

**GROTON CONSERVATION COMMISSION**

## Minutes

June 22, 2004

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

7:00 p.m. – Appointment/Josh Webber – Gibbet Hill Restaurant

Mr. Webber said he understood that the Commission had requested more details about how the wetlands will be handled on the east side of the function hall. He indicated that he and his father had put the wetland flagging up which the Commission reviewed this past Saturday. Mr. Webber said they would like to have more control over this area because it is the view from the function hall. He noted that a new fence is proposed to exclude the cattle from the area. The lawn will be hydroseeded to the 50' line, no pesticides or herbicides are proposed, and it is unlikely that fertilizer will be necessary. He anticipates mowing or weed whacking the area periodically. In addition, J. Webber noted that it will be necessary to repair the dam retaining the water in the pond. He also proposed an interceptor drain to improve drainage in the pasture lands above the pond.

Regarding the west side of the restaurant, Mr. Webber indicated he would follow the original condition with mowing or weed whacking done once a year. Commissioners noted that a number of new elements were proposed in this amendment. Members asked the anticipated effect of repairing the dam, and Mr. Webber responded that the water level in the pond will be a little higher. The public can access the Gibbet Hill walking trails via a path between the function hall and restaurant that then wraps around the pond. P. Morrison asked if the area where the trail is proposed is stable, especially near the pond. J. Webber replied that it could be spongy in April, but with the installation of the interceptor drain, he anticipates that it would be very serviceable. The area where the interceptor drain is proposed is actually part of the farm area that is subject to the Conservation Restriction. Members thought that this probably qualifies under the agricultural exemption. Currently parking near the area where the public trail begins is limited. The trails are located on the Conservation Restriction Plan. Mr. Webber indicated that he would control invasives either by mowing or weed whacking. Although the trail access is being routed through the restaurant lot, J. Webber said the family does not want to make public access permanent.

The interceptor pipe, perforated rigid PVC, is likely to be at least 4 feet deep and approximately 800 feet long laid in a bed of crushed stone and sand. K. Corwin commented that piping is likely to create a flashier watershed. J. Webber agreed to prepare more detailed plans of the proposed work to present to the Commission at a later date.

7:15 p.m. – 68 Hayden Road – request for an amendment to the Order of Conditions for DEP #169-777

Engineer Kevin Ritchie from Civil Solutions explained that a Notice of Intent had originally been filed in the late 1990's. The revised design for the septic upgrade eliminates a retaining wall and the pump chamber. In addition, the homeowner has brought in town water so the well can be eliminated. The new plan also calls for an addition which is about 65' from the wetland. The leach field, which was formerly 73' from the wetland, is now 79' from the wetland. He requested that the Commission consider these insignificant changes. The septic system will be slightly mounded with edges graded into existing material. The entire site is within the Buffer Zone. The cesspool will be filled with clean sand, and the water line is already installed. K. Ritchie indicated on the plans where the haybales/silt fence will be placed in the vicinity of the addition.

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

VOTED: to close the hearing for 68 Hayden Road, DEP File #169-547.

7:30 p.m. – 162 Hayden Road – Request for an amendment to the Order of Conditions for DEP File #169-777

Homeowner Roger Cruz reported that he had originally received an Order of Conditions in March 2000. They now plan to tear down the existing house and garage and construct a new home which will be 43' from the wetland at its closest point. Members pointed out that the erosion control line is very close to the proposed work. The owners plan to use the existing septic system, and this limits the configuration and location of the house. The water table tends to be high so it may be difficult to handle roof drainage with a dry well. Soils and other materials will be stockpiled on the back right of the property. Commissioners indicated that additional fees are due because of the change in plans from an addition to a new house. Mr. Cruz drew on the revised plan where the erosion control line will be placed at the back of the house. There being no further questions, upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to close the hearing for 162 Hayden Road, DEP File #169-777.

