

GROTON CONSERVATION COMMISSION

Minutes

January 27, 2004

Chairman Craig Auman called the meeting to order at 7:00 p.m. Bruce Clements, Kris Corwin, Bruce Easom, and Evan Owen. Peter Morrison was absent. Associate Member Marshall Giguere arrived at 7:30 p.m. Conservation Assistant Barbara Ganem was also present....

Upon a motion by E. Owen, seconded by K. Corwin, it was

VOTED: to approve the minutes of January 7, 2004 as drafted.

Upon a motion by K. Corwin, seconded by E. Owen, it was

VOTED: to approve the minutes of January 13, 2004 as amended.

Chairman Auman explained that he has prepared a draft Procurement Policy for choosing outside consultants for the Commission's review. In addition, Kopelman & Paige provided a draft contract for use with outside consultants. Hyla Ecological Associates and Oxbow Associates have submitted proposals for a wildlife habitat study for the Mattbob parcel. C. Auman asked members to review all of these documents for discussion at the next meeting on February 10th.

Correspondence from Town Counsel on the most recent draft Bylaw Regulations will be reviewed by members prior to the next Commission meeting. It is likely that we can hold the public hearing on February 24th to finalize approval of the Regulations.

B. Ganem reported that there has been a wetlands violation at 123 Martins Pond Road where the homeowner has cut trees in the wetland and buffer. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to send a letter to the owner of 123 Martins Pond Road, requesting the filing of a Request for Determination of Applicability.

Commissioners reviewed the draft wording on the Conservation Fund for inclusion in the Financial Management Policies for the Town and agreed to forward the suggested wording to the Finance Committee.

7:15 p.m. – Richard Mavilia/22 Redskin Trail Request for Determination of Applicability

Mr. Mavilia explained that previously he had shared a well with the house across the street, but has had problems with the water being shut off. He noted that he obtained a permit from the Board of Health for a new well but was unaware that he needed to get a permit from the Conservation Commission for work near Lost Lake. Mr. Mavilia said he is now hooked up to the new well. B. Clement said that the erosion control measures installed around the well appeared to be adequate, but he was concerned about the driveway down to the Lake. Mr. Mavilia replied that this was a right of way that has been the same since he was a kid. In response to a question about the ownership of the lot in question, Mr. Mavilia responded that his father had set up the Redskin Trail Realty Trust, and he is the beneficiary of the Trust while his brother is the executor. He stated he has paid the taxes on the property for the past four years.

The new well is 260 – 280 feet deep according to R. Mavilia. E. Owen asked if the footprint of the house has changed, and Mr. Mavilia indicated that the deck remains the same, but there had been a question from the Building Inspector about a staircase. He has since removed the staircase. B. Clements noted that the work drilling the well has been done, and there does not appear to have been an impact on the resource area. E. Owen commented that the snow plowed up on the right of way may require that the Commission contact the owner, Mr. Pike. K. Corwin said that the work appears to be consistent with that usually filed for in a Request for Determination. Members stressed the need to file

for any work in the Buffer Zone, and noted that the well driller, Skillings, should have been aware of this. Upon a motion by B. Clements, seconded by E. Owen, it was

VOTED: to issue a negative Determination of Applicability for 22 Redskin Trail.

C. Auman voted in the negative.

Upon a motion by K. Corwin, seconded by B. Clements, it was

VOTED: to issue a fine of \$50 to Richard Mavilia for not obtaining a wetlands permit prior to doing work in the 100-foot Buffer Zone.

E. Owen and B. Easom voted in the negative, but the motion carried with K. Corwin, B. Clements, and C. Auman voting in favor.

7:30 p.m. – Mattbob, Inc./993 Boston Road Notice of Intent continuation

Mark Sleger, engineer from Landtech, explained that Judith Nitsch Engineering, Inc. has had the plans and drainage calculations since October 15th. They do not expect their review letter until tomorrow, and Mr. Sleger requested that the Commission continue the hearing until the last meeting in February. He further explained that the applicant's attorney was attempting to work with Natural Heritage to determine the boundary of the vernal pool on site, but there has been no response to date. Commissioners asked what alternatives have been considered for the site, including a bridge to avoid filling the vernal pool. Mr. Sleger replied that the length required for a bridge would be prohibitive as 46 feet was the maximum culvert length and it would require a number of these to get over the filled portion of the vernal pool.

