

**GROTON CONSERVATION COMMISSION**

## Minutes

September 13, 2005

Chairman Peter Morrison called the meeting to order at 7 p.m. in the 2<sup>nd</sup> floor conference room in Town Hall. Members Craig Auman, Bruce Clements, Kris Corwin, Marshall Giguere, and Evan Owen were present. Member Bruce Eason was absent. Conservation Assistant Barbara Ganem was also present.

The first order of business was discussion on 21 Moose Trail and the Commission's position on the possible sale of adjacent town-owned land to Tom Wilson. Commissioner B. Clements felt the Town should keep the land. He did not think a lease would work as the Town would not have the use of the land or access. Member E. Owen pointed out there was no lawn on the site before Mr. Wilson moved in. Chairman Morrison questioned whether the land had always dropped off so sharply, commenting he was trying to determine if Mr. Wilson knowingly encroached. M. Giguere said Mr. Wilson assumed he had purchased the four parcels shown in the sketch.

B. Clements suggested the Town should have ownership without any encumbrances other than the well. This would require the removal of the shed, fence, and air conditioning compressor. An easement could be granted for the underground utility (electricity) and well. E. Owen noted the Lake area is a changing community with more grass and paved surfaces than ever. As a general principle he recommended holding onto the lot. Mr. Owen added that the sketch for the lot showed 100' as one boundary and yet Mr. Wilson has built on more than that. C. Auman agreed it should stay as town land. If the Town allows improvements to be located on town-owned lands, it sets a dangerous precedent for future encroachment. We cannot show favoritism to one individual as others will wish to have the same opportunity to buy or lease. Mr. Wilson feels that the fact he has already put his possessions there gives him the right to encroach. Mr. Auman concluded with the statement, "It is important to protect shore properties." B. Clements made a motion, seconded by K. Corwin, and it was

VOTED: to recommend to the Board of Selectmen that the Town retain full rights and possession of Groton Assessors Parcel 130-56 and require the removal of structures from the property. Some consideration should be given to the well and underground utility.

7:15 p.m. - 30 Kaileys Way Request for Determination of Applicability

Homeowner Charles Bridge explained that he wished to move the hill behind his garage to the rear right side of his property in order to enlarge his backyard. M. Giguere questioned how much earth will be moved. Mr. Bridge said he consulted with Planning Board member Josh Degen who estimated the soils would fill the depression that is his current backyard. The house was built in 1997, and C. Auman pointed out this preceded the Wetlands Bylaw. He noted erosion control measures will be important because of the steep area. He added the tree canopy helps maintain temperatures in the wetlands, and Mr. Bridge assured him he wished to save trees as he did not wish to have a view of the power lines. They intend to do no stumping in the buffer zone area. E. Owen asked if the cut and fill will exceed 4', and Mr. Bridge responded yes. Mr. Owen suggested he review the project with Michelle Collette in her capacity as Earth Removal Inspector.

K. Corwin commented the parcel is not exempt according to our Bylaw as the land has mature trees and is not previously disturbed. B. Clement said he, too, was concerned about compliance with the Bylaw. Mr. Bridge said he was planning on keeping large trees in the buffer zone. E. Owen suggested the Commission consider amending the Bylaw to allow the Commission to approve a waiver in cases that might not meet the letter of the law, but do meet the spirit. Upon a motion by B. Clements, seconded by K. Corwin, it was

VOTED: to issue a negative #3 Determination, noting the work within the buffer zone is unlikely to cause any harmful effects to the wetland providing appropriate erosion control measures that provide a limit of disturbance are in place prior to the commencement of the project.

Under the local Bylaw, upon a motion by K. Corwin, seconded by B. Clements, it was

VOTED: that the filing is exempt from the Bylaw as the area has been previously disturbed.

After reviewing the draft memo responding to the Planning Board's request for comments on the Monarch Path Preliminary Subdivision Plan and upon a motion by C. Auman, seconded by E. Owen, it was

VOTED: to send the memo as drafted.

