

## GROTON CONSERVATION COMMISSION

Minutes  
March 9, 2004

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

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

VOTED: to approve the minutes of February 24, 2004 as amended.

Commissioners reviewed and discuss the draft letter to Marty Jalonski concerning the revised plans submitted to DEP for the appeal of the Commission's denial of the Groton Residential Gardens development. Upon a motion by B. Clements, seconded by P. Morrison, it was

VOTED: to send the letter to DEP Environmental Analyst Marty Jalonski as drafted.

Members made several suggestions for changes in the Master Plan Update, noting that it is a very positive step to follow up on the implementation of the Plan. Due to the limited time in which Commissioners could review the plan, C. Auman suggested that any additional comments be conveyed to B. Ganem.

7:15 p.m. – Vic Burton/Groton Trails Committee Notice of Intent

Vic Burton explained that the site the Commission originally visited for the location of the trail bridge has been altered slightly, to a distance 15' to 20' further to the right of the existing box culvert. The construction of the timber bridge will involve the placement of four 6' x 8' stringers. There will be a 3 ½' high handrail on the 6' wide by 20' long bridge. Dillis & Mische provided the exact floodplain measurement at the box culvert, and V. Burton indicated that there would be no net loss of flood storage. It is anticipated that they will use pressure-treated wood (at the new standard) for the construction.

B. Easom commented that he has a conflict because he prepared the stress analysis to determine the maximum load of the bridge and recused himself from the hearing. B. Clements indicated that he also serves on the Trails Committee, but he feels he can be fair and unbiased in his review of the project. P. Morrison pointed out that neither member has a monetary interest in the project, so it is difficult to see a conflict of interest. Addressing K. Corwin's question about the cost of the project, V. Burton responded that the original plan was \$800, and this bridge will be \$2000. B. Clements asked what kind of supports the bridge will rest on, and V. Burton answered "the butt ends of telephone poles". Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to close the hearing for the Tuity Brook trail bridge NOI.

V. Burton briefly updated the Commission on the clean up of the silo at the Williams Barn. He noted that they were beginning to remove the tires from the silo, and they anticipate getting quotations on the cost shortly.

Members signed signature pages for several previously issued Certificates of Compliance.

Following up on the earlier discussion on Groton Residential Gardens, Commissioners agreed to send a memo to urge the ZBA to enforce the local Wetlands Bylaw and require a minimum 50 foot no-disturb buffer.

B. Ganem reported that she had a complaint about work being done at 101 Boathouse Road (the last house on the left) and has requested a filing from the homeowner, Frank Mavilia. Commissioners requested that the site be included on the next site walk.

P. Morrison explained that the Board of Health had met the previous evening to discuss the arsenic remediation at Surrenden Farm. Attorneys representing Newberry Development, the Town, and the Marion Campbell estate were present, as well as the Licensed Site Professionals (LSPs) for the Town and Joseph Falzone. The Earth Removal Advisory Committee has requested hydromulching of the areas that are currently bare by March 18<sup>th</sup>. No further work is supposed to take place until the LSPs have agreed on a sampling plan.

Regarding the request for the Conservation Fund, P. Morrison reported that the Selectmen suggested that the Commission wait until the fall town meeting once the free cash is ascertained. He expressed reservations about this as the Commission has been promised this before. While \$75,000 was approved last spring, the Selectmen indicated that they would support an amount to be determined at a later date.

#### 7:35 p.m. – Craig Heusser/Town of Groton Request for Determination of Applicability

In the absence of Scout Craig Heusser, P. Morrison summarized the project as a 9' to 11' long by 5' wide trail bridge. C. Heusser plans to use three stringers to span the brook, and the stringers will be trees felled by beaver in the area. The bridge deck will be composed of 2" x 6" environmentally safe planks with a 4" by 4" edge to prevent horses from slipping off. The logs will be placed on granite abutments. Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to issue a negative #3 Determination with the condition that no trees larger than 6" in diameter shall be removed in order to construct the bridge..

