

GROTON CONSERVATION COMMISSION

Minutes

February 10, 2004

Chairman Craig Auman called the meeting to order at 7:00 p.m. C. Auman, Kris Corwin, Bruce Easom, and Evan Owen were present. Bruce Clements and Peter Morrison arrived at 7:05 p.m. Stacy Laudenslager was absent. Barbara Ganem, Conservation Assistant was present.

C. Auman outlined the process for hiring consultants, including the draft procurement policy based on the Ch. 30B bidding process. Members agreed that a review of the credentials of consultants to conduct a wildlife study on the Mattbob project could be done on February 24th. B. Easom noted that the letter from Douglas Deschenes, dated February 10th, would not allow Commissioners or consultants to access the land without prior notice. The Commission commented that it may be necessary to continue the hearing for a year in order to collect the necessary information as there is not enough time to implement a wildlife study after the requested continuation date at the end of March. They are running a risk with the timing. Their analysis would have to show what kind of study they conducted, as well as the qualifications of their consultants.

In review of the minutes of January 27th, several corrections were made. Upon a motion by E. Owen, seconded by K. Corwin, it was

VOTED: to approve the minutes of January 27, 2004, as amended.

Returning to the issue of the procurement process, B. Ganem reported that she had attempted to get three quotes for the Mattbob wildlife study, but there had been only two responses to the request for proposals. B. Clements asked if it is necessary to get town counsel review of the procurement policy, and B. Easom suggested that we ask the Selectmen whether they feel Town Counsel should review this. C. Auman indicated that he had previously gone over this with Jean Kitchen. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to approve the draft procurement policy with the amendment that the amount be changed to \$5,000 to \$24, 999 providing it is acceptable to the Board of Selectmen and/or town counsel.

In discussion on the draft contract prepared by David Doneski, B. Ganem suggested that there be an escape clause in the event of a conflict of interest. Upon a motion by E. Owen, seconded by P. Morrison, it was

VOTED: to approve the draft contract with the addition of an escape clause covering conflicts of interest.

Rick Muehlke, President of the Groton Conservation Trust, has asked if any Commissioner is willing to set up another stewardship meeting to acquaint residents with conservation lands in the community. The outcome of last year's stewardship meetings was the development of an e-mail list serve of potential volunteers to help out on projects. Commissioners B. Clements, E. Owen, and K. Corwin participated in the meetings which also had representatives from the Trust and the Town Forest. Several members expressed concern that they were over-committed at this time with other committee meetings. It was agreed to respectfully decline this opportunity, given existing commitments. B. Clements suggested that an associate might be willing to take this on.

7:30 p.m. – Mattbob, Inc. Notice of Intent continuation

P. Morrison read the legal notice, and Mark Sleger of LandTech Consultants submitted new plans, revised in response to comments from Judith Nitsch Engineering, Inc. M. Sleger acknowledged that the calculations were also revised to include 1" of rainfall instead of .5" as originally provided. He also noted that, as outlined in Douglas Deschenes' letter,

the applicant's main concern is the delineation of the vernal pool which is being reviewed by their consultant. B. Clements asked if they are planning to do any trapping, and M. Sleger said they were primarily looking at the limit of the vernal pool. Commissioners stressed the importance of determining whether there are rare species on site, and this is typically done through trapping. M. Sleger stated that he was working with the appropriate officials to make this determination. He pointed out that the majority of development is outside of the 100-foot buffer. He indicated that the applicant will work with Natural Heritage to determine whether the edge of water is the boundary of the vernal pool. M. Sleger stated that Natural Heritage does not require that the Notice of Intent be mailed to them unless the work is within mapped estimated rare species habitat.

