

GROTON CONSERVATION COMMISSION

Minutes

Monday, March 14, 2005
(postponed from March 8, 2005 due to snow)

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

Regarding a request to co-sponsor an event with the Garden Club, C. Auman indicated he has reservations because the Commission has not actually had an opportunity to see the presentation. He felt more details about the event are necessary before the Commission makes a decision. B. Ganem explained they are looking for Commission support because they are planning to advertise the event shortly. Upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: that the Commission co-sponsor an "Organic Lawn Care" lecture with the Groton Garden Club on Sunday, April 10, 2005 at 2:00 p.m. in the MacNeil Lounge at Lawrence Academy.

Five members voted in favor, with C. Auman abstaining.

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

VOTED: to approve the minutes of February 8, 2005, as amended.

Member P. Morrison abstained from the vote.

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

VOTED: to approve the minutes of February 22, 2005, as amended.

The Conservation Commission reviewed the recent ZBA decision and waiver requests for the Mattbob or Oak Ridge Manor Comprehensive Permit. P. Morrison questioned #2 of the Oak Ridge Waiver Requests in which the applicant states the project is located in the Conservancy District. In review of the conditions that could have an effect on the environment, Commissioners agreed that Conditions 2, 20, and 31 generally presented no obstacles for the Commission. Members were concerned, however, that the final plan would differ from that approved by the DEP Superseding Order of Conditions. Chairman Clements noted that, in order to assure compliance, the Commission must see the final plan. He suggested the Commission request a copy of the plan, as well as the low salt maintenance plan from the Fire Chief. He felt the Order of Conditions should be referenced in this request to the ZBA. B. Ganem explained the applicant will have to go back to DEP because there have been changes in the plans. They may remand the matter to the Commission since they affirmed the Commission's original Order of Conditions.

Resident Kristen McEvoy (89 Stonebridge Way) asked if the Commission would consider joining her appeal of the ZBA decision. She felt that additional negotiations could result in a better project and asked the Commission to request of town counsel whether they have sufficient grounds to appeal. She explained she would also be asking other boards if they would be willing to appeal the decision.

Members agreed it would be useful to at least inquire of Town Counsel whether an appeal is worthwhile and how we would go about it. It might be helpful to provide documentation to Town Counsel for a determination of the basis for an appeal and what our chances of success might be. Success would be measured in terms of the reduction of the size

of the project. Ms. McEvoy reported one of their issues is the question of site control and also a concern about a jurisdictional matter which involves gaining access in Littleton through land that is not zoned for multi-family units. She believes a Comprehensive Permit from Littleton is necessary. She noted she is an aggrieved party because apparently earth removal can occur 24-7 on this parcel. She expressed concern that there will be increased flow to her property line and that alternatives such as shifting the project further from the wetlands, closing the roadway loop, or decreasing the number of units were not fully considered. She felt the Board of Health has a strong case as well. Abutters must appeal to Superior Court or Land Court, and Ms. McEvoy said it is likely the proponent will appeal in response to their appeal. She noted mediation is one option for resolving the lawsuit.

Member Owen noted the Commission will have to go through channels to get funding for an appeal since there is no money in our budget for legal purposes. The Commission has never been denied, but the Selectmen have control of the legal consultant fund. Upon a motion by E. Owen, seconded by K. Corwin, it was

VOTED: to inquire of Town Counsel whether the Commission should consider joining in the appeal of the ZBA Mattbob decision.

Commissioners questioned whether there is likely to be a written response from Town Counsel and also if we need a written request for a decision. B. Ganem said she typically talks to Jean Kitchen before contacting Town Counsel to determine what documents they need to advise us. If necessary a written request can be drawn up. Nevertheless, the Commission's concern about the project's proximity to wetlands and density is evident in Commission minutes and in the multiple memos the Commission has submitted to the ZBA. Ms. McEvoy explained she and her husband had the pro forma analysis and engineering review done at their own expense.

Clerk B. Easom read the legal notice for the Lost Lake drawdown, DEP #169-861. In response to the applicant's request, and upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: to continue the hearing to August 9, 2005.

7:30 p.m. – 65 Burntmeadow Road NOI (DEP #169-913) continuation

(As an abutter of the project, P. Morrison recused himself.)

Applicant Bennett Black explained he had adapted a conservation restriction from NEFF for his purposes. Sue Yeager indicated a map was not yet available, but the property is listed in town records. The barn will be located so as not to obstruct any views from the road, close to Mr. Black's yard. They are envisioning a 40' by 30' barn with a paddock. K. Corwin pointed out they will need a map showing the proposed location. The Groton Conservation Trust is listed as the grantee in the restriction. In response to B. Easom's question about their reaction, Mr. Black indicated the Trust has not had an opportunity to provide feedback as yet. It is anticipated the ZBA will act on the plan by the end of the month.