#### 7:45 p.m. – Tim Boudreau/123 Martins Pond Road Request for Determination of Applicability

Mr. Boudreau explained that several of the willow trees in his yard had come down in a windstorm in October. He noted that the individuals who prepared estimates on tree removal all recommended that the other willows be removed because they posed a safety hazard. One company suggested chipping and pushing logs into the woods. T. Boudreau noted that they waited until the ground was frozen and all work was done in a careful and clean manner. He said the letter from the Commission about the need to file for such work caught him by surprise.

In addition to the tree removal, Mr. Boudreau indicated that he would like to do some landscaping behind his house. He distributed a plan showing proposed landscaping in his yard. He explained that when his house burned, some of the rubble was left behind the house. They anticipate some grading to flatten the area and then loaming and seeding to create the backyard. He estimated that the brook was approximately 150' away. In the area where trees were removed he expects to patch the lawn. When asked if he had any problem with planting a wetland seed mix or some blueberries adjacent to the stream, T. Boudreau agreed that this could be done. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to continue the meeting on the 123 Martins Pond Road Request for Determination of Applicability to March 23, giving members time to visit the site on March 20<sup>th</sup>.

P. Morrison voted in opposition.

After reading the legal notice for the 8 Valley Road Request for Determination of Applicability, it was noted that the public notice was not advertised in the newspaper. Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to open the meeting for the 8 Valley Road Request for Determination of Applicability on March 23<sup>rd</sup>.

E. Owen abstained from the vote.

B. Ganem noted that the Forestry Management Plan prepared for Sorhaug Woods recommends woodland management

to improve the health and productivity of the forest. She asked for the Commission's viewpoint on doing a selective forestry cutting at the site. E. Owen pointed out that there was a lot of black locust established in the area behind the open field. K. Corwin commented that the vernal pools on site have forest-dwelling endangered species. B. Easom said he agreed with the process of thinning the forest, combined with the removal of invasives. The trees to be removed would have to be marked as was done on the Shattuck parcel to maintain the viewshed. If there is good timber on site, that could be used to offset the cost of invasive removal. In general, Commissioners agreed that this is one of the worst sites for invasives and that tree-cutting might improve the health of the forest providing the logging is not too extensive. E. Owen, B. Easom, and B. Clements expressed an interest in attending the meeting with representatives from the Wildlife Habitat Improvement Program (WHIP) on either Monday or Tuesday.

8:15 p.m. – Robert Anderson/270 Whiley Road Request for Determination of Applicability

Mr. Anderson explained that he proposes the removal of an existing deck and replacement with stairs. He noted that it would be a net reduction of about 84 SF of decking in the 100-foot Buffer Zone, with all work within the existing footprint of the building. Upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to issue a negative #3 Determination with the conditions that the area under the deck be stabilized after the deck is removed and that stone riprap be installed around the gutter downspout.

Commissioners asked if there were any upcoming ZBA hearings; members will advise one another if they are planning to cover a ZBA meeting.

8:30 p.m. – Larry Anderson/57 Old Ayer Road Notice of Intent

Brian Thorne of GPR explained that the wetland line had been re-drawn at the request of the Commission. He submitted the soil logs to accompany the new flagging and noted that the entire septic system upgrade would be within the 100-foot Buffer Zone. They will be meeting with the Board of Health on March 22<sup>nd</sup> to discuss how they should proceed with the design of the system. He estimated that the work is 50' to 58' away from the wetlands. Groundwater is at 30". Although the design has been previously reviewed, the delineation of the wetlands has changed. Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to continue the hearing to April 13, 2004, pending information from the Board of Health.

Commissioners assured Mr. Thorne that whatever practical solution is agreed to by the Board of Health is likely to meet Commission requirements.

Scout Craig Heusser was present to discuss the Sorhaug trail bridge and explained that he expects to start in a few weeks, hopefully at the end of March. He anticipates completing the project around the beginning of June. Commissioners expressed appreciation for the work Mr. Heusser is doing on behalf of the town. C. Heusser commented that Fletcher Granite Quarry is donating the granite to be used for the abutments.

