

GROTON CONSERVATION COMMISSION

Minutes

May 10, 2005

Vice Chairman Peter Morrison called the meeting to order at 7 p.m. Members Craig Auman, Kris Corwin, Bruce Easom, Marshall Giguere, and Evan Owen were present. Chairman Bruce Clements arrived at 9:15 p.m. Conservation Assistant Barbara Ganem was also present.

In reviewing the draft Order of Conditions for DEP #169-920, 77 Boathouse Road, C. Auman moved significance which was seconded by P. Morrison. It was

VOTED: to approve the significant interests for 77 Boathouse Road.

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

VOTED: to issue an Order of Conditions for DEP #169-920 approving the regular and special conditions, as amended.

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

VOTED: to approve the significance, regular, and special conditions for an Order of Conditions for 41 Old Ayer Road, DEP #169-918.

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

VOTED: to issue an Order of Resource Area Delineation, as drafted, for DEP #169-921 for 960 and 966 Lowell Road.

B. Ganem said Stacey Chilcoate of the Nashua River Watershed Association has reported the Petapawag Conservation Area is in poor shape with rutting of the driveway and fencing that has fallen down. In addition, one of the granite benches has been stolen. Ruts remain in the lawn where a truck was driven in to load the bench. B. Ganem will follow up with the state and Tom Delaney to see if repairs can be done.

7:15 p.m. - Whippoorwill Lane Notice of Intent continuation, DEP #169-901

Attorney Bob Collins submitted an updated draft Conservation Permit from Jon Regosin of the Natural Heritage & Endangered Species Program. He explained that revised plans, reviewed by Tom Orcutt, have been submitted for this filing. Bob Pine has suggested if there is water in the resource area at the time the crossing is done that silt fencing and haybales be installed upgradient with a flexible culvert to bypass the construction area. They estimate the work will take approximately 7 days and will be done during the dry season. Commissioners requested a letter with these measures outlined.

Mr. Collins assured the Commission he will provide a draft of the revised Conservation Restriction. The Town will hold the Restriction on the 387 acres of land to be owned by Massachusetts Audubon. A 20-acre parcel with three vernal pools will be donated to the Town. Development will take place on 52 acres in Groton. An additional 115 acres will be preserved in Ayer, contiguous with the MassAudubon parcel. There are three other areas which will be owned by a homeowners' association but subject to another Restriction.

K. Corwin commented the Commission typically requires staggered haybales where rare species are present, and Mr. Collins indicated Natural Heritage had also made similar suggestions. Ms. Corwin noted the proposed project does not conform to the local Wetlands Bylaw. The Commission typically takes into account the proposed mitigation and

requires the Conservation Restriction before the hearing is closed. Mr. Collins explained the Conservation Permit requires the Restriction to be in place before more than one building permit is issued. Natural Heritage is basically overseeing the process, and they will assure an effective Restriction. If there are procedural questions, the Commission will have an opportunity to review changes. B. Clements said the draft deeds and Restriction should be available to the Commission. P. Morrison suggested continuing the hearing until these documents are in. B. Easom pointed out the name Whippoorwill Lane has been changed to "Robin Hill Road". C. Auman urged that any proposed trail network be laid out as soon as possible so that new homeowners will not be surprised by the presence of trails. B. Collins indicated Natural Heritage will have final approval on trail locations.

P. Morrison questioned whether the 44 acres already donated to the Groton Electric Light Department was deed-restricted in anyway, and B. Collins said, "No.". Upon a motion by B. Easom, seconded by C. Auman, it was

VOTED: to continue the hearing for DEP #169-901 to May 24, 2005.

7:30 p.m. - Eger/174 Shelters Road Request for Determination of Applicability

Dr. Eger explained his existing retaining walls are crumbling, and he anticipates replacing them with 6" by 6" timbers at the same height and depth. A little fill may be necessary behind the wall for stabilization. Only a portion of the work is within 100 feet buffer zone of Lost Lake. Upon a motion by K. Corwin, seconded by E. Owen, it was

VOTED: to issue a negative #3 Determination.

In response to the Planning Board's request for comments on Academy Hill, K. Corwin said she is concerned the second access does not conform to the Wetlands Bylaw. She recommended it be narrowed as much as possible in order to reduce fill within the wetland and buffer. She also said the access should follow the existing driveway more closely. E. Owen noted the detention basins impact the resource areas. B. Easom questioned whether the roadways could be permeable, but P. Morrison said these typically work for a while but fail in the winter. C. Auman commented the density of people and animals in a sensitive area remains a major concern although he conceded the removal of the through road and reduction in housing units were positive steps.

