

**GROTON CONSERVATION COMMISSION**

## Minutes

May 25, 2004

Chairman Bruce Clements called the meeting to order at 7:05 p.m. Kris Corwin, Craig Auman, Evan Owen, and Bruce Easom were present. Peter Morrison arrived at 8 p.m. Member Stacey Laudenslager was absent. Associate Member Marshall Giguere was also present. Conservation Assistant Barbara Ganem was present.

After review of the minutes, and upon a motion by C. Auman, seconded by B. Easom, it was

VOTED: to approve the minutes of May 11, 2004 as drafted.

Upon a motion by C. Auman, seconded by K. Corwin, it was

VOTED: to approve the issuance of Certificates of Compliance for DEP #169-805 and #169-817 for 23 Radio Road.

Upon a motion by K. Corwin, seconded by C. Auman, it was

VOTED: to approve the issuance of a Certificate of Compliance for DEP #169-819 for 16 Redskin Trail.

Upon a motion by K. Corwin, seconded by C. Auman, it was

VOTED: to approve the issuance of a Certificate of Compliance for DEP #169-717 for 39 Court Street.

In discussion on the proposed sale of the MacMillan property at 32 Jenkins Road currently enrolled in Ch. 61, members noted that it is not a priority parcel and not contiguous with existing protected open space. The purchase and sale has contingencies such as soil testing and wetland delineation. The price appears to be tied to how the land will be used in the future – more for a Ch. 40 B project than for the development of single family homes. Commissioners agreed to postpone making a recommendation to the Board of Selectmen until after a visit to the site.

A request has come in to allow the grass to be cut in the field behind Williams Barn. B. Clements noted that he has just mowed the grass in the front of the Williams Barn. The back field will be used for overflow parking, perhaps during the planned farmer's market this summer. The field was seeded last fall. Upon a motion by K. Corwin, seconded by C. Auman, it was

VOTED: to authorize the Williams Barn Committee to decide on and take care of the mowing of the parking area behind the Williams Barn.

B. Clements will convey this vote to the Williams Barn Committee.

7:15 p.m. - 101 Boathouse Road/Mavilia Notice of Intent continuation

Chairman Clements read the meeting protocol, and B. Easom read the legal notice for the hearing. Members asked Mr. Mavilia for an update on the plans for his retaining wall. Mr. Mavilia stated that nothing has been done since the Commission visited the site on April 24, 2004. B. Clements questioned whether the proposed work has already been done as additional rocks were put down and crushed stone has been added. There are concerns that the work on the road has been done without a permit, and the site needs stabilization.

Patty Mavilia said that they are here for the retaining wall along the water. Nothing has been added since the Commission was on site April 24<sup>th</sup>. Members noted that a more recent visit, May 17<sup>th</sup>, showed that crushed stone and a riprapped embankment have been added. This work was done without going through the filing process. C. Auman pointed out that the process is that you file a plan and then you do the work. Mr. and Mrs. Mavilia distributed a new plan for the proposed work. B. Clements indicated that there is a photograph which appears to show that filling was done without an Order of Conditions.

There is also a legal question that has not been resolved that the embankment where stones were placed may belong to the town. P. Mavilia stated that they were not prepared to address that tonight. K. Corwin pointed out that this work is under the jurisdiction of the Commission because of its proximity to the Lake. An extension on the Order of Conditions for the garage and driveway was granted, and Mrs. Mavilia maintained that the large rocks are part of the driveway. B. Clements commented that the plans for the driveway and garage submitted with the Notice of Intent do not show work in that area.

Frank Mavilia said he corrected an erosion problem, which came from the town right of way, as part of doing the driveway. K. Corwin said there is some dispute whether the work is covered under that earlier Order. B. Clements noted that an area appears to have been filled, and the Commission is within its rights to ask for clarification. F. Mavilia stated that he is not removing one rock from the shore line, and the Commission can issue fines for non-compliance with #169-611. He maintained that he did not do anything to the 15' town road but provide access to his house off the town right of way.