8:45 p.m. – Tracy Eliades/Culver Road Notice of Intent

Chairman Auman read the meeting protocol, and P. Morrison read the legal notice. The applicant's wetland scientist, Michael Turgeon, submitted the green cards for abutter notifications. He reported that he had revised the wetlands delineation as a result of the Commission visit to the site with him on March 7<sup>th</sup>. Mr. Turgeon estimated that the wetland, at the closest point to the retaining wall on Lot A-1, is about 50' rather than the 100' on the previous plan. The 100-foot buffer line goes through the duplex on Lot A-1. He indicated that the duplex on the south side of the Brook (Lot A-2) is more than 100' from the wetland line but is within the 200' buffer to the stream, James Brook. Under the Bylaw, he noted that he intends to mitigate for work in the buffer.

Of the invasive species on site, Mr. Turgeon indicated that barberry and honeysuckle are the worst, with some specimens located within the actual wetland. Under the Invasive Species Management Plan, he proposed identifying and removing the invasive species, including Japanese knotweed near the road. He noted that the Norway maple will be girdled. As the invasive plants are removed, new plantings such as red maple and sugar maple will be planted in the disturbed areas. A sedge and rush seed mix will be used in the wettest areas.

C. Auman requested clarification on the number of lots involved in the filing, noting that a second lot seems to have a driveway within 100' of the stream. Tracy Eliades stated that the septic system on the south side of the stream has been approved by the Board of Health. C. Auman asked why he had not filed previously. K. Corwin noted that the house on the north side of the stream is within the 100' Buffer Zone which is a violation of the Bylaw. T. Eliades pointed out that no work is proposed within the first 50', and there are hay bales there now.

It was estimated that the driveway on the south lot is within 50' of the stream. T. Eliades said that both the septic and the house were first approved in 1999. At that time, there was no restriction. He maintained that the driveway was part of a utility easement held by AT&T since 1964, and indicated he felt it was outside the Commission's jurisdiction. P. Morrison noted that the driveway appears to have been re-graded recently. T. Eliades stated that the Highway Dept. required the T-turnaround at the end of Culver Road. P. Morrison asked if any work had been done, and T. Eliades indicated that yes, work was done in 2001 when the septic system went in. P. Morrison pointed out that work was done in the Buffer Zone without an Order of Conditions, Superceding Order of Conditions, or a Determination of Applicability. T. Eliades said that AT&T has the right to maintain it with a preceding easement. K. Corwin commented that the issue is that the work is a violation of the Town Bylaw. M. Turgeon responded that the Invasive Species Management Plan is supposed to mitigate for violations of the Bylaw. E. Owen pointed out that the Commission had given suggestions for how to work with the Bylaw. To offer some flexibility the Commission suggested conservation restrictions, but proper permits are necessary to be fair to all applicants. What the Commission lets transpire here will come back to a lot of proponents who would look to cite this plan as a way to get around the Bylaw. E. Owen concurred with prior member comments.

B. Clements observed that the plan does not comply with the Bylaw. C. Auman offered that the impact is much more severe than the Commission previously thought with the addition of a second lot. M. Turgeon said that, by having two lots, they could remove invasives from land in both lots as mitigation. He noted that the driveway of the south lot was stable, and there is no sedimentation into the wetland. He did not think the wetlands boundary line would move that much. The last boundary line was done by a certified wetland scientist, checked by the Board, and checked by DEP. The applicant had no idea it would move this much. The applicant is offering the Invasives Management Plan as a way to mitigate for any problem in the wetland demarcation.

C. Auman asked if there were any other questions on the plan, and abutter Maureen Beal (7 Dolan Drive) asked if the project is subject to the 100' or 200' setback. C. Auman indicated that the Commission has not decided but under the Bylaw James Brook is considered a stream. T. Eliades stated that the Order of Conditions was extended for the brook crossing. He then questioned whether the Commission is saying it is perennial, and C. Auman said the Commission is undecided at this point. T. Eliades said the two lots were split in 2001.

Abutter Peter Cunningham (44 Smith Street) asked the status of the lot on the south side as he understood that it was not recognized as a building lot. He questioned why Mr. Eliades was proceeding, and T. Eliades indicated that he had a permit for a septic system. Mr. Cunningham asked why a septic system would be put in if it is not a legal building lot, and Mr. Eliades indicated that there are different ways to do things. He stated that the septic plan was approved in 1999 and built in 2001.