Abutter P. Morrison said he was disappointed to hear the applicant proposes the Trust as the holder of the restriction as he thought the Town, acting through the Commission, was the holder, particularly since the Commission had specified certain conditions. C. Auman noted it was unacceptable to have the Trust hold the restriction instead of the Commission. B. Ganem pointed out the Division of Conservation Services, which reviews the document before sign off by the Secretary of EOEA, usually does not allow "whereas" clauses, and the Commission has previously weighed in on the issue of a buffer around the pond and fencing and pasturing of animals. In addition, the notary documentation must reflect the new notary requirements. M. Giguere suggested the restriction could be held jointly. B. Easom asked if the Trust was providing any money to purchase the restriction, and Mr. Black said "no". Mr. Easom noted the Commission is looking for mitigation for allowing the driveway within the buffer zone. Sue Yeager felt the Commission was involved because of the pond. Ms. Yeager said they would discuss it with the Trust and Attorney Ray Lyons. She noted the site plan needs to be corrected to show where stone walls are located although photographs may cover it.

Members commented they are responsible for managing land which they own. Land subject to conservation restrictions is monitored on a more irregular timetable as management is up to individual owners. Upon a motion by B. Easom, seconded by K. Corwin, it was

VOTED: to continue the hearing to March 22, 2005.

Mr. Black agreed to get the requested documents to the Commission by Friday.

8:00 p.m. – Webber Request for Determination of Applicability – farm pond and access

Steve Webber explained he is proposing a pond with a dam which will serve as a roadway. He stated none of the interests protected by the Act will be harmed with this project. Mr. Webber said he has attempted to contact Dan Lenthall to coordinate the preparation of a Farm Conservation Plan but it has been well over a year and a half. P. Morrison said it looks okay to him but he would like to study it further. The land is in agricultural use. Mr. Webber indicated the purpose of the pond is to water livestock, but he noted it will still be necessary to bring in a water line from Martins Pond Road to the barn to provide water in the winter. Mr. Morrison said he did not see anything different from Kirk Farm.

Resident Cindy Kollarics (39 Indian Hill Road) asked what the project is for, and Mr. Webber responded it is to provide access to a new barn from Martins Pond Road. The access will be near the Pietras' property at the bend in the road. C. Auman pointed out the Wetlands Protection Regulations (Section 10.04(c)(1)(g) and (c)(2) allows an exemption for agricultural purposes for the alteration of wetlands if a Conservation Plan is provided.

Member E. Owen commented that all of the interests of the Act could be impacted by this project. Putting in a dam and altering wetlands changes the hydrology of the area. He expressed concern that the proposed work will concentrate flow in a pipe, and it is right at a property line. He noted the Commission typically requires there be no net increase in flow offsite. Mr. Owen added the flow rate is likely to be more concentrated in a pipe.

M. Giguere said there is an existing culvert under Martins Pond Road. B. Clements suggested there are enough issues that it might be valuable for the Commission to issue an Order of Conditions. P. Morrison cautioned that the activities could be exempt with a Farm Plan. The purpose of the Farm Plan is to assure that best management practices, with as much detail as possible, are implemented to assure there is no erosion downstream. In the alternative, K. Corwin suggested a Notice of Intent could be filed. It was agreed B. Ganem will contact Dan Lenthall to encourage some movement toward producing the Conservation Plan.

C. Kollarics said she was particularly concerned about the potential for increased runoff reaching Martins Pond. Mr. Webber assured her there would be substantially less, and she questioned whether the quality of water will change. Mr. Webber indicated that a lot of the particulate matter will settle out once the pond is in place. Upon a motion by C. Auman, seconded by K. Corwin, it was

VOTED: to continue the meeting to March 22, 2005.

8:15 p.m. – Carol Malloy Abbreviated Notice of Resource Area Delineation – across from 155 Indian Hill Road

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(Member B. Easom recused himself due to a conflict of interest.)

Engineer Jack Visniewski of Cornerstone Land Consultants explained the plan showing the wetland flagging done by consultant Michael Turgeon has previously been submitted to the Commission. He noted there is a grassed path which leads to a steep knoll to the right rear of the property.

Mr. Visniewski said he was consulted due to the possibility of a failed septic system as well as to examine the potential to develop the property. The purpose of this particular filing is to see if the Commission agrees with the wetland flagging. He noted this is a 9-acre parcel with 30,000 SF of upland in the right back corner. He did not know the full square footage of upland on the lot, but said he would determine this. E. Owen asked if the wetland was a

stream. Mr. Visniewski said there is a culvert under the path which parallels a groundwater pond. The animals use this path to get back and forth. K. Corwin noted the Commission will visit the site with the wetland consultant to review the soils and vegetation used to determine the wetland boundary.