Upon a motion by K. Corwin, seconded by M. Giguere, it was

VOTED: to amend the memo to include a reference to rare species found on an adjacent site.

In discussion on 151 Duck Pond Drive, K. Corwin noted there was no drywell where the gutter is located. Builder and former homeowner Dennis Lacombe reported there was a 2' by 2' stone area beneath the downspout which may have grown in somewhat. Upon a motion by K. Corwin, seconded by C. Auman, it was

VOTED: to issue a Certificate of Compliance for DEP #169-626 for 151 Duck Pond Drive.

E. Owen abstained from the vote.

Concerning the Request for a Certificate of Compliance for Groton Woods, K. Corwin commented she could not think why the engineer designed a project in which a wetland was filled with cement. B. Clements questioned whether the lower pipe should be unplugged, but other members noted there was still flow. Upon a motion by K. Corwin, seconded by M. Giguere, it was

VOTED: to issue a Certificate of Compliance for DEP File #169-215 for the Groton Woods Subdivision infrastructure.

E. Owen abstained from the vote.

The next item of business was discussion on the Certificate of Compliance for 235 Riverbend Drive. Clerk Giguere read a letter dated September 17, 2005 from environmental consultant Matt Marro into the record. Abutter Chris Petroff (227 Riverbend Dr.) requested the Chairman's permission to have his representative speak. Alton Stone of Alton Stone Engineering in Sterling, MA asked the Commission to consider not issuing a Certificate due to the applicant's addition of 10% to 30% of hardscaping on the lot. While the applicant proposed the thinning of approximately 20 trees, 110 trees were actually removed and the area adjacent to Mr. Petroff's boundary was clearcut. Mr. Stone maintained the work was not conducted in accordance with the Order of Conditions. As a result of communication with DEP, he felt the replanting of trees and shrubs was required.

P. Morrison questioned whether he was looking to have the original vegetation re-established. Mr. Stone said the trees were important for wildlife and many of the reasons Commissioners articulated previously during the meeting. Mr. Stone requested a planting plan acceptable to Mr. Petroff so that the work complies with the Order of Conditions and Notice of Intent. He felt his client was impacted by this and did not appeal because he thought the applicant would be required to adhere to the proposed plans. He requested that some level of restoration be put in place before a

Certificate of Compliance is issued.

Member Clements said he had observed the area was re-vegetated and there remains a treed buffer between the two homes. It was his impression the area was stable. K. Corwin noted the Commission has visited this site four times and discussed issues with Mr. Petroff at several meetings. She did not see a discrepancy from what the Commission thought was going to be done. Mr. Petroff argued the area was changed from trees to lawn, and he disagreed they have the same value. Chairman Morrison requested all comments to be directed through him and presented in a calm manner. Mr. Stone noted that changing from tree to lawn is generally not a benefit because of changes in temperatures, more runoff, pollution, visually, noise, and wildlife habitat, and this was not in compliance with the Order of Conditions. K. Corwin commented the work was within the scope of the Order of Conditions, and she did not agree with his assertion the area was clearcut. Mr. Morrison noted many of the saplings were less than an inch in diameter. E. Owen said he thought the applicant did the thinning as represented, but it is an imperfect system

Commissioners asked if Mr. Petroff had a written response from DEP, and he replied "No, it was a phone call, but it explained the policy for changes." C. Auman indicated he agreed with the statements from his colleagues. M. Giguere noted the cleared trees were marked and most of the rest was early successional stuff. He did not feel it was beyond what was expected. Chairman Morrison pointed out if the applicant had stuck to his original plan, the pool and the filtration system would be closer to the wetland than they are.