It was noted the ZBA will hold a hearing on "Pine Ridge Court", the Comprehensive Permit application for Jenkins Road, on May 25, 2005 at 8 p.m.

7:45 p.m. - Pimental/17 - 19 W. Main Street Request for Determination of Applicability

Homeowner Chad Pimental explained they plan to remove an existing deck and aboveground swimming pool. The deck will be replaced and slightly enlarged but in a direction away from the stream. Mr. Pimental agreed to install crushed stone underneath the deck to assure proper drainage. Excavated soils will either be reused or stored outside of the 100-foot buffer zone. The area where the pool was removed will be re-seeded, and there are no plans to replace the pool. Upon a motion by M. Giguere, seconded by B. Easom, it was

VOTED: to issue a negative #3 Determination, providing there is no storage of materials within the buffer zone, siltation protection is on site, and crushed stone is placed underneath the deck.

Commissioners visited 13 Common Street this past Saturday to observe the proposed location of two fences on the property - one to prevent trespassers and another to enclose a pasture for livestock. E. Owen commented the land could be considered as being in agriculture, but it is a new conversion. K. Corwin noted that Ch. 61 enrollment does not necessarily mean it is agriculture under the definition in the Wetlands Protection Act. In general, members felt the fences would prevent intrusion into the vernal pool and would increase protection of the resource area. Commissioners agreed to send a letter to the Smiths allowing the fences to be installed without an additional filing.

Also included in the Saturday site visit was 106 Peabody Street where Mr. Hoch has inquired whether stumps can be removed and the area where the septic tank was crushed grassed over. Members agreed to send a letter to Mr. Hoch

allowing the stumps to be removed and grass planted only within the area that is shown as “hatched” on the Notice of Intent plan.

8:00 p.m. - Sellars/213 Whiley Road Notice of Intent DEP #169-922

Owner Jeffrey Aubuchon explained they are proposing several retaining walls constructed of Keystone blocks. He estimated that the foundation of the walls will be between 18” and 24” deep. Dirt will be used to backfill behind the wall. The cap of the wall will be glued, but the wall itself is not cemented. C. Auman recommended that the work be done in the fall when the Lake is drawn down and that the wall not expand further into the Lake. Mr. Aubuchon said he will be replacing existing railroad ties with a slightly higher wall than exists now. Members asked if the work will be in the floodplain. The foundation of the wall will be firm and level, and crushed stone will be placed on the uphill side of landscape fabric. Ms. Sellars submitted the green cards. As far as the timing, Mr. Aubuchon said he planned to do the 2nd, 3rd, and 4th retaining walls immediately. Members asked him to show on the plan where haybales will be placed and also the type of material and construction plan to be used. Retaining wall #1 will be done when the water level is down.

B. Ganem noted the as built plan shows the shape and size of the house has changed from the plans submitted with the NOI. E. Owen questioned whether it would be necessary to do some contouring at retaining wall #2, and Mr. Aubuchon replied they would only disturb the area where the trench for the foundation is dug as they do not want to displace a lot of dirt. Members agreed that silt fencing in the lake bed would be okay at the time retaining wall #1 is constructed.

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

VOTED: to close the hearing for DEP #169-922.

8:15 p.m. - Request for an Amendment to an Order of Conditions, DEP #169-901, 129 Longley Road

Homeowner Anna Eliot explained she has submitted a letter and plan showing where she wished to clearcut and stump in order to create a hayfield. She indicated it is 45’ from the brook to the nearest stump. Ms. Eliot said haybales have been placed along the roadway between the roadway and the brook. C. Auman asked the percentage of trees that will be removed. Ms. Eliot indicated she is removing 5 or 6 pine trees with a diameter of 8” to 10” to improve the viewshed for sunset viewing. She will also remove invasives such as bittersweet and honeysuckle. She estimated 50% or more of the trees will remain. Some of the trees will be used for firewood. No fencing or herbicides are proposed. Ms. Eliot said manure will be used for fertilizer, and the soils to be reclaimed will be limed. She pointed out there are already existing fields that are mowed to the stream bank.

Member Owen asked if there are any plans to control brush along the stream, and A. Eliot responded she will encourage maples and cherries while getting rid of honeysuckle and bittersweet. Mr. Owen felt this is a new agricultural endeavor under state regulations. K. Corwin requested Ms. Eliot to mark on the plan the 45’ from the stream where stumping will occur, and the area where the pines will be removed. B. Easom expressed concern about topsoil being washed into the stream in areas where logs are carried and asked that there be no erosion problems on the site. C. Auman encouraged Ms. Eliot to remove invasive plants.