K. Corwin pointed out that if the applicant's wetland scientist does identify rare species on site, there will be a missed opportunity this year to study the possible impacts. She asked if the applicant was willing to wait a year if the Commission does not feel the applicant's report is adequate. Mr. Sleger indicated that the applicant is refusing to pay for the Commission's peer review and wildlife assessment until after his consultant's study is back. B. Easom stated that it seems pretty clear that they would not want to identify rare wildlife on site. M. Sleger maintained that the standard of proof rests with the applicant. Members pointed out that the Commission must be convinced by the information provided, and the Commission should be clear about expectations. E. Owen noted that many wetland scientists are not familiar with the process of identifying amphibians and reptiles in particular habitats. Mr. Owen asked if the applicant was reviewing microtopography of the site, and Mr. Sleger responded "very lightly". E. Owen felt that at some point, it would be necessary to determine exactly where high water is located.

C. Auman read Mr. Deschenes' letter of February 10, 2004 into the record. Chairman Auman expressed disappointment that the applicant does not recognize the Commission's authority under M.G.L Ch. 44, §53G to hire an outside consultant. Mr. Sleger stressed that the applicant does not want the Commission to hire a consultant now before they have had an opportunity to do a full investigation themselves. Members pointed out that the risk is the timing as the window of opportunity for a wildlife study covers the March through May time period. It will be necessary to delay the study another year to adequately perform a wildlife study. Mr. Sleger underscored the need to first delineate the vernal pool.

P. Morrison pointed out that the Commission was giving the applicant an opportunity to work in a parallel process rather than serially which is likely to prolong the process. The risk is the time.

B. Clements noted that there is a high probability that there are rare species present based on the Commission's past experiences with vernal pools. E. Owen asked who will be doing the work, and Mr. Sleger stated that Leah Basbanes is the applicant's wetland scientist on this project. E. Owen asked if she has had experience in the breadth and methods employed in work of this nature, and M. Sleger replied that she has had experience in past cases that he has encountered.

The presence of obligate vernal species has already been documented on site. M. Sleger insisted that the applicant has never had the benefit of receiving a copy of anything. C. Auman noted that there are a number of open issues which have yet to be addressed. He outlined these issues and indicated that the Commission will be sending a letter to the applicant shortly.

In response to a request for comments from the audience, Kristen McEvoy, 89 Stonebridge Way, asked why the applicant chose to continue the hearing to March 23rd. Mr. Sleger responded that the applicant felt that this would be adequate time to delineate the vernal pool. Ms. McEvoy again requested that the applicant copy the Commission with any correspondence to the Natural Heritage Program. Mr. Sleger indicated that there had been a telephone conversation with the Program prior to her earlier request. In addition, it was noted that revised copies of a plan and calculations were submitted at this evening's meeting, and it is difficult to adequately review them on such short notice.

Leslie Lathrop, 55 Sunset Road, asked for clarification on the wildlife study, noting that the applicant has refused to fund a wildlife study to be done by an outside consultant chosen by the Commission. The adequacy of the wildlife study will depend on the consultants' qualifications. Members pointed out that the Commission may hire its own consultants under M.G.L Ch. 44§53G. Regarding the trespassing issue, Ms. Lathrop pointed out that the applicant's

surveyor has frequently been on her property, and she felt there ought to be a balance. M. Slegger indicated that his client was looking for the courtesy of being notified when people were to be on his property although the land is not currently posted against trespass.

K. McEvoy asked if it was possible that you would see vernal pool species one year and not the next, and K. Corwin indicated that this could happen if water levels differ from year to year.

Abutter Andres Viera, 56 Stonebridge Way, commented that there is a lot of motivation not to find rare species on site.

B. Clements asked what variances the applicant is seeking under the Wetlands Bylaw, and Mr. Slegger responded that limited projects are allowed under the Bylaw. The grading within 100 feet would constitute a variance however. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to continue the hearing to the last meeting in March, March 23, 2004, per the applicant's request.