Terri Ragot (25 Indian Hill Road) asked the purpose of the deep holes tests done on site. Members said these test results go to the Board of Health. Cynthia Kollarics (39 Indian Hill Road) said she had been on the property prior to Malloy ownership, and she is concerned about the endangered species in the area. K. Corwin said Natural Heritage must receive a Notice of Intent filing at the same time as the Commission. She also noted that sightings of rare species should be reported to Natural Heritage so they will be aware of the particular species in the area. Bob Lotz (163 Indian Hill Road) commented he thought this wetland connects with Half Moon Pond, and it runs most of the year. C. Kollarics urged that a wildlife study be done if work is proposed on the lot. T. Ragot asked about the wellhead that is visible from the road. Joan Reynolds (126 Indian Hill Road) requested clarification on what this filing is about.

J. Visniewski said he was uncertain what Ms. Malloy has in mind, but it could be to establish the value of her land. He assured the abutters present they would be notified if any work is proposed. He added the first step is defining where the wetlands are located. P. Morrison said the wetland boundary delineation establishes exactly where the Commission's jurisdiction begins and ends.

Arthur Blackman (179 Indian Hill Road) questioned whether any plans have been developed at this time or whether plans have been submitted to the Nashoba Board of Health. Mr. Visniewski indicated, although subsurface testing has been done, he was not aware of any plans that have been produced.

T. Ragot said the Commission should be aware there is a pond on the other side of the property where there is beaver activity. P. Morrison noted the Commission has jurisdiction within 100 feet of a wetland or 200 feet of a river. Upon a motion by K. Corwin, seconded by P. Morrison, it was

VOTED: to continue the hearing to April 26, 2005.

Members informed the abutters they will visit the site on April 23, 2005; members cannot give the public permission to visit private property.

8:30 p.m. – Whippoorwill Lane NOI continuation, DEP#169-909

B. Easom read the notice, and upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to continue the hearing to the March 22, 2005 meeting.

Camilla Blackman asked if the Commission had agreed to participate in the lecture on organic lawn care which will be funded with funds from the Commission of Trust Funds. Members noted they would like to co-sponsor the event and suggested the Water Department may also be interested in co-sponsoring the lecture.

Arthur Blackman said the Conductorlab Oversight Committee will be holding its 20 year meeting with representatives from Conductorlab on March 23rd. They will present a report on the cleanup efforts to date on the site. He explained that a series of wells below the deposit were determined to be polluted, and town water was brought into those parcels. He thought the least expensive amount of work to keep both the state and Groton happy has been done over the years. He noted he is looking for support from other boards to encourage the owners to undertake a final cleanup of the site. Mr. Blackman said the current owner, Honeywell, has been more responsive than previous owners, but he felt DEP has been no help at all. K. Corwin, C. Auman, and P. Morrison indicated they will try to attend on March 23rd. Mr. Blackman advised them to require the consultants to speak in laymen's terms as the language can get quite technical.

8:45 p.m. – Academy Hill NOI request for Amendment to DEP #169-783 and new NOI DEP #169-917

At the applicant's request and upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to continue the hearing to April 12, 2005.

B. Ganem read the request for an Extension for DEP #169-530 for 162 Shelters Road. Because it has been ten years since the original Order was issued, members agreed to visit the site before voting on the Extension.

Member Corwin noted she heard during the recent MACC workshop that the mapping done during the state fly-overs identified lawn creep as a major issue. She suggested the Commission consider requiring signage to mark the area where there should be no encroachment. This would help people recognize exactly where the resource area is located. Four by four inch posts with a medallion either in aluminum or plastic could serve to identify the land. P. Morrison suggested the medallions could be purchased in bulk, and it might be a good idea for the Commission to purchase them to assure quality and consistency. Commissioners thought developers would be more receptive to wooden posts rather than granite posts placed every 50 feet. B. Ganem will get a quote on the medallions in plastic or enamel on aluminum. The draft language for the condition will be included in the boilerplate Order of Conditions, and members can adapt it to particular situations.

Chairman B. Clements reported he had attended a workshop at the MACC Annual Meeting in which there was discussion about Commission decisions under local bylaws. He noted a recent case in No. Andover (Fieldstone) in which the Commission apparently had too much discretion, and the court found their decision “arbitrary and capricious” because the bylaw was not consistently applied. He felt the Commission should make it clear in its decisions why particular conditions have been added to an Order. C. Auman pointed out the “Findings” section of the Order typically identifies the project and why the Commission is allowing it to go forward.

K. Corwin asked fellow members to take another look at the Worcester replication requirements she previously e-mailed. Replication is a complex area, and the Commission should consider increasing its level of scrutiny and oversight of projects in which replication is proposed.

Regarding the request for an Extension for DEP #169-824, the Lost Lake Drawdown, and upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to extend the Order of Conditions until July 4, 2005, pending the development and implementation of a plan to monitor the ten stations to determine the efficacy of Diquat treatments.

The Commission will consider a further extension at the end of that time.

Members agreed to send a copy of the letter from Natural Heritage relative to the application of benthic barriers in Springy Pond.

M. Giguere noted the Commission could recommend that trails be included in a 40B project, and this could be a negotiating tool when working with the developer.

There being no further business, the meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as amended March 22, 2005.