Members noted that it is the Commission's intention to hire a wildlife biologist to evaluate the habitat and potential impacts from the proposed development. Usually they want to be set up in early March, and they are likely to get quickly booked for this period of time. C. Auman pointed out that the outside consultant would be hired at the applicant's expense so the Commission needs the applicant's agreement. Mr. Sleger urged the Commission to wait until the applicant hears from the Natural Heritage Program about what is included in the mapped area before we jump into a wildlife study. He noted that he did not think his client would agree to this. M. Sleger said that they would be willing to meet with someone from Natural Heritage on site, and he felt that the outlet was lower than the area which they are proposing to fill. Members commented that engaging someone soon is necessary to assure that the study takes place at the appropriate time of year.

In response to a question about the status of the proponent's 401 Water Quality Permit application, Mr. Sleger responded that the applicant plans to put a restrictive covenant on the property in lieu of filing. Mr. Easom asked if the proponent has talked with abutters about an alternative access, and Mr. Sleger indicated that he was not aware of any progress on this issue.

Chairman Auman read into the record a December 15, 2003 letter from Dann Chamberlin, 53 Sunset Road, relative to the project. Resident Kris McEvoy, 89 Stonebridge Way, pointed out that 30% of the site would be impervious and that much of the drainage is proposed on Hollis soils which are fractured bedrock. Mr. Sleger explained that the Hollis soils belong to Hydrological Group D which are soils with low permeability and a high perched water table, such as Charlton and Hollis, but they do not consist of fractured bedrock. Ms. McEvoy asked if any of the four sites where soil testing was done were where buildings were proposed, and Mr. Sleger answered no. Ms. McEvoy stated that her major concern was that blasting would be necessary in order to develop the site.

Ms. McEvoy asked if the peak flow rate into the vernal pool would be changed, and M. Sleger replied yes, but that this does not necessarily change the surface water levels. The Commission will work with Judith Nitsch Engineering, Inc. to evaluate drainage patterns. Ms. McEvoy asked if there was any update on the water and utilities to the site, and Mr. Sleger said no. She requested that the applicant have formal written communication with Natural Heritage, with copies

to the Conservation Commission.

Planning Board member Josh Degen pointed out that in the traffic review prepared by Faye & Spofford, it was noted that the sight distance from the access to Rt. 119 would not be adequate unless vegetation was removed on neighboring properties, particularly in the spring. He questioned what impact this would have on the tree canopy at the vernal pool.

Abutter Russ Arena of 17 Ernie's Drive in Littleton stated that blasting was necessary in order for his house to be built as the builder encountered ledge at 8 feet. Frank Castellucci, 28 Sunset Road, commented that the applicant is always pushing for the next meeting, and it is a waste of abutters' time. Mr. Sleger stated the delay is caused by the length of time it has taken the town's consultant to respond. K. McEvoy pointed out that the issue of utilities and the extent of the vernal pool remain to be resolved.

Bob Maitland, 50 Sunset Road, said that wells in the area tend to be wash wells that are very susceptible to the effects of blasting. He explained that a wash well is shallow and is dug out with high pressure water in gravel soils. Leslie Lathrop, 55 Sunset Road, commented that her well is only 6.5 feet deep and is right on the property line.

M. Sleger explained that the proponent plans to limit the housing to over 55, but the town's consultant has recommended a sidewalk and small area for children to wait for the bus. The ZBA has not issued an approval on the Comprehensive Permit at this time. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to continue the hearing to February 10, 2004 at 7:30 p.m.

8:15 p.m. – Appointment – Dr. Susan Horowitz, Chairman, Board of Health

Dr. Horowitz stated that the Board's consultants, Dr. Susan Sundstrom and GeoInsight, will be developing the remediation plan for Surrenden Farm. This will be discussed at their next Board meeting on February 9th. She noted that some of the land that is to be donated to the Town has been found to be contaminated. The remediation seems to be focused on "dilution is the solution" according to Dr. Horowitz. Originally, it was thought that rototilling 18 inches deep would be sufficient, but the depth may be extended to three feet and possibly five feet. Dr. Sundstrom is also considering some type of benthic barrier. No testing has been done below 18 inches.

Dr. Horowitz indicated that it is likely that all of these lots will have to be deed notified, and the issue of attaching deed restrictions is still up in the air. She feels that new homeowners need to be aware that this area was once an orchard, particularly if they are proposing swimming pools and gardens. Moving contaminated soils does not increase contamination, but it would increase the volume of contaminated materials. The land that is proposed to be conserved as agricultural land is where the contaminated materials will be stockpiled. B. Easom questioned whether this is actually remediation of the soils or a ruse to get rid of the contaminated materials.