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8:00 p.m. – Tracy Eliades/Orchard Realty Trust – 91 Culver Road Request for Determination of Applicability

Landowner Tracy Eliades explained that he had submitted the March 1998 plan which showed the wetland delineation, as well as a plan showing the location of the retaining wall and proposed duplex in relation to that delineation. Also submitted is the Occupancy Permit signature page with Beth Montgomery's signature for background information. He noted that he has discussed the work with Building Inspector Mike Tusino. Mr. Eliades requested that the Commission consider issuing a negative Determination with any conditions they feel necessary, a step which would allow him to stabilize the site. He commented that he was looking to get back to work as soon as possible.

Wetland consultant Mike Turgeon displayed a plan showing the proposed work superimposed on the delineation. He noted that a silt fence was in place on the site. The septic system is installed, and footings for the foundation have been poured. The hay bale line is located 100 feet from the 1998 wetland line. He acknowledged that the Commission may have some concerns that the wetland line has moved since the 1998 delineation. Mr. Turgeon indicated that a negative #3 Determination with conditions would still give the Commission jurisdiction and the applicant an opportunity to complete the work.

P. Morrison asked the date of the ANRAD, and Mr. Turgeon indicated he thought this was done in 1997. Ms. Montgomery signed the permit in 2001. Mr. Morrison pointed out that the ANRAD/Determination is good for 3 years and had not been extended. If the wetland line has moved, there could be a violation. Mr. Eliades traced the history of the project, noting that the actual flagging was done in 1997 with a sign off by the Commission in 1998. He said that he also got approval from the Board of Selectmen and the Planning Board and had to wait six months for approval from DEP to put the road in. That Order was subsequently extended. He noted that he was under the impression that all permits were in place. Mr. Eliades commented that three engineering firms also felt that the work was permitted, and it was not until he got the letter from DEP concurring with the Commission's position that he was aware that he needed to file.

P. Morrison pointed out that it is conceivable that Mr. Eliades would be required to remove the structure that is currently in place. Mr. Eliades protested that his application had been in process. P. Morrison noted that the Building Permit Application has nothing to do with the wetlands process. Mr. Eliades felt that the project should be grandfathered under the Bylaw. Members commented that there are exemptions in the Bylaw, such as for the greater community good, that have allowed work to occur within the 100 foot buffer. In that particular case, the applicant plans to set aside over 300 acres for conservation. That type of thing offsets work in sensitive areas. T. Eliades stated that he has donated 13 acres, but Commissions pointed out this was done in conjunction with getting permits. P. Morrison said this is a new project and a new application. M. Turgeon noted that the septic system was installed and even though the wetland line was not extended officially, he felt the project was underway.

P. Morrison asked when the footings on the foundation were put in, and Mr. Eliades answered the work was done in September 2003. Mr. Morrison noted that it is his experience that these things have an expiration date. Mr. Eliades said

that the Planning Board required that they upgrade the road, and they were in the process of getting the required extensions for this before putting in a house. Mr. Eliades indicated that, based on the economics of putting a house on both sides of the stream, he decided to go forward with the bridge at the wetland crossing. He noted that all of a sudden, a wetlands bylaw appeared, and this created an obstacle. P. Morrison commented that Mr. Eliades was coming before the Commission with an expired delineation, and a new delineation would include the local Bylaw. He noted that the Commission cannot grandfather new projects, and the criteria for exempting this work must be based on the Bylaw, particularly since the original delineation was not extended. M. Turgeon asked how his client could file under the new Bylaw since it protects both perennial and intermittent streams. Members urged him to look at the Bylaw exemptions.

K. Corwin noted that the original delineation has expired. Both she and B. Easom agreed that the wetlands should be appropriately delineated so that the Commission knows what it's negotiating. T. Eliades noted that the 1998 flags were re-hung in October, but the actual delineation was not re-visited at that time. Mr. Turgeon asked if using the tree and shrub layer was adequate for the delineation, and member K. Corwin responded that soils should also be looked at in this area. T. Eliades said that the hay bale line may be 65 feet from the wetlands, but he felt that there was at least a 50 foot protected, undisturbed buffer next to the wetlands. He noted that he is trying to think of ways the project can move forward right now.