C. Petroff said the documentation required in Condition #34 by the Commission is not in writing. He said he felt like the Commissioners are the cops, but they do not follow their own rules. E. Owen commented the Commission has an As-built Plan received on 8/30/05. B. Clements made a motion, seconded by C. Auman, to issue a Certificate of Compliance for 235 Riverbend Dr. because the project is in substantial compliance with the Order of Conditions. After further discussion, B. Clements offered an amendment to remove the word "substantial", seconded by K. Corwin. With the passing of the amendment, it was

VOTED: to issue a Certificate of Compliance for DEP #169-898 for 235 Riverbend Dr.

because the project is in compliance with the Order of Conditions.

Chairman Morrison asked Mr. Petroff to schedule an appointment in the future if he or a representative wishes to make extensive comments during a Commission meeting.

#### 7:30 p.m. - 284 Whiley Road Notice of Intent continuation

With the applicant's consent, it was, upon a motion by C. Auman, seconded by K. Corwin

VOTED: to continue the hearing to September 27, 2005.

#### 7:45 p.m. - Lost Lake/Knops Pond drawdown Notice of Intent continuation

With no further word from the Natural Heritage Program and upon a motion by C. Auman, seconded by M. Giguere, it was

VOTED: to continue the hearing for the Lost Lake/Knops Pond drawdown to

October 11, 2005.

#### 8:00 p.m. - Appointment - Jay Fernandes/12 Canterbury Lane

It was noted this appointment is about play structures located on conservation land off of Mill St. Mr. Fernandes explained when he purchased the land he was informed that his property extended to that area. It is a flat area where his children can play, and he did not realize it was on conservation land. He noted it was not intruding on the individuals who take care of the land. He stated he uses no chemicals on this land and would like to keep the play structures there. He estimated it was an 8' or 9' intrusion on the land, and it was not farmed by John and Laurie

Smigelski. His neighbors did not know it was conservation land as they thought it was his land.

M. Giguere questioned whether he was aware of the stone markers that indicate the boundaries of the property. Mr. Fernandes said he had seen one located on the retention pond side of his parcel. Mr. Giguere noted that the Commission had located both markers during a spring site walk. Mr. Giguere further noted there are similar issues with other neighbors to conservation lands, and the Commission needs to be fair and equitable. Mr. Fernandes indicated the area in question seems to flow with his yard.

C. Auman explained the Commission manages over 100 properties, and this is not a unique situation. He added that exceptions are not in the best interests of the Town. E. Owen said he thought the structures were over the line by more than 8' and were probably closer to 30'. Chairman Morrison requested Mr. Fernandes remove his personal property, noting his appreciation for Mr. Fernandes' cooperative attitude. In response to Mr. Morrison's question about the age of his five children, Mr. Fernandes said they were between 3 and 17. Noting the trampoline could be easily moved, P. Morrison asked whether the Commission thought it appropriate to allow the swing set to remain for 5 to 7 years. E. Owen said the Commission does not give this option to other people. P. Morrison stated "It would be hard to enforce elsewhere if we do not enforce here."

Mr. Fernandes said he has consulted with his neighbors, and no one reported an issue. He reiterated it is not farmed, and he uses no chemicals. Chairman Morrison said he hoped Mr. Fernandes could appreciate the Commission's position and understand that members must look at it in the context of all the other properties where we have encroachment issues. B. Clements requested the Commission set a specific date for the removal of the play structures from conservation land, and members indicated they would accept either this fall or spring 2006.

Commissioners thanked Mr. Fernandes for his understanding.

#### 8:15 p.m. - Water line installation/Schoolhouse Rd. Request for Determination of Applicability

Tom Orcutt, Superintendent of the Groton Water Department, stated 2,400 linear feet of water line has been installed. The road shoulders have not been seeded, but he expects this to occur by the end of the month. E. Owen confirmed these statements. With no concerns expressed, upon a motion by K. Corwin, seconded by M. Giguere, it was

VOTED: to issue a negative #2 Determination for the Schoolhouse Rd. water line and a

finding that the project does not fall under the Wetlands Protection Bylaw because

it is previously disturbed (pavement).