P. Morrison, in going through previous filings, noted that the Wetland Transmittal Sheet for the wetland crossing specified "site work without a house". That NOI filing does not include a driveway for the lot on the south side of James Brook. Mr. Eliades stated that there was no mention of a house because he thought it was out of the 100' Buffer Zone. C. Auman noted that the retaining wall on Lot A-1 is only 50 feet from the wetlands. M. Turgeon estimated that 100 SF of disturbance is within 50', with the total work in the Buffer Zone 1,000 SF. The septic system on Lot A-2 (south side) is outside the 100-foot Buffer Zone but within the 200-foot buffer of the stream.

P. Morrison, noting that Mr. Eliades has previously indicated he could not move the house with the retaining wall outside the 100-foot Buffer Zone, asked if it is possible to move the house on the south side out of the 200-foot buffer. T. Eliades said, "yes, it was possible, providing it meets the setback requirements for the septic system." P. Morrison pointed out that it would make that side of the stream a lot cleaner, with the remaining issue being the driveway.

C. Auman suggested moving the driveway on Lot A-2 outside the 100-foot Buffer Zone of the wetland. M. Turgeon asked if it can go in the Ayer portion of the lot. Commissioners questioned what happens to the AT&T easement if it is used as a driveway or paved. T. Eliades explained that the easement is along the town line, and it is for an underground coaxial cable system which has since been abandoned. E. Owen noted, putting aside legalities, a limited project for access is only feasible if it is demonstrated that he did not create his own hardship. M. Turgeon maintained that Mr. Eliades did not create his own hardship, but eliminated the issue by crossing the wetland.

P. Morrison asked if it was possible to mitigate by swinging the driveway further away from the stream although this may create an issue if a portion is in Ayer and another portion in Groton. Mr. Eliades maintained that the driveway is used, and members pointed out that the work was done without coming before the Commission. C. Auman noted that some of the problems could be eliminated by moving the house, and M. Turgeon agreed to take this up with the engineer. P. Morrison noted that the driveway was soft during the visit on March 7<sup>th</sup>, and T. Eliades said that they proposed to pave it. P. Morrison stated that he was not concerned about the T-turnaround, but the entire driveway may need improvement. The work was done without Commission approval and the appropriate conditions. As an example, the state had to come before the Commission for approval on the construction of the Rail Trail. Work within 100 feet of wetland resource areas has to be permitted.

T. Eliades said that the Lot A-1 septic system was installed in 2001. E. Owen pointed out that it is now within 100 feet of wetlands. M. Turgeon indicated that it is important to remember everything was done because Mr. Eliades thought he was outside of the Commission's jurisdiction. T. Eliades said "we had documentation", and M. Turgeon stated "but it had run out". He commented that it is unusual that the wetland has moved this much. According to Mr. Eliades, the weir has aggravated the site, but Commissioners noted that it would not change hydric soils that quickly as it can take years for soils to develop hydric indicators.

C. Auman stated that, in his opinion, the proposed invasive management plan did not adequately mitigate for something this severe. B. Clements said he was willing to listen to other kinds of mitigation given this rather severe violation of the Bylaw. Lot A-1 is not permissible under the Bylaw. P. Morrison urged the applicant to think outside the box with consideration given to mitigation offsite. K. Corwin noted that the invasive mitigation was not anywhere close to offsetting the damage to the resource area; she suggested that the purchase of additional land for donation or a conservation restriction on another property could be considered. Something very substantial is necessary to mitigate for this level of permanent impact. T. Eliades asked about a conservation restriction on this land, and Commissioners indicated that there was not enough conservation benefit if the buildings are constructed.

B. Easom concurred that, while he likes the invasive management plan, it is insufficient compensation for the impacts to the resource area. He indicated that he did not look favorably on any building on the south lot within 200' of the stream, but he was not comfortable making alternative suggestions. E. Owen noted that a monitoring program would be necessary to carry out effective eradication of invasives. Improving one side of the watershed may do very little if there are many other invasives on nearby portions of the watershed to provide a ready seed source. He questioned whether there were two building lots here.