E. Owen said what is before us is a Request for Determination of Applicability, and the Commission does not customarily grant waivers to the Bylaw. C. Auman stated that the wetlands should be re-delineated and re-flagged. T. Eliades noted that the greater good could be considered that these houses will bring in tax revenue. C. Auman pointed out that the Commission generally looks at it from a conservation viewpoint, such as the conservation of habitat, protection of both sides of a stream, or habitat improvements such as the removal of invasives.

Former Conservation Assistant Beth Montgomery stated that any signature on a building or occupancy permit in no way relieved the applicant from the need to file for a wetlands permit. She indicated that she did not remember signing an occupancy permit, but that form is done only when a building is ready to be occupied. Furthermore, she noted she did not have the authority to state that the work was more than 100 feet from the wetlands.

B. Clements said he is looking for a way to approve this, but there needs to be a justification, and he felt that Mr. Eliades should file a Notice of Intent. M. Turgeon asked what the Commission would like to see to move the project forward. C. Auman said that a clear, current delineation is necessary, and then the Commission can go from there. B. Clements indicated that he preferred an NOI. P. Morrison asked if it is possible to move the house further from the wetland, and Mr. Eliades replied that the house is about 20 feet away from the lot line now. M. Turgeon clarified the Commission's position as wanting a delineation done and approved prior to closing the hearing. P. Morrison pointed out that the applicant could withdraw the filing without prejudice. B. Ganem explained that the Commission does not approve boundary delineations under a Request for Determination but under an Abbreviated Notice of Resource Area Delineation (ANRAD). K. Corwin made a motion to issue a positive Determination, seconded by B. Clements.

In further discussion, Mr. Eliades indicated that the site was unstable because concrete has been poured and rebar is exposed. Commissioners responded that, to stabilize it from the conservation viewpoint, the hay bale line must be kept in good repair and replaced if necessary. P. Morrison pointed out that both sides of the stream could be delineated as part of an ANRAD filing. That would freeze the delineation for 3 years for both parcels. If an NOI is filed for the house, then that could be closed out with a Certificate of Compliance once the house is completed. Mr. Eliades stated that it was a subdivided lot. Members noted that fines are unlikely unless the site is unstable or if work continues without a wetlands permit. In response to Mr. Morrison's question about which direction the applicant wished to take, Mr. Eliades agreed that a positive #4 Determination, requiring the filing of an NOI would be acceptable. K. Corwin clarified her earlier motion, seconded by B. Clements, and it was

VOTED: to issue a positive #4 Determination for 91 Culver Road.

Chairman Auman reported that the subject of beach fees had come up during the budget review with the Finance Committee. B. Montgomery indicated that she has previously recommended that the fee be raised and noted that \$20 or \$25 is a bargain. C. Auman commented that the biggest users of the beach are the Recreation Department swim

lessons. Some out-of-towners sign up for the swim lessons. B. Easom asked how many parking spaces are available at the property, and members noted that it may be necessary to remove additional trees to accommodate larger sized vehicles. Also, there used to be a bus that would take children from the center of town to the beach for swim lessons. This eliminated the need for additional parking. People can walk or ride a bike to the beach and pay no fee. Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to increase the beach parking permit fees from \$15 to \$25.

All were in favor.

Upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: to increase the cost of a day pass for the beach from \$5 to \$10.

The motion passed, with B. Clements opposed.

Upon a motion by P. Morrison, seconded by B. Easom it was

VOTED: to raise the price of a second beach parking sticker from \$10 to \$15.

Upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to require that all residents and non-residents signed up to take swim lessons purchase a beach parking sticker.