Rick Muehlke (109 Common Street) said he was impressed with the quality of the forestry work done on the parcel. He noted there were few machinery scrapes on the remaining trees. He thought the forester was taking his time and not maximizing profits. Upon a motion by C. Auman, seconded by K. Corwin, it was

VOTED: to close the hearing for an amended Order of Conditions for DEP #169-901.

Ms. Eliot asked if the Commission could issue the Order tonight as she did not wish to hold the forester up. P. Morrison advised work would be done at his/her peril as the Commission has 21 days in which to issue the decision, and it has to be recorded.

8:30 p.m. - Evans/18 O'Neill Way Request for Determination of Applicability

Homeowner Bob Evans explained he had not been aware of wetland concerns on his property at the time he bought the house. He noted the top 1/3 of the tree canopy of the removed trees was dead. Dr. Evans acknowledged his main motivation was the removal of unsightly trees. He indicated he removes squirrels with havahart traps and refrains from using chemical fertilizers on his lawn. He received an award from Bob Durand for using separation facilities for mercury dental fillings. Dr. Evans said he had intended no disrespect of town laws. Member Morrison indicated once the Certificate of Compliance is signed for a project, it is difficult for homeowners to become aware of where the wetlands are located. E. Owen pointed out dead trees often have cavities that are great wildlife habitat. It was noted the Commission has tried to get the word out to local residents, via a newspaper article and flyers, about the need to file when work is proposed within 100 feet of wetlands or 200 feet of a stream. B. Easom asked if the forester was aware of the law, and Dr. Evans said he was from New Hampshire where, it was noted, the laws are different. The tree canopy is missing in this area of the stream, but Dr. Evans has no plans to remove the stumps. Dr. Evans noted another tree had fallen in the creek, and the wood was cut up and stacked on the side. K. Corwin advised this will improve stream flow, but salamanders typically attach their eggs to woody debris that falls into wetland areas. Upon a motion by C. Auman, seconded by E. Owen, it was

VOTED: to issue a negative #3 Determination for 18 O'Neill Way.

8:45 p.m. - Petroff/227 Riverbend Drive Request for Determination of Applicability

Mr. Petroff has requested a continuation. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to continue the meeting for 227 Riverbend Drive to Tuesday, May 24, 2005
at 8:45 p.m.

Member Corwin reported she has worked with Tom Delaney to order 12 metal turtle crossing signs to warn motorists about turtles crossing the road during nesting season. It is anticipated they will be in place by June 1. She said she is also attempting to contact the Dunstable Conservation Commission about installing signs at Unkety Brook where it crosses Groton Street.

B. Ganem said she recently attended a meeting with representatives from the Nashua River Watershed Association, Pepperell Conservation Commission, and DEP to discuss the issue of spreading mats of the invasive aquatic weed water chestnut in the Nashua River, particularly in the Pepperell Pond area. Any evaluation or eradication work would have to be a multi-partnership effort. The next meeting is scheduled for June 2nd at 9:30 a.m. at the NRWA.

In reviewing the "tickler file" for outstanding encroachment or filing issues, Commissioners agreed to visit several encroachment sites in the next two site visits. Letters will be sent to Mr. Rosenberger and Mr. Wilson about their respective filings.

9:00 p.m. Academy Hill Notice of Intent continuation, DEP #169-783 amendment and DEP #169-917

Larry Beals noted drawings were refined and modified in response to Commission concerns. It has become clear the Planning Board will require two points of access for the subdivision, and that is one of the reasons for the new plan. Mr. Beals acknowledged the Commission has some concerns regarding Flat Pond Brook where there appears to have been recent work on the culvert which is set rather high in relation to the stream bed. He said the builder has agreed to reset the culvert as part of his commitment to improve Townsend Road for sight distance. L. Beals said the brook closely parallels Townsend Road, but the disturbance of the Riverfront Area is less than 10% of the lot.

Member Owen said he believes the project meets a redeeming social wildlife benefits. Everyone will weigh in on this. Natural heritage has gone along with this, and in order to be consistent with the Commission discussions on Lost Lake, he believed the Commission should accept Natural Heritage's position. Overall, Mr. Owen indicated he believes there is a net benefit from the project's development with a conservation restriction in place.

K. Corwin commented she believes the amendment and addition of open space is a positive step. She stated she thought the old filing was not under our Bylaw, but the new roadway access does fall under the Bylaw. Ms. Corwin pointed out the detention basins are huge and right on top of the wetland. There will be a lot of disturbance involved. Mr. Beals explained there is 191 SF of filling required to construct a sidewalk, but they intend to request a waiver from the Planning Board. It is likely the sidewalk could be tied into a walking trail or perhaps be constructed as a wooden catwalk.