P. Morrison asked if the original delineation included soil borings, and E. Owen indicated that he thought David Cameron was there, when he, Beth Montgomery, and Rena Swezey walked the site in winter. Most of the discussion was related to wetland plant species, not soils, with the Determination issued in late winter. T. Eliades reiterated that work was outside the 100 feet.

C. Auman commented that concrete is in the ground and the Invasive Plant Management Plan is a good start, but there needs to be some mitigation such as protection of land in resource areas. T. Eliades pointed out that generating tax revenue on two duplexes with 2-bedroom units that do not usually appeal to large families is a substantial benefit. C.

Auman countered that the job of the Commission is to protect open space and natural resources in the Town. There has to be a significant public advantage to the project. Mr. Eliades asserted that it is in the public interest that additional profits go to the Town. He noted that that is a significant value to the Town. B. Clements observed that one mitigation strategy might be the protection of some other piece of land or the reclamation of a disturbed parcel. He noted that the Bylaw is intended to provide greater protection of our natural resources. He stressed that it must be equivalent to the lost land.

M. Turgeon stated that the removal of invasives within the 100' adjacent upland would improve the capacity of the land to provide habitat. There are a number of reasons why invasives impact wildlife habitat. New plantings provide re-growth and improve habitat. T. Eliades stated that he gave 13 acres to the Conservation Commission in 1998 and suggested the Commission consider this part of the mitigation. (*Note: This was a quid pro quo part of the subdivision approval process.*) P. Morrison noted that a gas line had been proposed within the Culver Road extension. T. Eliades assured him that all work was outside the 100- and 200-foot areas and did not cross the wetland. Resident John Durkin (85 Culver Road) noted that the work was within his front yard, but he was uncertain how far it went. Mr. Morrison underscored the need for Mr. Eliades to come before the Commission if the gas line is brought across James Brook.

M. Turgeon pointed out that there is a provision in the Bylaw that if we can improve the environment or the capacity of the resource area to protect the interests of the Act, the Commission could waive some of the provisions of the Bylaw.

B. Clements asked if Commissioners have determined whether James Brook is intermittent or perennial. P. Morrison suggested that if Mr. Eliades can remove that issue, he recommends that he do so, and then the Commission can work with the driveway. By re-locating the house on Lot A-2, discussion of Riverfront Area could be eliminated. Find a way to deal with that, and "perennialness" is not that big an issue. Other Commissioners pointed out that most of the problem is within the 100-foot Buffer Zone.

Resident Maureen Beal (7 Dolan Drive) commented that the septic system on the north lot appears to be within the 100-foot buffer by 15'.

T. Eliades pointed out that the Bylaw talks about already altered land that, for the purpose of the Bylaw, cannot meet the standards. He noted that the driveway (Lot A-2) had already been disturbed by the AT&T easement which allowed vehicular access. His wife cut in with the comment that vehicles go in there as there are tire tracks, snowmobiles, and people in the area who use the driveway so the driveway is previously disturbed.

T. Eliades said that Lot A-1 falls in the same disturbed category because of work done in 2001. K. Corwin observed that you cannot make your own alteration. T. Eliades maintained that this was done before the Bylaw was in effect, and he should be grandfathered as everything was done to the letter of the law. Mrs. Eliades stated you cannot keep moving the goalpost. Abutter Maureen Beal said that the utility easement was not maintained, it was barely a cart path previous to them clearing it, and she questioned whether it would be possible to get a vehicle up there.

Chairman Auman summarized the proceedings thus far, noting that, in the extreme, nothing more would be allowed on Lot A-1. He observed that no Commissioners feel that this Invasive Species Management Plan is enough mitigation for the potential impacts to the wetland resource areas. He indicated that he hoped Mr. Eliades would work with the Commission and move the house on Lot A-2 outside the 200-foot buffer of the stream and present the best possible proposal for some kind of mitigation. Mrs. Eliades asked why the onus is on T. Eliades and demanded that the Commission make suggestions for mitigation. C. Auman, noting that there are 5 acres here, suggested giving Lot A-2 to the Town and developing the other lot. T. Eliades said he would not do that.