The current senior citizen rate of \$10 will stand. E. Owen noted that the parcel where Sargisson Beach is located is considered conservation land and should remain so. B. Montgomery indicated that the Parks & Recreation Department has run programs while the Commission has always been in charge of parking and the beach itself. When Parks & Recreation split up, the Commission took on the operation of the beach. The Recreation Department may be willing to operate the waterfront if there is a balance between income and revenue. Members suggested looking at the job description for the Conservation Assistant position before seeing if the Recreation Department is equipped to take this on. The increased work load and emphasis on land management is at least partly responsible for such a change.

B. Montgomery pointed out that the Commission is being ripped off by the lifeguards because they leave earlier than they say they do. She recommended that the hours during which the beach is open could be reduced. In addition, she asked what was being done about the high E. coli readings last summer. Members indicated that the Board of Health is planning to test to determine the source. Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to investigate the possibility of transferring the duties of the Conservation Assistant with regard to the supervision of lifeguards and parking attendants at Sargisson Beach to the Recreation Department.

Commissioners thanked Ms. Montgomery for her input, and she noted that she will be available to help out as a Senior Volunteer at the beach this summer.

The Conservation Commission and the Board of Selectmen have been invited to appoint two members to serve as Groton's representatives to a Great Pond ACEC Committee to help in the development of lake management plans for the Great Ponds in town. E. Owen explained that the Lost Lake Weed Management Advisory Committee is now a sub-committee of the Groton Great Ponds Committee which has a broader mandate. Members felt it was difficult to commit to another committee without some idea of the time commitment involved. Also, it was suggested that Marshall Giguere might be willing to serve in some capacity on this Committee.

B. Montgomery requested that the Commission consider publishing a correction to last year's Annual Report in which it was stated she had resigned. Members raised no objection to stating that this was an error, and that she retired as

Conservation Assistant.

There is a conflict between the MACC Annual Meeting and the Commission's regular Saturday site visits. Upon a motion by B. Clements, seconded by K. Corwin, a motion failed to change the start time for regular site visits from 8 a.m. to 9 a.m. Those voting in the negative were E. Owen, P. Morrison, and C. Auman. Those voting for the motion were K. Corwin, B. Clements, and B. Easom.

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

VOTED: to change the March 6th site visits to March 7th at 9 a.m.

P. Morrison voted in opposition.

The Conservation Fund was one of the topics discussed with the Selectmen and Finance Committee. Currently there is \$213,000 in the Fund, and the Commission is requesting an additional \$200,000. Members noted that the Fund has previously held as much as \$700,000 when it was utilized for the purchase of developmental rights for Gibbet and Angus Hills and the Hurd parcel. It needs to be replenished in order to be an effective tool for protecting land. An informational sheet should emphasize what has been done with the Fund in the past.

Upon a motion by B. Clements to send a letter requesting a full NOI for remediation work at Surrenden Farm, seconded by B. Easom, members discussed the current status of remediation at the site. A memo has gone to the Board of Health requesting additional testing in the wetlands south of the stockpile area on Lot 22. It appears that extensive testing throughout the site will be necessary. B. Clements mentioned that the Middlesex Conservation District is reviewing the situation and has made several recommendations to the Earth Removal Advisory Committee concerning stabilization. Members felt that if the work is not close to wetlands, an NOI cannot be required. Several Commissioners pointed out that if there is an impact to wetlands from work more than 100 feet away, the Commission could then require a filing for after-the-fact damage. B. Clements withdrew his original motion, and upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: to send a letter to Beals Associates/Joe Falzone specifying that they are in violation of the original Determination and that failure to comply may result in fines and indicating that we will include Surrenden Farm in our regular site visits on February 21.