(Chairman Clements arrived at 9:15 p.m.)

Ms. Corwin commented the access way does not qualify as a limited project under the Bylaw. Mr. Beals said Natural Heritage does not see much wildlife value in the portion of the project which is to be developed. Also, there will be a turtle fence, turtle nesting areas created, an escrow account, and 20 years of studies to provide the science to help protect the turtle population. Ms. Corwin said Natural Heritage and the Commission have a lot of overlap in their interests, but there are differences as well. She asked if the Conservation Restriction has been revised, and Mr. Beals replied Natural Heritage has required the metes and bounds for the entire 216 acre site. Ms. Corwin requested the Commission receive a copy of the revised draft at least ten days prior to their next meeting in accordance with the Bylaw regulations.

Member Easom asked if it would be possible to have gravel rather than pave the new access. He also questioned whether gating was feasible. Mr. Beals replied the applicant has previously suggested transponders for school busses or emergency vehicles on a gated through road, and the Planning Board was adamant about having a second access. He also pointed out that paving helps controls stormwater, especially in steep sections. Mr. Easom recommended the roadway be as narrow as possible. Asked about the possibility of moving the sidewalk to the other side of the roadway, Mr. Beals responded it is easier to grade for the sidewalk than for the roadway.

Commissioner Auman noted the Commission has not had an opportunity to review Beals Associates' response to the Commission's letter. He also commented there are several items which will have to be added to revised plans. Mr. Auman felt the conservation restriction is an integral part of the overall plan, and it is important for the Conservation Commission to see a final draft as soon as possible. P. Morrison observed school busses will pass through the subdivision, creating less of a need for a sidewalk. He supported the concept of diverting the sidewalk to the walking trail.

Chairman Clement commented he did not feel the project was in compliance with the Bylaw because work for the roadway and detention basins is within a few feet of wetland resource areas. He questioned whether it is a good policy to have the replication area close to a roadway. L. Beals pointed out it is an existing paved driveway. Mr. Clements asked about the other entrance at Flat Pond Brook, and Mr. Beals said the channel is obvious in the field. He also noted the applicant has an Order of Conditions and could build the subdivision tomorrow. Ms. Ganem pointed out the project does not have 401 Water Quality Certification at this stage, and Mr. Beals said this was a pro forma, after-the-fact, certification. He noted the crossing is minimal, perhaps the width of the table.

M. Giguere asked for clarification about the north entrance and whether it falls under the Bylaw, particularly since a large detention basin is proposed there. Mr. Beals said there has been no further movement on reducing the pavement width. The police and fire prefer an 18' width, and the preferred width will be discussed with the Planning Board.

In summary, Commissioners requested revised plans, the draft conservation restriction, and an opportunity to digest the May 5th letter from Beals Associates. Chairman Clements questioned whether members were interested in getting a clear and definitive legal opinion on whether the request for an amendment now places the north access under the Bylaw. P. Morrison objected, stating this would re-open the entire hearing process. C. Auman said he did not know the answer. M. Giguere noted it could be costly as the original Order was issued under a different set of rules. B. Clements commented there have been modifications which will affect the whole project. B. Easom asked if state or case law would be applicable. Mr. Beals said it would be necessary to re-file the whole thing if new regulations apply. He noted adjustments have been made in order to preserve 216 acres of habitat. E. Owen, K. Corwin, and P. Morrison did not feel it was necessary to get a legal opinion. B. Easom, C. Auman, and B. Clements agreed a legal opinion would be

helpful, while M. Giguere said he could vote either way. M. Giguere commented, however, that it seems unfair to change the rules midway through the approval process. P. Morrison noted there is mitigation, and the Selectmen must approve funding for seeking a legal opinion. He suggested the Commission would need to clearly formulate how we ask the question. Upon a motion by C. Auman, seconded by E. Owen, it was

VOTED: to continue the hearing for DEP #169-783 and DEP #169-917 to May 24, 2005.

9:15 p.m. - Devine/Grigglesome/Breakneck Road Notice of Intent continuation, DEP #169-919

Engineer Dan Wolfe of Ross Associates noted he had visited the Commission in January with table sketches showing where work was proposed on Lot 3, Breakneck Road. There was some discussion about fill in the buffer zone, and questions were raised about whether this project could be entertained by the Commission. The Commission responded these matters were considered on a case-by-case basis, but advised against any fill within the 50 foot buffer zone. While the Commission has high standards, exceptions may be made.