Mr. Orcutt asked the Commission if he could leave the haybales in place for the duration of the winter, and members recommended staggering the haybales to provide breaks that could accommodate migrating vernal pool species. He noted he is still getting quotes for the roof of the Baddacook well, but the repairs are needed quickly. Commissioners commented there are many trees proposed for cutting at the site. The filing will come before the Commission at the next meeting.

#### 8:30 p.m. - Dinkel/43 Dolan Drive Request for Determination of Applicability

With no applicant present, the Commission indicated the site has been stabilized (grassed in) since the construction access is no longer needed for the completed house addition. Upon a motion by C. Auman, seconded by E. Owen, it was

VOTED: to issue a negative #2 Determination and a finding that the project does not

fall under the Wetlands Protection Bylaw as it is previously disturbed (lawn).

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

VOTED: to approve the draft minutes of August 23, 2005 as amended.

Members discussed the August 31, 2005 letter from MassAudubon concerning their intention to purchase the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) land on Nate Nutting Road. While MassAudubon would hold the fee interest in the land, they have inquired whether the Commission is willing to hold a conservation restriction on the parcel. Members agreed to send a letter of commitment/support for the protection of this land.

Commissioners requested B. Ganem prepare and send a letter of support for the Recreation Department's Community Preservation application to fund new docks at Sargisson Beach. Chairman Morrison reported the Community Preservation Committee (CPC) indicated the funding amount of an application cannot be raised at Town Meeting. The CPC has asked the Commission to consider reducing the \$200,000 CPC application amount for the Conservation Fund. Mr. Morrison noted that if negotiations succeed on one or two of the properties under consideration, the Fund will be eliminated. In addition, the Commission has recently committed \$45,000 for the purchase of the abandoned railroad line in W. Groton. Upon a motion by E. Owen, seconded by C. Auman, it was

VOTED: to continue to request \$200,000 for the Conservation Fund in the CPC application.

B. Clements asked if the Commission's application could be reduced to "0" for the fall meeting, and Chairman Morrison responded it could but he felt it was unlikely. If no article is approved in the fall, he thought the Commission should file a separate article at the spring Town Meeting.

#### 8:45 p.m. - 216 & 218 Longley Road Notice of Intent

Proponent Greg Melone (216 Longley Road) indicated it was his intention to pave an existing gravel driveway. He noted they have fixed the items which the Commission requested be fixed. In addition, they cleaned out the drain pipe in Longley Road. Jane Hughes (218 Longley Road) pointed out there has been further development and clearing of trees along Longley Road since the driveway was originally installed. She maintained that washouts are impossible to completely prevent. Every other house on Longley Road has a paved driveway. The problem becomes particularly noticeable at the base of the driveway. She stated the paving would solve long term maintenance issues and safety, both of which have been on-going problems.

E. Owen acknowledged crushed stone has been added to the existing grading, but he expressed concern that runoff will sheet across Longley Road. Mr. Melone said the pitch is toward 220 Longley Road, and there is a catch basin about 60' - 70' downhill from the driveway. J. Hughes indicated a minimal amount of flow reaches the catch basin.

The green cards were submitted as well as an additional fee of \$25 for the Bylaw application fee. K. Corwin asked where snow will be stored outside of the buffer. J. Hughes replied, stating the snow can be pushed up the hill away from the wetlands. B. Clements asked if the Special Permit specified paving and also commented he would prefer to have satisfactory assurance by the design engineer that paving was properly designed and planned. Mr. Melone noted there are two catch basins on the driveway, and the one that is higher up gets the bulk of the water.

William Foley (220 Longley Road) maintained the driveway was originally designed to be a gravel driveway. If it is paved, he felt there would be freezing that would create a hazardous condition. He stated snow is pushed across Longley Road to the wooded section where there is another wetland. They plow on the way down the hill, not going up. The original driveway has been widened by heavy construction equipment. Mr. Foley said the driveway is now overburdened after this board assured him there would be no effect. Mr. Foley said Mr. Melone continues to have heavy construction equipment on the driveway. He thought Jane Hughes had managed the driveway perfectly and that the problem occurred when Mr. Rizzitano scraped the gravel off, and nobody has repaired it per the easement. The low position and Longley Road create hazardous freezing conditions.