7:40 p.m. – 90 Boathouse Road Request for Determination of Applicability/deck

Homeowner Thomas Duffy stated that he purchased the property in January and plans to construct a 19' by 12' pressure-treated deck behind an existing retaining wall. He will install crushed stone beneath the deck. P. Morrison asked if he would hand-dig the holes, and Mr. Duffy responded that they were actually already dug. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue a negative #3 Determination of Applicability for 90 Boathouse Road providing the area beneath the deck is stabilized with crushed stone.

7:45 p.m. – Appointment/Ray Lyons – Surrenden Farm Conservation Restriction

Attorney Lyons noted that some of the wording for the Conservation Restriction reflects his work with New England Forestry Foundation. He commented that there will be a public benefit in that 54 of the 56 acre parcel will be covered by the Restriction in order to keep the land in agricultural use and preserve the view to Mt. Wachusett. He indicated that he was present to request the Commission's acceptance, as grantee, of the Conservation Restriction.

K. Corwin indicated that she was uncomfortable accepting the Restriction without the completion of the soil remediation process, particularly since this is the lot that will receive the contaminated soils. Mr. Lyons assured the Commission that the Restriction will not be recorded the remediation process is complete. He noted that there is a natural depression or swale which will be filled by soils from other lots. Some demarcation of the boundary of the conservation-restricted land could be a condition of approval of the grantee. R. Lyons said that the antique apple trees would remain on the site. B. Ganem asked if there would be a limitation on the type of crops that could be grown due to the arsenic contamination. C. Auman inquired as to the long term agricultural use of the property, and Mr. Lyons replied that it is likely to be used by an on-site farmer for hay or as pasture as one-third of the site is wet.

Members said the angles and distances of the conservation-restricted land are usually incorporated into the Restriction. B. Clements commented that it is premature to accept the Restriction until all issues are dealt with by the Board of Health, and he prefers to wait. Board of Health Chairman Susan Horowitz was present and noted that the question of whether the Town would accept land that may have a liability came up at the most recent Board of Health meeting. P. Morrison said the Town is just accepting the restriction and not the land or liability, and this will be protected from future development. K. Corwin noted that it's somewhat like signing a blank check as the Commission does not know what it's accepting. B. Easom said he did not see the down side to accepting the Restriction.

Mr. Lyons indicated that Joel Lerner has begun the review of this Restriction, but he is due to retire by the end of the month. B. Clements reiterated his position, stating that it is putting the cart before the horse in approving the Restriction when no lot is officially recognized. P. Morrison said the Commission is being offered something that may or may not be offered in the future, and it is shirking our responsibility not to accept it. B. Clements maintained that this is not likely to happen as the Restriction is a required part of the subdivision permit. P. Morrison made a motion, seconded by B. Easom, to accept the Conservation Restriction for Lot 22 contingent upon the inclusion of the metes and bounds showing the excluded 2-acre building envelope.

The motion failed due to a negative vote from K. Corwin, C. Auman, E. Owen, and B. Clements. P. Morrison and B. Easom voted in favor of the motion.

Members agreed that the document was fine as drafted, but the process would be more orderly once the Board of Health has agreed on the remediation process. Commissioners urged him to continue working with Mr. Lerner or his successor in finalizing the draft Conservation Restriction. Mr. Lyons asked if the Commission would reconsider their decision, and Chairman Clements pointed out that the Commission has taken a final vote on the matter.

8:20 p.m. – Lost Lake Drawdown Notice of Intent continuation DEP #169-861

Dr. William Eger informed the Commission that the Lakes Association had not confirmed the presence of endangered species (the Bridle Shiner) in the Lake and was not able to make any progress on the action to be taken. He noted that there is a new member of the Association who will seine for the Bridle Shiner which was last sighted in 1979. The existence, continued presence, and numbers will be ascertained by this study. Dr. Eger asked that the hearing be continued to allow time to collect this information. In response to Commission questions, Dr. Eger said Steven White is an amateur aquarium hobbyist. Members recommended that he assure that Mr. White's expertise is acceptable to Natural Heritage. K. Corwin pointed out that not finding them is not necessarily proof that they don't still exist in the Lake. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to continue the hearing to September 14, 2004 for DEP #169-861, for the  
Lost Lake/Knops Pond drawdown.