Rick Muehlke (109 Common Street) said the Bylaw should be enforced as written, but he acknowledged a Bylaw cannot be one-size-fits-ll, and a board may choose to waive a requirement on occasion.

Mr. Wolfe stated he could not further reduce the amount of fill in the buffer zone. He said town water is available from Breakneck Road and so a well will not be necessary. D. Wolfe pointed out the Bylaw was working as the amount of buffer zone alteration has been reduced from 85% under the Wetlands Protection Act to 14% under the Bylaw. He maintained the wildlife corridor will be left intact because the flowing stream and wetlands and much of the buffer will not be developed. Mr. Wolfe said the project will not alter existing drainage patterns, and there are no offsite impacts. The standards set by the Commission have resulted in increased protection of resource areas because people do not want to get caught. He asked for the Commission's thoughtfulness and acceptance of this project as he believed it meets the intent of the Bylaw.

Member Morrison thanked him for his analysis. Chairman Clements said he did not mean to dispute Mr. Wolfe's statements but he felt the intent and spirit of the Bylaw must be applied uniformly. He noted the Commission has previously allowed exceptions when the applicant proposes some public or environmental benefit as mitigation for a project that does not comply with the standards. E. Owen said he envisioned work being done outside the buffer zone, but there is some spillover due to Title V constraints for breakout. He said he was at a loss to see the redeeming value of the project.

K. Corwin said she envisioned minor grading in the buffer, and she thought this project exceeded the definition of limited project under the Bylaw. She questioned whether a hardship was created through the subdivision of the property. Mr. Wolfe said it had been a lot of record for a year, and there are two lot lines in the wetlands. K. Corwin noted it was subdivided after the Bylaw was in place. She thought the definition of a limited project is to cross a resource area in order to get to upland of the same owner.

B. Easom stated, in his opinion, the project could not be considered a limited project as the applicant is trying to fit a septic system into a very tight lot. If sewer were available on Breakneck, there would be less concern. C. Auman questioned whether a retaining wall could reduce the changes in elevation to less than two feet. D. Wolfe indicated the Board of Health does not allow retaining walls for septic systems. P. Morrison asked if a retaining wall was feasible nearer the house. He also suggested the Commission could include language in an Order that restricts future expansion into the buffer.

Abutter John Brunett (41 Sheple Lane) questioned where the driveway falls off Breakneck Road, and Mr. Wolfe said fill will be added to give the driveway a more gradual slope. Ed Doucette (17 Breakneck Road) asked the height of the retaining wall. D. Wolfe said it would be at elevation 93' and feather down to meet the grade. Mr. Doucette noted the whole area within the limit of disturbance will be clear cut. Rick Muehlke pointed out the limit of fill will expand if the septic expansion is ever constructed. B. Clements commented the Commission frequently sees filings for septic repairs and usually does not deny such repairs. Pam Gill (28 Breakneck Lane) asked if the lot was limited to 40,000 SF, and Commissioners advised this is a Planning Board issue. She asked the Commission to consider its responsibility

for enforcing the Bylaw and urged them to be fair and think about the aggregate impact in allowing a variance. Ms. Gill said she was notified of this hearing as an abutter, but she received no notification of the January informal discussion. While she realizes the applicant has expended money, time, and psychological energy, Ms. Gill suggested the Commission consider the aggregate impact of their decision. P. Morrison assured her the Commission takes this charge very seriously and will make every effort to be fair, even-handed, and reasonable in its decision.

E. Owen questioned whether the Commission would be acting on a plan that does not show a retaining wall, but then acknowledged the commission could require a retaining wall and specify the materials and construction sequence in the Order. D. Wolfe said he anticipates it would be a rock wall, and E. Owen asked whether this would involve a bigger footprint. Mr. Wolfe thought it would be built of two foot wide boulders in keeping with the natural setting. B. Clements asked if Mr. Wolfe felt there was any value in having more time, and he replied "no". Upon a motion by E. Owen, seconded by B. Easom, it was

VOTED: to close the hearing for DEP #169-919 for Breakneck Road.

Upon a motion by C. Auman, seconded by M. Giguere, it was

VOTED: to approve the minutes of April 26, 2005, as amended.

B. Easom reported the Trails Committee has met with Meredith Scarlet, the new owner of Angus Hill, to review the trail network there. There is a step-over for a fence, but a sign will be posted near the intersection of Shattuck, Chestnut Hills Road, and Martins Pond Road to mark the trail entrance.

After signing documents, there being no further business, the meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as drafted May 24, 2005