Clerk M. Giguere read a letter, dated September 7, 2005, from the Keoughs and Foleys into the record. Mr. Foley added the Conservation Commission should be concerned with washouts into the wetland area. He maintained nothing washes from his land into the wetland. P. Morrison pointed to the list of interests protected under the Wetlands Protection Act, noting that the Commission does not address property lines or easements. He explained the

Commission could issue an Order of Conditions that includes conditions the Commission wishes to see in order for the project to be carried out.

Mr. Foley argued that paving does not protect the wetlands. P. Morrison pointed out he had seen a lot of siltation end up in the wetlands, and he did not care where it comes from, but will make a decision based on state law. E. Owen said he would not want to see snow pushed across Longley Road. G. Melone indicated a 12' wide asphalt surface is proposed. Mr. Foley contended paving requires input from a professional engineer. Chairman Morrison said the Commission may write an Order of Conditions in which paving is authorized, based on information provided at this hearing and discussion while the Commission deliberates. Mr. Foley underscored the need for an engineer to do the design and the town to supervise the work. B. Clements said he did not feel assured, and he did not have the competence to determine that the design of the driveway would work with paving. He stated his preference for having a plan designed, approved, and stamped by a Registered Professional Engineer which he felt the Commission could request before the hearing is closed.

Mr. Foley objected to no one having the power or authority to assure the safety of the driveway. Members indicated this was not an area of Commission jurisdiction. Ms. Hughes pointed out she has personally cleaned gravel from in front of her driveway. B. Clements said he did not have a fondness for pavement, but could live with it. Mr. Foley stressed the importance of not ignoring the safety issue. The driveway has just recently deteriorated, and it freezes during the winter. Mr. Melone pointed out there is no culvert under Mr. Foley's driveway as the 1996 plans proposed. E. Owen said water always channels on that side of Longley Road. Apparently no culvert was installed by the builder. M. Giguere questioned whether this is the only board that will deal with this, and members answered "yes". E. Owen suggested having a competent engineer review the plans and check the calculations and submit something in writing. P. Morrison said the hearing could be continued pending the receipt of this statement. K. Corwin asked that it provide a written analysis of the drainage structures. Gary Oravitz (218 Longley Road) added he has had difficulty with icing on the gravel driveway in the winter time.

B. Clements said he would like to check with the Planning Board about their requirements for the common driveway. Lise LaFrance (216 Longley Road) asked for specifics on what information the Commission is requesting. Members explained they are looking for a registered professional engineer to review the calculations and structures and compare it with what is on the plan and determine if what was built has the capacity to handle paving. Mr. Foley maintained there is an as-built plan for the driveway although the plans appear to show an as-built for the septic system. Chairman Morrison requested a professionally stamped, written statement that addresses the capacity of the existing drainage structures in reference to the proposed paving.

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

VOTED: to continue the hearing for DEP File #169-932 for 216-218 Longley Road.

#### 9:15 p.m. - Buonopane/10 Rustic Trail Notice of Intent

Engineer Todd Lobo of Meisner Brem submitted the green cards for the filing. He explained they had modified the plan as a result of the site walk. They are proposing 90' of retaining wall and the replacement of an existing dock. Portions of the retaining wall are new. The work will be performed during the drawdown of Lost Lake/Knops Pond with erosion control measures in place. He clarified that no retaining wall is proposed for the area west of the dock. K. Corwin said it is difficult to tell that a retaining wall existed in some places. She noted the construction of over 49' of new retaining wall requires a wildlife habitat study. Scott Buonopane stated there are a lot of rocks that have washed away. He plans to backfill with washed, crushed stone behind the wall, and some stone will have to be added in the front.