8:25 p.m. Appointment/Cindy Kollarics – Report on Small Bur-reed

Conservation Assistant Barbara Ganem reported that she had met with Lee Lyman (Lycott Environmental) and John Diezemann at the public boat launch on June 14<sup>th</sup> to go over the Diquat application areas at Lost Lake. She noted that she requested that the areas near both points at the Town Beach not be treated since the Small Bur-reed populations were known to be in these locations. Mr. Lyman assured her that Diquat did not affect Small Bur-reed because it is an emergent.

Former Conservation Commission member Cindy Kollarics explained that she has worked as a volunteer with the New England Wildflower Society on monitoring Small Bur-reed populations throughout the state. She noted that she had visited the site on June 11<sup>th</sup> when she marked the plants' locations with stones. She returned to the area on June 15<sup>th</sup> with a camera and observed the degradation of several plants at that time. Photographs were shown to Commissioners. On June 19<sup>th</sup> she and Dr. Eger observed that some of the plants had turned white. Commissioners Corwin and Clements also visited the site on June 18, 2004. Ms. Kollarics said this is an endangered species which has been monitored for some years by former state botanist Bruce Sorrie and now present state botanist Paul Somers. It is possible that wave action or currents carried some of the Diquat into the area of the endangered species. Ms. Kollarics explained that she had notified the environmental police because of her concern about the loss of these endangered species. She said that a derivative of Diquat called Paraquat was no longer applied to orchards because of its toxicity to the pesticide applicator.

Member Corwin asked if the treatment is authorized under the existing Order of Conditions and if a cease and desist has been issued. Ms. Kollarics indicated that the state offices were closed Friday when she attempted to notify them of the proposed application near the Beach. Dr. Eger said no further applications are proposed, and the town committee, the "Lake Weed Advisory Committee" did not exist when the original Notice of Intent was filed. The Committee gave its tacit approval to the original contractor and the Lakes Association. Dr. Eger reported that the group is very distressed at what has happened as Diquat appears to be an effective tool in handling invasive aquatic weeds, but not a permanent remedy. While there is a mechanism to request a further extension of the Order of Conditions, the group would like to leave it alone at this time. Dr. Eger thought that there has been a problem with communication and what actually happened is somewhat of a mystery.

Chairman Clements asked where does this leave the proposed treatment of Cabomba in Springy Cove, and Dr. Eger indicated that it may have suffered winter kill as they have not observed it, but there are probably buds in the sediments. He said no treatment will occur this summer unless the Cabomba re-appears. Dr. Eger assured the Commission that the benthic barriers would not be placed unless the Cabomba is definitely confirmed at the site. Commissioners thanked Ms. Kollarics for her update on the Small Bur-reed.

8:40 p.m. – Eliades Notice of Intent continuation DEP #169-886

B. Ganem explained that Mr. and Mrs. Eliades had dropped off the revised Notice of Intent and Conservation Restriction Plans earlier in the evening. Pending further review and upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to continue the hearing for DEP #169-886 to July 13, 2004.

8:45 p.m. - Mattbob, Inc. Notice of Intent continuation DEP #169-880

Chairman Clements read Attorney Deschenes' letter of June 22, 2004, requesting a continuation, into the record. P. Morrison made a motion, seconded by K. Corwin, and it was

VOTED: to continue the hearing to July 13, 2004.

K. Corwin made a motion to request that all information pertaining to this project be sent to the Commission at least a week before hearings which was seconded by B. Easom. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to re-open the hearing so that members of the audience could comment on the project.

In response to complaints about no notification when a hearing is to be continued, Member Corwin suggested that the public call the Commission office to confirm whether or not a hearing is still on the Commission's agenda. Abutter Kris McEvoy (89 Stonebridge Way) asked the Commission what will be the next step in the filing process, and member Morrison explained that he is watching a similar situation in Carlisle where a proposed Ch. 40B straddles two communities. Also, Commissioners pointed out that the ZBA will be asked to enforce the local wetlands bylaw. P. Morrison noted there is only a 100 foot buffer over which the Conservation Commission has jurisdiction. The applicant is to meet with the Littleton Planning Board on Thursday, and Mr. Morrison indicated that he believes it's a water district, not a wetlands bylaw, that is applicable in Littleton. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to send a letter to the ZBA recommending that they consider the Groton Wetlands Protection Bylaw in their review of the Mattbob project.

