

GROTON CONSERVATION COMMISSION

Minutes

April 26, 2005

Chairman Bruce Clements called the meeting to order at 7:00 p.m. Members Craig Auman, Kris Corwin, Marshall Giguere, and Peter Morrison were present. Bruce Easom arrived at 7:12 p.m. and Evan Owen arrived at 8:58 p.m. Conservation Assistant Barbara Ganem was also present.

B. Ganem explained that Groton resident Holly Estes, a master's student at Antioch New England, is interested in doing flora and fauna inventories on conservation areas. Commissioners agreed that her efforts should be concentrated on larger, connected parcels and suggested Sorhaug, Torrey, Floyd, and Sawtell. K. Corwin pointed out that the Cow Pond area also has very little documentation. In general, the area between Chicopee Row and Cow Pond Brook should be the focus of the study.

Chairman Clements noted Rick Muehlke is organizing a town-wide clean-up on the weekend of May 7th - May 8th. Flyers were distributed to Commissioners.

(B. Easom arrived at 7:12 p.m.)

B. Ganem reported the clean-up of the wetland below 318 Main St. took place on April 21st. Several trees were trimmed in order to provide access for the vacuum boom, and the Water Department will clean up this brush. The operation went smoothly with most of the silt effectively removed.

In response to the letter from Brad and Sally Smith about their property at 13 Common St., there was some question about whether this project is similar to Anna Eliot's. C. Auman said the fencing would help protect the vernal pool by keeping the animals out. K. Corwin commented this could be considered maintenance of land in agricultural use. There is no farm plan for the property. She agreed that fencing would protect the vernal pool, but she felt they need to come before the Commission perhaps with a Request for a Determination of Applicability. After discussion, members agreed to request that the proposed fence location be staked in the field, and the Commission will review the line.

7:15 p.m. - McGovern Abbreviated Notice of Resource Area Delineation/Longley Rd. and Sand Hill Rd. continuation
DEP #169-914

The review of the wetlands delineation line was not completed during the last site visit. With the applicant's consent and upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to continue the hearing to May 24, 2005, pending another site visit.

B. Ganem explained the proposed project at 162 Shelters Road is for retaining walls. The Commission has issued two previous extensions, and she felt the applicant has tried to comply with Commission policies through requesting the extension on a timely basis. However, because the filing is over ten years old, the Commission should advise the applicant it cannot be extended in the future. Upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to issue an Extension for DEP #169-530 for 162 Shelters Road for two years.

Conservation Assistant Ganem reported she has visited 8 Valley Road and noted there are areas where vegetation is sparse. Given the tree cover, she felt it was unlikely the condition of the grass would improve in a measurable way. Upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to issue Certificates of Compliance for DEP #169-875, #169-811, and #169-753
for work at 8 Valley Road.

The Commission has previously visited 14 Island Road for a Determination for a deck. At that time, members agreed to postpone the issuance of a Certificate of Compliance for the house addition until gutters and mulching were installed. B. Ganem reported these activities have been done, but there remain areas of exposed soils and the silt fencing is still in place. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to authorize B. Ganem to issue a Certificate of Compliance for DEP #169-685 when the mulching is completed and erosion control measures removed.

7:30 p.m. - Malloy Abbreviated Notice of Resource Area Delineation/Indian Hill Road continuation for DEP #169-916

(B. Easom recused himself.) Concerns have been raised about the storage of manure on site, and Commissioners agreed to look at the situation during the next site visit. Due to missing wetland flagging and with the applicant's consent, upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to continue the hearing for DEP #169-916 to May 24, 2005.

B. Ganem explained the draft amended Order of Conditions for Kemp St. is highlighted in areas where there are changes from the original order. Upon a motion by B. Easom, seconded by K. Corwin, it was

VOTED: to approve the regular conditions, findings, and special conditions and issue the amendment for DEP #169-876.