Members requested the actual elevations for the property, not relative elevations and whether the work was in floodplain. This is an after-the-fact filing for tree removal on the lot. B. Clements stressed that the retaining wall should not encroach on the Lake and must be built on the same footprint as the existing retaining wall. S. Buonopane explained he will have to dig down in order to construct the retaining walls, especially the retaining wall closer to the house. T. Lobo indicated they would address the floodplain storage capabilities in a letter. He estimated about 46' of the existing wall will be replaced with 30' to 35' of new wall. C. Auman asked for details on the materials and

structure of the dock and retaining wall, as well as information on the construction sequence, equipment storage, and a construction access. He thought the plans were sketchy and dimensions and materials should be included.

E. Owen requested elevation information for the top and bottom of the retaining wall. Mr. Buonopane replied the walls will be less than 4' high. Stairs have been added to the new plan. The Commission will require the true elevations, not relative elevations, as well as the dimensions of the stairs. M. Giguere asked the applicant for an explanation of the minor clearing of trees and brush to the west of the driveway as shown on the plan, and Mr. Buonopane indicated he did not anticipate doing this. M. Giguere asked that this notation be removed from the plan. Upon a motion by C. Auman, seconded by K. Corwin, it was

VOTED: to continue the hearing for DEP File #169-931 for 10 Rustic Trail to

September 27, 2005.

9:30 p.m. - Whiley Road NOI continuation

With the applicant's consent and upon a motion by B. Clements, seconded by E. Owen, it was

VOTED: to continue the hearing for DEP File #169-928 for Whiley Road to

September 27, 2005.

9:45 p.m. - Rivercourt NOI continuation

With the consent of the applicant and upon a motion by C. Auman, seconded by M. Giguere, it was

VOTED: to continue the hearing for DEP #169-930 for Rivercourt to

September 27, 2005.

Regarding Mr. Striebel's inquiry about the Commission's position on the beaver flooding at the rear of his lot, C. Auman noted the water level of the culvert under the Rail Trail was certainly not in danger of overtopping the Rail Trail. He noted this culvert belongs to the state and is not the Commission's responsibility. E. Owen felt the black plastic pipe in the beaver dam was a recent installation. B. Clements noted the Board of Health apparently has identified no public health or safety issue, suggesting no action is required. Commissioners observed fish in the wetlands which would feed on mosquito larvae. At the time the Commission observed it, the Rail Trail culvert was not flooded, and the water level appeared to be many feet below the Rail Trail. A letter will go out to Mr. Striebel expressing these findings.

The Commission reviewed the 401 Water Quality Certificate for Academy Hill and the Superceding Order of Conditions for Groton Residential Gardens.

Concerning the ZBA request for comments on Pineridge Court on Jenkins Road, the Commission encouraged notifying the applicant of possible rare species concerns on the site. Upon a motion by K. Corwin, seconded by B. Clements, it was

VOTED: to send a draft memo to the ZBA.

Upon a motion by E. Owen, seconded by K. Corwin, it was

VOTED: to authorize the purchase of signs for the following conservation properties:

Northwoods (2), Groton Woods (4), replace Cronin sign on Rail Trail (1),

Sawtell (2), and Battenwoods (1).

In discussion on the mowing of conservation parcels, the Commission agreed to have the Eliades conservation land mowed. Bennett Black, Jr. has agreed to mow the trail at Deerhaven in exchange for being allowed to bring his farm equipment over that route. The path at Baddacook should also be mowed, and the Commission anticipates starting the Crosswinds WHIP project soon.

The members agreed to authorize B. Ganem to sign off on the Occupancy Permit for 213 Whiley Road. The applicant will be instructed to file for an amended Order of Conditions for the changes made after the original Order was approved by the Commission.

M. Giguere requested confirmation for him to attend the Low Impact Development Workshop on September 27<sup>th</sup>.

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

Respectfully submitted,

Barbara V. Ganem

Conservation Assistant

**Approved as amended September 27, 2005**

**Approved as amended October 11, 2005**