K. McEvoy asked if the applicant will be required to file a new ANRAD to determine the boundary of the vernal pool. Commissioners indicated that the boundary of the bordering vegetated wetland and the vernal pool are likely to be the same. Detention basins, grading, and drainage are proposed within the 100 foot buffer zone, and these activities are subject to Commission jurisdiction. According to Sandy Brock of Judith Nitsch Engineering, Inc. it appears that it is alright to change the hydrology of the vernal pool since they are reducing the amount of water flowing into the pool. They are not changing the flow in terms of the rate, but are changing the distribution pattern. Returning to member Corwin's motion, it was

VOTED: to send a letter to Mattbob requesting that all new information concerning the project be mailed to the Commission at least a week before a scheduled hearing.

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

VOTED: to continue the hearing to July 13, 2004 for DEP #169-880.

In discussion on the draft Order of Conditions for 101 Boathouse Road, DEP #169-889, B. Ganem explained that abutter Charles Courtemarche was successful in the lawsuit to determine adverse possession of the area with the ripped embankment. Commissioners reviewed photographs of the site, and K. Corwin asked if the Commission should consider issuing a separate enforcement order. B. Easom indicated that he felt the Commission had previously dealt with the issue of whether the work was old or new. Member Morrison moved significance of the interests under the Wetlands Protection Act. B. Ganem recommended adding a map showing the 40 foot and 100 foot sections of the retaining wall which will be re-worked. In response to Mr. Courtemarche's questions, Chairman Clements indicated that the Commission was not able to definitively prove that there had been filling at this location and he did not think further comments were appropriate. K. Corwin pointed out that the hearing was closed two weeks ago, and the Commission cannot accept new comments or information. Upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to issue the Order of Conditions for DEP #169-889 as amended.

E. Owen asked if the Commission could listen to Mr. Courtemarche's comments, and Chairman Clements agreed if it would not take too long. Mr. Courtemarche explained that he has lived next door to the site for 35 years, and there was no land there and now the land has been extended 18 feet out into the Lake. Chairman Clements said the Commission had attempted to identify old and new elements of a retaining wall and came to the conclusion that Mr. Mavilia was restoring land lost to wave action and erosion. E. Owen commented that the retaining wall appears to follow the edge of the Lake on old plans. Mr. Courtemarche maintained that the fill has been placed within the past 40 days. Commissioners invited him to come back in for a discussion at a later time. Upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: to add a condition to the Order for DEP #169-889 that the fine for doing work without a filing be paid prior to commencing the work covered under this Order of Conditions.

B. Clements noted that the work without a permit might not have been permitted if the Commission had been notified ahead of time. Commissioners recommended that the credible evidence, including photographs, be conveyed to DEP and asked Mr. Courtemarche to arrange an appointment with the Commission.

Commissioners discussed changing the previously issued Order of Conditions to reflect the new plans submitted for Moose Trail, DEP #169-853. P. Morrison moved significance of the interests, seconded by C. Auman. P. Morrison moved acceptance of the first 17 general conditions, seconded by K. Corwin. Upon a motion by E. Owen, seconded by C. Auman, it was

VOTED: to issue the Order of Conditions for DEP #169-853 with the revised plan reference.

Member C. Auman recommended that the Commission respond to a request for comments from DEP on the proposed revisions in the Wetlands Protection Act Regulations. C. Auman indicated that he felt this streamlined waiver process gave the Commission less control over what happens in the outer 50' to 100'. He noted that the local Bylaw looks at whether a site is previously disturbed and also how a project will affect wildlife habitat. In addition, there have been instances in which work beyond the 100' jurisdictional Buffer Zone has resulted in impacts to the wetland. Upon a motion by C. Auman, seconded by K. Corwin, it was

VOTED: to authorize B. Ganem to send a letter to DEP outlining the above-noted issues with the proposed changes in the Wetlands Protection Act Regulations.