Ben Cutone, Health Agent to the Board of Health, has recently declared a public health and safety issue for beaver flooding at 590 Old Dunstable Road due to falling trees and the proximity of the water to their well. The flooding is occurring on the Woodland Park Conservation Area, and the resident needs Commission permission to trap on conservation land. They have indicated they would be willing to pick up the costs of trapping beavers. K. Corwin said trapping is not a long term solution. A beaver flow device might be a better option to explore before trapping is done. P. Morrison indicated he did not feel the Commission should wait. B. Easom noted an Emergency Certification can be issued for breaching, and this would allow time for a consultant to evaluate the situation. There were concerns that this would increase the costs, but it was estimated the initial cost of an evaluation would be \$75. P. Morrison felt the hang-up is time as the Board of Health has essentially declared this an emergency. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to authorize the neighbor to first evaluate the use of beaver exclusion fencing or piping on the dam that controls the water level on the Woodland Park Conservation Area and to allow the breaching of the dam.

The motion passed with five voting in favor, and P. Morrison abstaining.

7:45 p.m. - 160 Townsend road Notice of Intent continuation for DEP #169-908

With the applicant's consent and upon a motion by M. Giguere, seconded by K. Corwin, it was

VOTED: to continue the hearing to May 24, 2005.

P. Morrison recused himself from the discussion on the minutes of April 12th on which the Commissioners recommended several changes. Upon a motion by K. Corwin, seconded by C. Auman, it was

VOTED: to approve the minutes of April 12, 2005 as amended.

K. Corwin agreed to coordinate the placement of turtle crossing signs at Hoyts Wharf and Cow Pond Brook, Gay Road, Lost Lake Drive, and on Rt. 40 near the intersection with Lost Lake Drive. B. Clements suggested Townsend

Road also be included and placing monitors there during rush hours.

Member Auman said he was planning to attend the MACC workshop on dams and restoring natural flow on May 20th.

B. Easom has signed up for the May 7th basics class.

8:00 p.m. - Gingras/41 Old Ayer Road Notice of Intent DEP #169-918

Lynne Remington of Ross Associates submitted the green receipt cards and noted there were minor revisions in the notes for the revised plan, copies of which were also submitted.

She explained the filing is for the upgrade of a failing septic system. The 5-acre parcel presently has an extensive lawn area with fruiting trees and a shrub border on the property boundary. There is a larger cattail marsh with standing water behind the parcel. An isolated pocket of wetlands with high bush blueberry and red twig dogwood is within 100 feet of the proposed work. The area has a high water table with a slow percolation rate. There will be a 6' mound with a three to one slope for the septic installation. They anticipate loaming and seeding at the conclusion of the work. High bush blueberries will be at the toe of the slope. She estimated the distance between the work and the wetland to be 62'. M. Giguere questioned whether grading is allowed this close to wetlands under the Bylaws. C. Auman, reading from the Bylaw, indicated that it is, providing the maximum feasible buffer is maintained. Ms. Remington explained putting the septic system toward the front of the lot would result in the neighbor having to look directly into the 6' mound from their downstairs windows. A new tank and pump chamber is proposed under the filing. The old septic system will be displaced by this system. Chairman Clements asked what the drain line is for, and L. Remington responded it is the discharge from their sump pump which will be re-located away from the septic system. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to close the hearing for DEP #169-918.

B. Easom reported that the docks did not make the cut in the Capital Program Committee recommendation at Town Meeting the previous night. B. Ganem said it is her understanding that swimming lessons have been cancelled for Sargisson Beach this summer. The rope across the beach will help define the swimming area.

P. Morrison recommended the Commission check on some of the previously identified encroachment issues on conservation areas during the next site visit.

8:15 p.m. - Devine/Griggstone Breakneck Road Notice of Intent

Lynne Remington of Ross Associates noted the Commission had walked the 2.6 acre wooded parcel which is surrounded by wetlands on three sides this past Saturday. The Commission agreed with the wetland boundary delineation. There is an intermittent stream coming from the west. In general the wetlands are well defined by the topography. There is an upland knoll on which a new single family house with three bedrooms is proposed. The filing is to determine whether this is a feasible plan, while still maintaining a 50' no-disturb buffer and minimizing intrusion into the 100 foot buffer zone as much as possible. Ms. Remington explained the house, septic system, and driveway are out of the 100 foot buffer zone. Some of the grading associated with breakout is proposed within the 100 foot buffer zone. In response to K. Corwin's suggestion at the site visit, the driveway was moved so that it is over the expansion area and the revised plans reflect this change. This would reduce the volume of fill and bring in the toe of slope 6' to 10'. The slopes will be loamed and seeded, and haybales will define the limit of work.