B. Easom reported on the status of the Community Preservation Act study committee, which also has members appointed from the Housing Authority, Planning Board, Selectmen, and the community. The mandate from Selectwoman Virginia Wood is to see if this is a viable method for getting funding for affordable housing to show that the Town has a plan which could thwart Ch. 40B proposals. B. Easom said that committee members are investigating other towns which have a similar demographic/geographic makeup as Groton. He noted that meetings have been or are to be conducted with the town assessor, accountant, treasurer, Selectmen, and Nashua River Watershed Association. In general, the response has been favorable. Mr. Easom commented that the 2001 failure of the Community Preservation Act was largely due to fears that it would be an administrative burden on the Town. He reported that this was not the experience of other towns.

Noting that the Conservation Commission was unanimously against the Town adopting the Community Preservation Act in 2001, B. Easom asked members for their current concerns and questions. The loss of control was one issue raised, and B. Easom responded that Tyngsborough has successfully protected 45 acres of open space on the Merrimack River since they implemented the Community Preservation Act. Ayer reduced the contribution from 3% to 1% after a year's operation. It appears that the state contribution will stay at 100% at least through 2005. This level of participation is also geared to the number of towns that have adopted the Act and how much is collected through the state Registry of Deeds which funds the state's portion. B. Easom commented that as much as 80% of the funds can be used for purposes other than open space protection. Some of the exemptions which the Town could consider are the first \$100,000 value of a house or for senior or low income citizens. For example, at 3%, the fees collected on a house

valued at \$300,000 would be \$95.00 without exemptions.

K. Corwin expressed concern that potentially very little could actually go to conservation. B. Clements noted that on important purchases the Committee makes the final decision. Self Help funds are generally granted on a reimbursement basis, and members questioned whether adopting the Community Preservation Act improves a town's chances of receiving Self Help funds. Members felt that the Commission's charter is to conservation, not necessarily to other causes the Town may value. As advocates for open space, the Commission supports the protection of conservation land.

B. Ganem noted that correspondence has come in from the Middlesex Conservation District about the availability of Wildlife Habitat Incentives Program (WHIP) funding for the management of wildlife habitat on town-owned conservation land. Commissioners suggested Crosswinds (airfield area) and Sorhaug Woods as possible candidates for restoration, particularly since forestry management plans have been drawn up for both areas. B. Ganem will contact the District to see if these areas might be eligible for funds to implement the plans.

In discussion on the fees to be implemented under the Bylaw Regulations, C. Auman pointed out that the current fee rate collected by the town (under the Wetlands Protection Act) is penciled in on the "Wetlands Filing Fee Calculation Worksheet". This rate could be increased by 25%, 50%, or 100% as the Commission decides. This should be compared to the fee currently outlined in the draft Regulations. The draft Regulations reflect the Sudbury fee structure whose bylaws formed the basis of Groton's draft Regulations. Due to the lateness of the hour, members agreed to review the fee structure at the next meeting. K. Corwin pointed out that the purpose of adding additional fees under the Bylaw is to act as a financial deterrent to filling wetlands or working in the buffer zone.

K. Corwin reported that she attended the ZBA hearings on Monday, February 2nd. She noted that the Washington Green 40B project did not address the fact that the septic systems are within the 200-foot Riverfront Area and 100-foot Buffer Zone. The site is not included in the Natural Heritage polygon for estimated habitat of rare species. Regarding Groton Residential Gardens. K. Corwin reported that Judith Nitsch Engineering, Inc. is reviewing the drainage for the site. The question of whether blasting will be necessary for the Oak Ridge Manor Ch. 40B proposal remains an open issue.

B. Easom explained that the Trails Committee has agreed to install replacement fence posts at McLain's Woods, if the Commission will pay for their purchase. (The Commission previously agreed to pay for replacement posts at the November 12, 2003 meeting.)

Upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: to send the draft letter to Mattbob, as amended, about insufficient funds and other outstanding issues related to the Oak Ridge Manor Ch. 40B filing.

B. Ganem informed the Commission that a filing was in the works for 8 Valley Road.

There being no further business, the meeting was adjourned at 10:20 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved, as amended, on February 24, 2004