P. Morrison noted that if you eliminate the problem lot by moving the house and prepare a mitigation plan suitable for the driveway on Lot A-2, there could be equality. K. Corwin commented that the north lot is still a question. B. Clements said it is an interesting observation that the land is now disturbed before the Bylaw was in place and asked how other members felt about this. P. Morrison stated, unfortunately we don't have photos of events on other parts of the lot in our file. Aerial photos before 2001 and after September 2001 might be helpful, and M. Turgeon commented that there are a number of resources he could look at. T. Eliades stated that the septic system was started in July and

finished in October. He indicated that the BOH permit expired in September 2001. He stated that he did not clear the area for the house until this past fall. Hay bales and silt fence were put in, trees cleared, and grading done for the completion of the septic system. E. Owen suggested that there may be a bill with a date for the staking of the hay bales. K. Corwin and P. Morrison both indicated that they would expect something more substantial than the Invasive Species Management Plan as mitigation for the considerable impacts of two duplexes. It is not a buildable lot according to the Bylaw.

Identifying herself as Rosalie Ryan Eliades, Mrs Eliades asked if she could ask a question and then stated that this land has been in Tracy's family for some time. Ten years ago he bought a decaying nursing home in W. Groton and created Hale Village, and he has always followed the letter of the law. His mother gave land for a hospital. When you talk about thinking outside the box, she suggested the Commission consider this question.

Mr. Morrison congratulated Mr. Eliades on the improvements at Hale Village. T. Eliades insisted that Lot A-2 was cleared prior to the Bylaw being put in place, and he suggested using the invasive plant mitigation to help Lot A-1. P. Morrison said that might be sufficient to take care of the driveway situation on Lot A-2.

R. Eliades commented that the turnaround was required by the Highway Department all the way back when Mr. Eliades came before the Planning Board for an ANR lot. E. Owen suggested that documenting previously disturbed areas could be a question the Commission will consider.

Jay Lawrence (55 Dolan Drive) asked why the extent of disturbance makes any difference, and Commissioners told him it's an issue with which members must wrestle. P. Morrison re-stated his position on the need for some kind of documentation of what was done prior to the Bylaw. C. Auman re-stated the Commission's position as 1) the need for documentation on disturbance on the lots (photographs, receipts from contractor), 2) move the house on Lot A-2 outside the 200' adjacent upland area, 3) enhance invasive management plan, and 4) alternative mitigation measures. Upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: to continue the NOI hearing to March 23, 2004 at 8:30 p.m.

10:30 p.m. (scheduled for 9:00 p.m.) – 38 Fitch's Bridge Road Notice of Intent continuation

Lynne Remington of Ross Associates read a letter that had come in from Natural Heritage stating that there would be no adverse impact from the project as proposed. In addition, she explained that there is a peninsula that is part of this parcel, and a backwater or perhaps an old oxbow where the River water comes in. She submitted photographs showing the steep banks at the site, noting that the wetland boundary and the River are one and the same because the bank is undercut, a clear example of riverfront bankful determination.

(P. Morrison left the meeting at 10:33 p.m.)

K. Corwin noted that she had questioned the delineation because it appeared to be halfway down the slope. L. Remington indicated that she had used woody vegetation and the undercutting as the delineation. In response to E. Owen's request for soil logs, Ms. Remington explained that she had not done soil samples because of the presence of undercutting and the woody wetland vegetation. B. Clement pointed out that the new septic system will be an improvement over the current cesspool. Upon a motion by E. Owen, seconded by K. Corwin, it was

VOTED: to close the hearing for 38 Fitch's Bridge Road.

After discussion and review of the draft Order of Conditions for 38 Fitch's Bridge Road, and upon a motion by E. Owen, seconded by K. Corwin, it was

VOTED: to issue the Order of Conditions for DEP File #169-883 at 38 Fitch's Bridge Road as drafted.

There being no further business, the meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Barbara V. Ganem  
Conservation Assistant

**Approved as amended 3/23/04**