C. Auman read the definition of "minor grading" from the Regulations: "Grading in which elevation changes are less than two feet. With slopes that exceed 5%, grading elevation changes shall not exceed one foot to be considered minor grading." Ms. Remington mentioned that Dan Wolfe has previously discussed this project with the Commission, and members had indicated they consider this on a case by case basis. She estimated the grading for the breakout is three to one. C. Auman pointed out this is a requirement, not discretionary, for new development.

B. Easom said the slope from the house looks ripe for encroachment of future homeowners into the wetland buffer. He questioned how landscaping would be done to discourage the individual home owner from doing this. Ms. Remington

responded this limitation could be well documented in the Order and plantings such as rhododendron or junipers or large boulders could be used to define the extent of lawn. The buyer will have to understand the lot has constraints. Mr. Easom asked how confident she was in controlling this space in the future.

K. Corwin thanked the applicant for taking her comments into consideration and questioned whether the Board of Health will allow the septic system to be under the driveway. She asked what happens when you need the reserve area, and L. Remington replied this won't happen for 25 years, but it is likely both the septic system and driveway would be replaced at the same time. The site is difficult, and Ms. Corwin indicated the limit of grading is pushing it in her opinion. Member Giguere noted there is grading on both sides of the driveway, but on the right side, it is extremely steep. The slope goes from 2:1 to 3:1. Mr. Giguere asked if any pipe is proposed to allow the flow of seepage. Ms. Remington said she did not anticipate a pipe because it was a seasonal seepage. No trees are proposed to be cut beyond the limit of disturbance, but Commissioners thought it would be a temptation to owners to want to remove trees near the house.

Chairman Clements stated there appears to be grading in excess of what the Bylaw allows, and there needs to be some kind of public benefit that makes the tradeoff worthwhile. Abutter Pam Gill (20 Breakneck Road) said the site provides a wildlife corridor for animals traveling toward Shepley, and she was personally saddened to see it disturbed. She also noted the site collected drainage from Breakneck and Longley which eventually drains to Nod Brook. Adding the impervious surface of the driveway, creating a lawn area, and adding fertilizers could impact the resources. Chairman Clements commented the Commission typically adds conditions on the use of salt and fertilizers.

Ed Doucette (17 Breakneck Rd.) asked for clarification on the siting of the house, and L. Remington said it will be set a little forward of the knoll. Mr. Doucette pointed out there is a 15' drop from the road to the low area which is sometimes under water. He felt the driveway would create a dam, and there was potential for water to back up onto his property. Rick Muehlke (109 Common St.) urged the Commission to take a hard look at the rules and regulations to see if they specify what can be allowed. He thought that waivers should be few and far between, and the Commission should not modify its own rules. K. Corwin asked if this project is within a Natural Heritage polygon, and L. Remington replied "no". Members agreed it was important to study the revised plan in depth and suggested the hearing not be closed. A motion by P. Morrison, seconded by B. Easom, to close the hearing failed unanimously. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to continue the hearing to May 10, 2005.

8:30 p.m. Provost 77 Boathouse Road Notice of Intent DEP #169-912

Mr. Provost explained he plans to construct a three season room with two decks but no water or bathroom. It will probably be heated with a propane stove. The Commission has previously visited the site and discussed the project under a Request for Determination of Applicability. Chairman Clements explained the Order must be recorded before any further work is done. There being no questions from the public, upon a motion by P. Morrison, seconded by K. Corwin, it was

VOTED: to close the hearing for DEP #169-912 for 77 Boathouse Road..