In discussion on the recent inappropriate use of the emergency access roadway at the Groton Dunstable Regional High School graduation, members agreed that it could be beneficial to set up a meeting with the School District,

Conservation Commission, and Planning Board. C. Auman noted that this would give everyone an opportunity to understand what rules should apply to the usage of this roadway. Members agreed that it should be a matter of public safety and public health, particularly if the main roadway is blocked for some reason. The Chairman of the School Committee, Alan Vervaeke, also is expecting to hear from the Commission on this matter. Commissioners stressed that this should be done on the basis of a friendly discussion with the intent of preventing a similar event from occurring in the future. The Commission is charged with enforcing the Conservation Restriction on the property owned by the Groton Dunstable Regional School District.

Members also suggested that this could be a good opportunity to discuss the operation and maintenance plan under which the Buildings and Grounds personnel are working. B. Ganem will invite the Police Chief, Fire Chief, EMS Director, the Business Director Craig Young, School Committee Chairman Vervaeke, and other school personnel to a meeting on July 13<sup>th</sup> at 6:30 p.m.

The Commission has received several reports of turtle collecting by children at the Cow Pond Brook sports fields. Members suggested a newspaper article or seasonal signs as a way to help educate the public about the effect this can have on turtle populations. Leslie Lathrop recommended notifying coaches about this issue. B. Ganem will contact the Recreation Department, and place a notice on the town web site. K. Corwin will post a notice to the Groton mailing list and check with the newspapers about running articles. K. Corwin indicated she would be willing to pay for turtle crossing signs, estimated to be approximately \$15 apiece, for such locations as Hayden Road, Townsend Road, and Hoyts Wharf.

Chairman Clements reported that the Williams Barn Committee will be before the Planning Board to discuss the proposed parking area and future uses of the Barn on July 1, 2004. He noted that no paving is proposed, and there is stone dust on a small existing parking area. For large events, overflow parking will occur in the grassed area behind the Barn. The Conservation Commission is listed as a co-applicant for the application because it is the landowner although Jean Kitchen can sign off on behalf of the Town. Starting July 9<sup>th</sup>, weekly farmers markets will be held at the Williams Barn.

(P. Morrison left at 10 p.m.)

Commissioners briefly reviewed the Superceding Order of Conditions for Groton Residential Gardens and agreed that an appeal was not in order. Upon a motion by C. Auman, seconded by K. Corwin, it was

VOTED: to distribute the Superceding Order to all land use boards.

Commissioners reviewed the revised plan for the Ch. 40B project at 160 Townsend Road. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to send a letter to the ZBA noting that the entire wetland Buffer Zone is either being re-graded or built upon.

Fred Nucci, 54 Northwoods Road, has requested the Commission's permission to use machinery within the trail area in order to re-locate his fence. Commissioners agreed to include it on our July 10<sup>th</sup> site visits.

After reviewing the draft Order of Conditions for 2 Shelters Road, DEP #169-892, and upon a motion by K. Corwin, seconded by C. Auman, it was

VOTED: to issue the Order of Conditions for DEP #169-892, as amended by omitting Condition #43.

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

VOTED: to approve the minutes of June 8, 2004 as drafted.

K. Corwin abstained from the vote.

At 10:30 p.m., upon a motion by K. Corwin, seconded by C. Auman, and a roll call vote of E. Owen, K. Corwin, B. Easom, C. Auman, and B. Clements, it was

VOTED: to go into Executive Session to discuss pending litigation, to return to Open Session at adjournment.

At 10:56 p.m., the Commission returned to Open Session. K. Corwin asked how members felt about including donors and stewards on the listing of conservation properties on the web site. Some of this information requires confirmation, but Commissioners agreed to the concept..

Member Owen noted that he has observed tracks left by a wide-track vehicle, perhaps an Humvee, apparently using the Torrey Woods property.

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

Respectfully submitted,

Barbara V. Ganem  
Conservation Assistant

**Approved as amended 7/13/04**