Commissioners asserted that the neighbor's retaining wall was extended, rebuilt, an inlet filled, and this work was done without observing the regulations of the Wetlands Protection Act or Bylaw. Such violations are subject to fines and restoration can be required. Members cautioned that a significant area may have been filled. Mr. Mavilia stated he filed a plan, and the Commission approved the plans. Members maintained that the work exceeded what was proposed in #169-611, and the work was done without an Order of Conditions. Mr. Mavilia reiterated that he complied with what the Commission approved. He acknowledged that he had added a skim coat of crushed stone which he compacted. He plans to repair the existing wall on the Lake side within the same footprint as the existing retaining wall. K. Corwin asked if he will remove the earth behind the rocks first and will equipment be necessary. Mr. Mavilia replied that the rocks would be placed with a loader on the downhill portion, and he did not anticipate the need to remove any materials.

Mr. Easom commented that, based on the submitted drawing, Mr. Mavilia proposes to add six eight-inch thick slabs or 320 CF of material without removing any materials. This appears to be more encroachment on the Lake than what is currently there. Mr. Mavilia acknowledged that the drawing was not done to scale. Mr. Easom indicated that he is concerned that there will be a loss of lake volume, particularly if there are six tiers below normal water level. Mr. Mavilia said the drawing was not to scale. C. Auman asked if there was a lot of disturbance in front of the wall where rocks have fallen down. Commissioners requested information on erosion control techniques, equipment, and the removal of material. C. Auman said the other question at issue is the amount of filling done in years past. K. Corwin noted that some of the proposed work will be the capping of the part of the wall that may have been previously filled. P. Mavilia said that this work is necessary in order to stop the erosion caused by wave action.

Chairman Clements asked if there were any comments from the public, and Charles Courtemarche (100 Boathouse Road) estimated that Mr. Mavilia has moved his retaining wall 15' out into the Lake so that now it is even with his (Mr. Courtemarche's) retaining wall. He reported that he had observed Mr. Mavilia working in this area with his bobcat in February of this year. He maintained that the land area was extended 15-18' feet and then filled. Mr. Courtemarch explained that he has lived there for 35 years, and this work was completed within the past six weeks. Mr. Courtemarche indicated that the concrete retaining wall was partially on the land in dispute with the town. E. Owen commented that pins are shown on the surveyed plan, and he asked for clarification on their location. Mr. Courtemarch replied that he thought marking stones were put in on town property.

Mr. Mavilia maintained that eight years of erosion changed the plan. Chairman Clements said the Commission must act on this most recent submittal for rebuilding and capping of a retaining wall. Members will have to give further

thought to the other issues. C. Auman stated the question seems to be how much the wall has been extended into the Lake. Mr. Mavilia indicated that you can still see the base or foundation underwater. Commissioners thought there could be a problem with capping if there is an area that has been filled. Members agreed to take another look at the site during the next site visits. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to continue the NOI hearing to June 8, 2004.

7:30 p.m. Request for an Amendment to the Order of Conditions for Moose Trail/DEP File #169-853

(P. Morrison arrived at 8:00 p.m.)

Attorney Julie McNeil represented the applicant. Ms. McNeil explained that the house had been turned 90 degrees, and the new access would be safer and better. The project will have less impervious surface with a raised septic system without a retaining wall. A 3-foot high retaining wall is proposed for the driveway. The Board of Health has not approved the septic system. In summary, J. McNeil reported that a lot less cutting and filling is proposed in the revised plan so there will be less impact. E. Owen commented that usually the 100 foot buffer is shown on the plan. Other members noted that the location of silt fencing and haybales should also be shown on the plan. Ms. McNeil stated that all the previous erosion measures would be in place. B. Easom asked that both the 50-foot and 100-foot buffer zone lines be included on the plan, and it should also show the grading for the driveway as it is cut into a hill.

Commissioners expressed concern that the driveway could cause erosion and undercutting of a public way. Pending the receipt of the revised plan and upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to continue the hearing for Moose Trail to June 8, 2004.

7:45 p.m. – Boathouse Road/Enwright Notice of Intent

Mark Enwright explained that he had previously come before the Commission for a septic upgrade. He is now requesting a permit to take the house down and re-build in the same footprint. Mr. Enwright reported that his engineer has the green receipt cards. He plans to do a new foundation in the front part of the house with a footing four feet deep and 20" wide. The digging will be done at the same time as the septic system is put in.