Commissioners noted that a tremendous amount of material has been moved around the site, giving rise to the speculation that it is a shell game. Members thanked Dr. Horowitz for her efforts in keeping on top of this issue. Josh Degen pointed out that the initial pilot study was to have covered only a small area of the site. Using Lot 22 (the agriculturally restricted area) as a holding area could result in an excessive arsenic load in the soils. He noted that there was a wetland complex just south of this lot and expressed concern that it could become contaminated as a result of the stockpiling of contaminated soils. This wetland eventually drains to James Brook. J. Degen added that the applicant has virtually ignored the various conditions set by the Planning Board, Conservation Commission, and Earth Removal Advisory Committee.

Dr. Horowitz concurred, stating that the Board of Health was now going to require lot by lot testing to determine the extent of contaminated soils to make the appropriate risk assessment. Dr. Sundstrom is aware of the presence of arsenic, lead, and possibly dieldrin. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to send a letter to the Board of Health requesting that they include testing of the wetland and 100-foot Buffer Zone just south of the contaminated soil

stockpile on Lot 22.

8:15 p.m. – Appointment – Selectwoman Virginia Wood

Members explained that the budgets for the Conservation Commission and Water Safety were essentially flat, going from \$85,055 to \$85,280. The parking attendants have been moved from the Conservation budget, and the land use assistant's hours reduced from ten to seven. Salaries for both lifeguards and parking attendants will be based on experience, rather than the current flat rate. Land maintenance expenses have been raised to reflect the necessary mowing and signage. The Commission is in the process of developing a fee structure for the Bylaw, and it is likely that revenue could be doubled in the coming years. The current fee structure in place under the Wetlands Protection Act does not recover the true costs of developing near wetlands.

Ms. Wood suggested that the Commission contact Sherborn and perhaps other towns to see what fees they charge for beach or parking permits. The Commission will be meeting with the Board of Selectmen to go over the budget on February 2nd. The Commission is also proposing an article for \$200,000 to be added to the Conservation Fund. Only \$75,000 was approved last year. One of the upcoming projects the Town may be asked to contribute to is Brooks Orchard. Previously the fund has been used to purchase the Hurd parcel, with a partial reimbursement from the state Self Help Program. C. Auman pointed out that we need to invest in land before it disappears.

Regarding the Open Space & Recreation Plan, members informed Ms. Wood that this is probably 90% done with a May target date. She asked if the Commission had considered bringing this to Town Meeting as residents should be aware of the plan because of the expense and time taken to develop it. This would help residents buy into the plan and reasoning for protection of open space. V. Wood asked if the Commission is actively seeking out parcels for protection, and B. Clements noted that the Nashua River Watershed Association and Greenway Committee recently co-sponsored a workshop (with Stephen Small, an attorney who specializes in family estate planning) to help landowners plan what to do with their land.. Perhaps more programs of this nature could be planned. Members also pointed out that a committee is currently reviewing the Town's possible adoption of the Community Preservation Act, and this group may be following up on available land.

9:00 p.m. Appointment/Vic Burton

The Commission previously visited Williams Barn to see what trees were proposed for cutting. There are four trees to be removed, one of which is on Conservation land and three on cemetery land. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to authorize the removal of one ash tree on the Sorhaug Woods property, adjacent to the old silo.

B. Clements recused himself from the vote.

In discussion on the proposed trail link at Crosswinds, members commented that it would be a shame to remove the tree buffer between the houses. V. Burton assured the Commission that the trail would be kept as narrow as possible. It was noted that trails should be put in place at the outset for subdivisions, and the Planning Board may want to minimize such narrow strips in the future. Mr. Burton noted that it is not the intent of the Trails Committee to make the area ATV accessible. Snowmobiling is apparently allowed at the airfield however. Upon a motion by E. Owen, seconded by B. Easom, it was

VOTED: to allow the establishment of a trail between #5 and #15 Squannacook Drive to continue on town-owned property to Spaulding Lane, providing access to said trails is designed for non-motorized use and kept to the narrowest width possible.

K. Corwin abstained from the vote.

Members next reviewed the proposed Reedy Meadow Estates plan. The development would be adjacent to the Meadowbrook Conservation Area. It appears that they have enough land so that development could be kept out of the wetland buffer and the Riverfront Area. Comments to the Planning Board should note that the area is within the ACEC and the rare species polygon on the Natural Heritage map. Members look forward to seeing the wetland more definitively identified.