8:45 p.m. - Millstone Realty Trust 960 & 966 Lowell Road Abbreviated Notice of Resource Area Delineation DEP #169-921

Steve Ericksen of Norse Environmental noted the Commission had visited the site this past Saturday and appeared to be in agreement with the wetland flagging. Vernal pool species were observed in the wetland defined by the A-series of flagging. The Commission could include certifying the vernal pool as a condition when it issues an Order for the project. Mr. Ericksen gave K. Corwin permission to visit the site to obtain photographs of the vernal pool. Resident Dean Marsh (38 Painted Post) said he had not received previous plans for the project. Member Morrison explained the Commission currently has not received any official project plans, and is only agreeing with where the wetland lines are located at tonight's hearing. Mr. Marsh stated he had not received notices from the Planning Board for the project. The applicant will submit the green cards tomorrow. Upon a motion by C. Auman, seconded by K. Corwin, it was

VOTED: to close the public hearing for DEP #169-921.

(E. Owen arrived at 8:58 p.m.)

E. Owen indicated he would be willing to lead several walks for Biodiversity Days (June 4 -12, 2005) on town-owned conservation areas. The walks could be advertised in the newspaper and on the web site. B. Ganem said she would e-mail the contact information for Chris Shaffer, a resident who has expressed interest in participating.

9:00 p.m. - Mendenhall 401 Nashua Road Request for Determination of Applicability

Linda Mendenhall explained several different aspects of her proposed project: 1) construct a horse run-in on the side of the barn to provide shelter for horses in the nearby paddock; 2) install fence in open field, 3) install bridge across a gully to provide access from the paddock without going out onto the street; and 4) restore part of a paddock which has been compacted and eroded over the past 30 years. She noted this area has become wet which is not good for the horses' feet and could lead to contamination of the water.

C. Auman asked if she considered the property in agriculture, and Ms. Mendenhall said they are enrolled in Ch. 61A as they breed and sell horses. Mr. Auman inquired whether there were any receipts for such sales. P. Morrison said this is not a public document. Ms. Mendenhall stated they have a web site where they advertise horses for sale. They have also filed as a small business with the town and pay taxes as a business. She noted the fence line is visible in town aerial photographs. The stream is fenced off so that horses will not go in that area. Mr. Auman said he thought the overall operation was clean, neat, and well-organized.

K. Corwin thought the filing was pretty straightforward, but urged the use of clean fill and haybales for the area to be filled in and no footings for the bridge. M. Giguere concurred, stating that constructing the new bridge in a similar fashion as the existing bridge would be his preference. With no comments from the public and upon a motion by C. Auman, seconded by E. Owen, it was

VOTED: to issue a negative #3 and #5 Determination providing 1) clean fill is used; 2) no erosion or sedimentation occurs into the wetland; and 3) the crossing is accomplished with a bridge with no footings in the wetland.

9:15 Fontaine/473 Chicopee Row Request for Determination of Applicability

Roger Goscombe explained he was representing the owner of the house, and the buyer, Kevin Phelan, was also present. Mr. Goscombe noted there is an orchard behind the site and a stream to the east of the property. The upgrade of the septic system is placed in the only viable location that meets Board of Health requirements. It appears that a substantial amount of fill has been added to the lot at some point. None of the septic system will be in fill, but some of the grading will extend into this area. R. Goscombe said haybales will be installed down slope from the project. The area where the septic upgrade is proposed is currently grassed lawn.

E. Owen said the fill area is likely the site of an old farmhouse. The location of an existing underground pipe is estimated based on the inlet and outlet as well as the septic tank. If the septic tank and line are determined to be inadequate, they will be replaced. It is likely the underground pipe is very deep, and the line would be placed over this pipe if replacement is necessary. B. Easom expressed concern about hitting this pipe and possibly causing water to bubble up. With no further questions from the audience, and upon a motion by B. Easom, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination providing 1) erosion control measures are installed and 2) additional measures may be necessary if the septic tank or septic line must be replaced.

At 9:30, Commissioners began discussion on the permit decision for DEP #169-913 for Burntmeadow Road. The

applicant, Bennett Black, Jr., Attorney Ray Lyons, and realtor Roger Goscombe were present. As an abutter, Member Morrison recused himself from the proceedings. Chairman Clements commented there had been some concern about the extension for DEP #169-828 which the Commission voted on at the previous meeting. M. Giguere questioned whether this vote should be reconsidered as it was a bit hasty, and there was little discussion, particularly since the applicant has another Notice of Intent which essentially supersedes the earlier filing. Mr. Lyons expressed disapproval of such an action. C. Auman said he agreed with Mr. Giguere that the Commission could have discussed this in greater detail. He acknowledged he was not saying that granting the extension was the right decision.