C. Auman commented that it is a tight fit between the road and the proposed foundation. Mr. Enwright indicated that the porch is coming down. He would like to carry the breakout retaining wall five feet beyond the foundation to form a wing wall to help assure that the roadway does not collapse. Mr. Enwright explained that there is currently a 2' by 6' plywood frame against the hillside next to Boathouse Road. Sona tubes are located underneath the deck. He plans to stabilize the hillside exposed to the elements. Members asked how the site will be stabilized during construction as the wall could erode and put the road in danger. Mr. Enwright responded that there is 11' of clearance, and he will do the work in one operation by digging out the foundation, putting in the footings, and pouring the foundation. He stated that the forms can be left in the ground.

K. Corwin asked what would happen to the current footings next to the wetland, and Mr. Enwright said he had no plans to extend the foundation. He was requested to sketch out the proposed wing wall, and he drew in an estimated wing wall of 6' in length. Roof drainage could be handled with a 2 foot deep by 18" wide trench but it may be necessary to have a gutter on the back, emptying to a dry well. Mr. Enwright plans to bring in a dumpster to be placed where the septic system is to be located. The house will be taken down piece by piece. Any bare ground between the house and the street will be replaced by lawn. There being no further questions, upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to close the hearing for Boathouse Road, DEP File #169-891.

8:00 p.m. – Request for an Amendment to the Order of Conditions for Gibbet Hill Restaurant/DEP File #169-874

Josh Webber explained that the requirement for a wet meadow in Condition #31 limited their flexibility on an area of the property where most of the development is taking place. He asked if the Commission would be amenable to

allowing this restoration to occur on the west side rather than the east side of the new buildings. He indicated that the area would be about 5 acres as opposed to 1.5 acres. The cows will be excluded from both areas. K. Corwin asked what the percentage of wetland is on the east side and noted that wet meadows are disappearing all over Massachusetts. E. Owens asked if there was a management plan for the new area as the east area was permitted to be mowed twice a year under the Order of Conditions. Steve Webber said it is too wet to hay, but they would probably leave whatever grows in. Commissioners were concerned that it might come up in invasive shrubs which require work to keep them down. The Commission must think in terms of long term management and assure that it not become an invasive shrub jungle. Using a weedwhacker might be an appropriate management technique. C. Auman noted that there is buffer zone to the farm pond and stream on the east side. It may be important to limit fertilizers and herbicides. The Webbers commented that Lawrence Academy just recently received permission from the Selectmen to apply a pesticide to their playing fields which are downstream from this property. Upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to close the hearing for the Gibbet Hill Restaurant, DEP #169-874.

8:15 p.m. - Appointment – Don DiBona/186 Crosswinds Drive

Mr. DiBona explained that he had installed the fence to avoid having to take trees down. Because of the angle of his lot line, the fence would have had to be placed between two lines of trees. He estimated that it juts into conservation land approximately 16' in order to include 4 or 5 trees within the fenced-in portion of his lot. Members informed Mr. DiBona that they have no authority to grant the right to put a fence on publicly owned conservation land. P. Morrison mentioned that the Commission is currently dealing with several other landowners with fences encroaching on conservation land. Mr. DiBona agreed that approximately an 80' portion of his fence intrudes 16' into conservation land. He had assumed that those 5 trees were on his property until he had a surveyor check the boundary. The other choice for the placement of the fence is to bring it inside the tree line. Commissioners explained that removing conservation land currently held by the Town under the Article 97 process is extremely cumbersome and time-consuming. Upon a motion by K. Corwin, seconded by C. Auman, it was

VOTED: to request that Mr. DiBona remove his fence from conservation land.

Commissioners thanked Mr. DiBona for coming in to discuss this issue and for his cooperation.

8:15 p.m. – Appointment – Barry Cunningham/212 Longley Road – DEP #169-746

Mr. Cunningham explained that he is asking for Conservation Commission sign off on his Occupancy Permit. The house and septic system are completed and are outside the 100-foot buffer zone, but the driveway had a wetland crossing and the Order expired September, 2003. There remains some stabilization work to do on the driveway. Mr. Cunningham indicated that this is his own house, and he does not plan to sell the property. P. Morrison made a motion, seconded by K. Corwin, to authorize B. Ganem to sign off on the Occupancy Permit for 212 Longley Road. He noted that he planned to make a second motion requiring the filing of a Request for Determination of Applicability.