Upon a motion by K. Corwin, seconded by B. Clements, it was

VOTED: to approve the draft Order of Conditions for 8 Valley Road, DEP #169-875, as amended.

E. Owen abstained from the vote.

Upon a motion by E. Owen, seconded by K. Corwin, it was

VOTED: to approve the Order of Conditions for 12 Highland Road, DEP #169-878 as drafted.

Regarding underground propane tanks, B. Ganem reported that she had discussed this with Fire Chief Bossellait who indicated that it is not a question of safety, but aesthetics. If gas should leak, it appears that it would dissipate. K. Corwin commented that she had talked with May & Hally about the Bylaw prohibition. She offered to look into the possible effects of leaking propane tanks.

B. Clements reported that he had received correspondence from Brian Sargent of the Massapoag Rod & Gun Club. He reports that the Club is trying to sell a five-acre lot with shore frontage on lower Massapoag that includes a historic mill site. This parcel is near land owned by the Groton Conservation Trust, NEFF, and MIT, as well as the Commission's Woodland Park Conservation Area. The Community Preservation Committee in Tyngsboro will be considering the purchase. B. Clements indicated that he had written a personal letter in support of their effort and asked members to consider sending a letter from the Commission.

C. Auman asked why they are selling the parcel, and B. Clements thought perhaps it was to raise money to help maintain a dam. Massapoag is in the headwaters for Salmon Brook and is in rare species habitat according to the Natural Heritage map. Upon a motion by K. Corwin, seconded by E. Owen, it was
VOTED: to write a letter of support to the Tyngsborough Community Preservation Committee for the purchase and protection of a five-acre parcel on Lower Massapoag Pond.

E. Owen reported that he has been in touch with the Massachusetts Chestnut Foundation, and they are looking for small parcels (<1.5 acres) on which to maintain a nursery of approximately 200 – 300 saplings, preferably with access to water. They do better in an old pine shrubby area, and those trees that are successfully inoculated will be allowed to mature to fruit bearing age. If the Commission supports the idea, it might be possible to clear an area at Sorhaug or McLain's.

Upon a motion by B. Clements, seconded by K. Corwin, it was

VOTED: to approve the draft Order of Conditions for 37 Cow Pond Brook Road, DEP #169-881 as drafted.

Members discussed the feasibility of hiring a consultant to prepare a wildlife habitat survey for the Mattbob site. C. Auman explained that he had reviewed the Ch. 30B procurement information in order to draft a "Procurement Process" for the Commission. In addition to a written request for proposals, it would require obtaining three bids (quoting only qualified professionals) for work over \$5,000 in value and a "not to exceed amount". Also, David Doneski of Kopelman & Paige has offered a draft Consultant Services Agreement which members should review prior to the next

meeting.

Commissioners underscored the need for determining migration routes, identifying what's there (including turtles and salamanders), and the analysis of potential impacts of removing tree canopy and putting in the access roadway. After reviewing the proposals prepared by Oxbow Associates and Hyla Ecological Services, members questioned how they would find turtles and how migratory patterns would be identified as these activities are likely to be the most expensive component of the review. B. Clements summarized the discussion as what we need from the consultant is a finding on who is going to get run over.

In fine tuning the request for services, members agreed that there should be an inventory of egg masses (including species type), an assessment of migration patterns in the roadway work area, and a determination as to the presence of rare species. The written job specification should address the need to assess the short and long term impacts to the inhabitants of the vernal pool. It may be appropriate to only do a drift net in the first 500 feet of the access roadway in order to determine migratory routes. This would include wetland flags 13A through 25A. Checking the wetland for rare species and evaluating suitable upland habitat may be all that is necessary to infer the migratory route. This study could be an intermediate step to developing conditions that would protect the resource area in the future with the state likely to get more involved if rare species are identified on site.

Members thought that the applicant is likely to resist hiring an outside consultant. The recently approved rules for hiring outside consultants include a statement that if the applicant chooses to not pay the fee in advance of the Commission receiving services, the project may be denied. These rules were approved under the state enabling legislation that now allows Conservation Commissions to hire outside consultants; similar regulations will be promulgated under the local Wetlands Protection Bylaw.

There being no further business, the meeting was adjourned at 11 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as amended February 10, 2004