B. Easom noted the packets provided by B. Ganem included an excerpt from *Robert's Rules of Order*, and he was not prepared to reconsider. He felt the vote represented a commitment or contract on the part of the Commission. Once the Commission granted the extension, the Commission has given the applicant an indication about how to proceed. Mr. Easom said it could be harmful to the applicant, particularly if the Commission approved it without understanding the circumstances under which the applicant is working.

K. Corwin said she did not think it would be professional to reconsider the extension. E. Owen commented Mr. Lyon stated at the time his client was interested in keeping his options open. B. Clements said no written documentation exists yet, but he agreed with his fellow Commissioners and would honor the opinions of other members. Mr. Lyons thanked members for their decision.

Member Corwin requested clarification of whether the Commission could rule differently under the Wetlands Protection Act and under the Groton Wetlands Protection Bylaw. B. Ganem responded there are different performance standards and interests protected under the individual laws. Ms. Corwin suggested two separate Orders of Conditions should be prepared for the project. She made a motion to deny #169-913 under the local Bylaw and read portions of the draft denial based on excerpts from the Bylaw and Regulations.

Chairman Clements asked if other members had comments on the draft. C. Auman said he supported a denial as it does not meet our Bylaw with work proposed in the 50' no-disturb buffer. B. Easom stated it is clear in describing the project that it is not within the Bylaw. He indicated he had not seen significant mitigation or compensation within the draft conservation restriction. K. Corwin commented there had not been sufficient avoidance of impacts in the examination of alternatives. E. Owen noted he had voted not to close the hearing because he did not feel the Commission had the necessary information. M. Giguere questioned whether the new Natural Heritage map provides new information on the species present. Mr. Lyons responded that Natural Heritage identified all the rare species at the site in correspondence. He commented he still has to do a Conservation Restriction as one of the conditions of the Special Permit. He noted there is no question Mr. Black will have to come before the Commission with the Restriction, and they are both working on it. Mr. Lyons objected to the Commission denying the Order on the basis of the Conservation Restriction.

K. Corwin objected to Mr. Lyons attempting to re-open the hearing. She explained the Commission is making a decision, not accepting new information. B. Clements confirmed Mr. Lyons' comments were beyond the scope of the current process. R. Lyons said the Commission's previous vote on the driveway location would be featured prominently in an appeal. E. Owen pointed out that was approved with the proviso an adequate Conservation Restriction would be in place. K. Corwin opposed any further discussion whatsoever. With Ms. Corwin's motion on the table and a second by C. Auman, it was

VOTED: to deny a wetlands permit, under the Wetlands Protection Bylaw and Regulations, for the proposed project on Burntmeadow Road, DEP #169-913.

All members voted in favor of the motion.

Member Owens made a motion to issue the Order, approving the standard conditions in the boilerplate WPA Order of Conditions. After he read through the findings and special conditions in the draft Order of Conditions, K. Corwin seconded the motion. B. Ganem explained the highlighted areas in the draft were where the Commission must make choices. K. Corwin made a motion, seconded by B. Easom, and it was

VOTED: to amend Conditions #37, 40, 46, and 52.

Returning to the main motion, it was

VOTED: to approve the issuance of an Order of Conditions under the Wetlands Protection Act as drafted, read, and amended for DEP #169-913 for Burntmeadow Road.

All members voted in favor of the motion.

R. Lyons said he was very disappointed with the decision. He said there were two people in the room who have seen something similar happen in Pepperell, but with a better outcome. He explained it was Mr. Black's intention to sell the three lots for a single house, but they needed an appraisal value reflecting the approval of three lots. Mr. Lyons stated the Commission will be a co-holder of the Conservation Restriction, and he questioned why there would be this much controversy over a bit of driveway in an upland area. He acknowledged it was probably not appropriate to discuss this further.

Wrapping up the meeting, Commissioners signed documents and suggested the Bylaw Regulations be placed on the Commission web site.

There being no further business, the meeting was adjourned at 10:25 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as amended 5/10/05