E. Owen said he did not like the idea of signing the Occupancy Permit if the site is not stabilized and suggested that wood chips might be needed. E.Owen offered an amendment, seconded by C. Auman, to require stabilization of the site first. Mr. Cunningham estimated that the erosion control was originally placed in spring 2003, but it has not been inspected recently. K. Corwin, E. Owen, and C. Auman voted in favor, but P. Morrison, B. Clements, and B. Easom opposed the amendment which failed due to the lack of a majority. Returning to the original motion, it was

VOTED: to authorize B. Ganem to sign off on the Occupancy Permit for 212 Longley Road.

B. Easom voted in opposition.

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

VOTED: to require the filing of a Request for Determination of Applicability for the

remaining work to be done at 212 Longley Road.

### 8:30 p.m. – Culver Road NOI Continuation

Tracy Eliades displayed a plan showing the proposed location of conservation-restricted land. Members informed him that this was not appropriate in Open Session since it has to do with on-going negotiations. Mr. Eliades explained that he had drawn the lines to include septic expansion areas, particularly on Lot A-1. He also depicted two 2-car garages on Lot A-2 to go within the existing cleared area. He noted that he assumed that the residents on Lot A-1 would be allowed to do a sitting area, picnic, and remove invasives as long as there were no structures within the conservation-restricted area. Commissioners repeated that it would be necessary to discuss these details in Executive Session.

Maureen Beal (7 Dolan Drive) asked if a conservation-restricted area would still be considered part of the lot, but prevent the building of permanent structures, and Commissioners indicated that this remains to be determined.

T. Eliades stated that, since the weir in the culvert acts as a dam causing water to back up, he would like to request that it be modified. He maintained that the weir is causing problems rather than solving them, and he feels that water would flow better if the weir were removed. Members noted that DEP has recently sent a letter in which they refuse to consider this modification. If changes are made, it could result in a Certificate of Compliance not being issued under the Superseding Order of Conditions. DEP confirmed that the weir was necessary in order to maintain existing hydrology. Commissioners indicated that it would require extensive topographic studies of both pre-existing and post-construction conditions to determine whether the flow is being maintained. B. Easom said he was not opposed to having town engineers take a second look at this. The watershed may be flashier with the flow rate going up and down more quickly due to the alterations created by the culvert installation. Mr. Easom said it may be necessary to determine the water level as a function of time, but this may not be adequate to assure the success of the replication area.

Commissioners suggested that the only way this modification would be allowed is to file a new Notice of Intent once the wetland crossing Superseding Order has received a Certificate from DEP. Once DEP has issued a Superseding Order, the local Conservation Commission cannot override that decision. Members asked where Mr. Eliades is in the 3 year growing season on the replication area and suggested he might be ready to request the Certificate. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to continue the NOI hearing for DEP #169-886/Culver Road to June 8, 2004.

In discussion on boilerplate rules and regulations for the use of conservation land, B. Ganem noted that the Commission had voted in February 1992 to adopt a set of rules which were suggested in the handbook produced by the Massachusetts Association of Conservation Commissions. T. Eliades interrupted the discussion to ask if the Commission would give him permission for cement to be poured on the rebar on Lot A-1 in early June. Members agreed that no work should commence until all issues are worked out, and that no comments were appropriate for the public record at this time.

Returning to the topic of rules for conservation lands, members suggested that a set of standard rules would be helpful in those cases for which rules were not otherwise specified. K. Corwin noted that sometimes there are conflicts, and the rules appear to be contradictory. She noted that she wanted to clarify the rules prior to her meeting with the Web Site Committee tomorrow evening. B. Clements suggested that establishing standard rules and then dealing with exceptions on a case by case basis should save the Commission time and effort in the long run. Hunting and fishing is allowed in accordance with state law. (*Cannot ... "discharge a firearm or release an arrow within one hundred and fifty feet of a highway or possess a loaded firearm or hunt ... on land within five hundred feet of any dwelling in use, except as authorized by the owner or occupant thereof."*) P. Morrison thought that not allowing people to cut vegetation would discourage stewardship that includes removal of invasive, non-native plants. He thought that people will care for the land if they are given the opportunity. Benign neglect is not always the best way to go.

Reviewing the list from the beginning, the first rule prohibits use of conservation lands after dark. Several Commissioners expressed concern that this would prohibit such activities as star gazing. B. Ganem pointed out that it becomes difficult for the police to enforce conservation regulations if people are allowed on properties at night. A

motion by P. Morrison, seconded by C. Auman, to strike #1 “All people are welcome to enjoy themselves without charge in these conservation areas of the Town of Groton from ½ hours after sunrise until ½ hour after sunset.” failed without a majority, with K. Corwin, P. Morrison, and B. Clements voting in favor, and E. Owen, B. Easom, and C. Auman voting against.

P. Morrison suggested that snowmobiles can be beneficial to trails if organized snowmobile groups make an effort to maintain trail systems. Rule #2 was modified to read “No cars, trucks or other powered vehicles or tools except for vehicles permitted by the Groton Conservation Commission.” In discussion on #3, which allows hunting and fishing in season with a license, Commissioners questioned whether it would be necessary to post all the small parcels or those under 5 acres. It was agreed that #3 will read “If not posted, areas may be hunted or fished in season with license and in accord with applicable law.”

Upon a motion by B. Easom, seconded by C. Auman, it was

VOTED: that Rule #4 will continue to read “In these areas, no person shall cut, break, remove, deface, defile, or ill-use any structure, fence, sign or have possession of any part thereof. No growing trees, bushes, plants or flowers shall be defaced or cut, nor shall trails be cut or marked, no dams built nor any structure such as a lean-to, bridge, tower or handrail be constructed, without written authorization of the Conservation Commission.”

P. Morrison voted in opposition.

P. Morrison made a motion to strike #5, but it failed due to a lack of second. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: that Rule #5 shall continue to read “No person shall engage in business, sell or expose for sale, or give away any goods, wares or circulars without a permit.”

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

VOTED: that Rule #6 shall now read “Overnight camping in these areas may be permitted to groups having an adult leader present at all times. Every group shall obtain prior written permission from the Conservation Commission, must obtain a fire permit if open fires are planned, and must each time notify the chief of police of both exact dates of occupancy and identity of the accompanying responsible adult.

No additional rules were proposed at this time.

Concerning the Cronin Conservation Area sign that has been vandalized, B. Clements offered to haul the sign out and get it fixed. Members suggested that there may be a more public place to locate the sign and authorized B. Ganem to send a letter to abutters asking for help in the stewardship of this area. They also recommended that the police be notified that the sign posts and trails markers have been vandalized at this area.

Upon a motion by P. Morrison, seconded by C. Auman, and a roll call vote of C. Auman, P. Morrison, B. Easom, K. Corwin, E. Owen, and B. Clements, it was

VOTED: to go into Executive Session to discuss pending litigation, to re-convene in Open Session at adjournment.

The meeting was temporarily adjourned at 10:05 p.m. to re-convene at 10:35 p.m.

Member Corwin asked if she should treat Groton Woods as one property in her list of Conservation Commission properties, and Commissioners agreed with this practice.

In other business, Chairman Clements expressed reservations about the conversion of the agricultural land to the east of the Gibbet Hill Restaurant to a landscaped area. He noted that there is a precedent for limiting fertilizers in our other Orders. Mowing a buffer zone is typically allowed within disturbed areas, but fertilizers and herbicides could be restricted. Commissioners noted that an abutter to the Wiewal Conservation Area, Gary Rutherford, persists in mowing the trail. The Commission had originally offered a trial run and perhaps it is time to remind him of our previous agreement.

In reference to 101 Boathouse Road, members commented that it is necessary to visit the site to determine if there are violations, but the work appears to be a good job, just done without permits in place.

Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to authorize B. Ganem to make inquiries about getting a large boulder placed in the middle of the entrance to the Gilson Estates Conservation Area, remove wooden planks, and tear down the tree fort.

Commissioners thought that it would be relatively easy in the event of an emergency to access the site from Nicole Lane.

There being no further business, the meeting was adjourned at 11:05 p.m.

Respectfully submitted,

Barbara V. Ganem  
Conservation Assistant

**Approved as drafted 6/8/04**