

GROTON CONSERVATION COMMISSION

Minutes

January 10, 2006

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

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

VOTED: to approve the Open Session minutes of December 13, 2005 as drafted.

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

VOTED: to approve the Executive Session minutes of December 13, 2005 as amended.

Correspondence from Gary Shepherd of Ross Associates indicates it is the intention of developer John Lorden to move all construction for Reedy Meadow Estates outside of the jurisdiction of the Commission. Members felt it would be prudent to keep the hearing open until such time as their plan gains final approval from the Planning Board.

In review of the budgets for conservation and for water safety and upon a motion by C. Auman, seconded by E. Owen, it was

VOTED: to approve the Water Safety budget as prepared.

Regarding the conservation component, members questioned the amount that should be allocated for the mowing of Gibbet Hill. Commissioners thought the expense could vary between \$3000 and \$8000, depending on the number of times the area is mowed and the extent of mowing. Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to approve the amended Conservation budget with \$3000 allocated for the mowing of Gibbet Hill.

7:15 p.m. - Pickol/37 Boathouse Road RDA

The homeowner, Thomas Pickol, explained he wished to repair or replace the damaged roofs on his house and garage. He said there has been interior damage due to leaks, and he has temporarily covered the roofs with tarps. Member Easom noted the roof overhangs the lake and questioned how the debris from re-roofing will be handled. Mr. Pickol said he would put a tarp down on the ice. Work will be done in sections with no machinery used. Rolled roofing will be pieced in as necessary to repair the damaged sections. Mr. Pickol estimated there are five different sections which will need replacing unless the damage is more extensive than anticipated.

Mr. Giguere questioned whether any other work is proposed, and Mr. Pickol stated only the roof repair is proposed. E. Owen advised that additional work, including a dumpster, would require the applicant to come before the Commission again. Upon a motion by C. Auman, seconded by E. Owen, it was

VOTED: to issue a negative #3 Determination with the conditions that a tarp be used to prevent materials from entering the lake and that removed debris be taken to an appropriate landfill.

7:30 p.m. - Bobzien/Longley Rd. & Sand Hill Rd. NOI continuation

Engineer Bob Pine apologized for not being present for the earlier hearing and explained that Steve Ericksen would not

be present this evening. Mr. Pine stated a single family home is proposed on a 53-acre parcel by Hugh McGovern's son-in law, Brad Bobzien. Mr. Pine said this is the best siting for the home because there is a beautiful drumlin hill at the back of the property, as well as a stream. Prior to moving forward with the hearing, Mr. Pine said it is likely ten housing units will eventually be proposed with 3 or 4 single family homes and six attached condominium units clustered in an appropriate area of the 53-acre parcel. A wetland crossing will be necessary, but it will be done at the narrowest point in the wetland. The remainder of the property will be put into conservation. The current site of the home will leave options open for both development and conservation.

The proposed house does intrude slightly into the buffer. It steps down in the back with a walk out basement. No work is proposed within 50' of the wetland, but there will be a three to one grade off the driveway. Mr. Pine submitted a sketch showing the necessary grading. M. Giguere questioned whether the new plan meets the definition of minor grading in the Bylaw Regulations. Mr. Pine acknowledged a waiver may be necessary, but it could be possible to move the footprint over several feet. He hesitated to limit the choices for development as he felt it was to everyone's advantage to keep the house over to that side of the lot. Mr. Pine said the side line setbacks could be affected, but he did not think the septic system would have to be moved.

C. Auman said it was very appropriate to share the larger plan at this stage, but emphasized that only one house lot is proposed under this filing. He urged that the driveway be located outside of the buffer, and E. Owen suggested flipping the driveway to the other side. K. Corwin said she preferred to see a plan that meets the specifications of the Bylaw, but would be receptive to some type of mitigation tradeoff such as a conservation restriction. Mr. Pine acknowledged the applicant was in receipt of a letter from Natural Heritage which would allow a single family house on the lot without a full wildlife study. Brian Butler has looked at the property, and the applicant understands the risk of undertaking a single family house before a study is done for the entire 53 acre property.

Mr. Morrison asked who would hold a conservation restriction, and Mr. Pine said the Groton Conservation Trust holds adjacent property, but it could also be held jointly with the Conservation Commission. K. Corwin cautioned the applicant must be careful, in subdividing the property, not to create a self-imposed hardship. Mr. Pine assured the Commission the crossing would be done at the narrowest possible point. B. Easom stated his preference is to see a plan that requires no waivers from the Bylaw and adheres to the Regulations. Pending the submittal of a definitive plan, upon a motion by B. Easom seconded by M. Giguere, it was

VOTED: to continue the hearing to January 24, 2006.

7:45 p.m. - Gilson Road Abbreviated Notice of Resource Area Delineation

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

VOTED: to continue the hearing for the Gilson Road ANRAD to February 14, 2006.

Commissioners expressed concern about issuing a Certificate of Compliance for 28 Boathouse Road at this time of year. The Commission will consider the Certificate after it has had an opportunity to see how the blueberry bushes survived the winter.

Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to issue a Certificate of Compliance for the Unkety well, DEP #169-869.

Upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to issue an Order of Conditions for 245 & 246 Lowell Rd. for DEP #169-943,
as amended.

8:00 p.m. Nam Hang LLC RDA/Crossroads Plaza continuation

Scott Smyers of Oxbow Consulting and Bruce Ringwald of GPR were present. Mr. Smyers reported the site walk this past Saturday resulted in identifying two spots where soil samples yielded hydric soils, both within skidder ruts. The question is whether this area is subject to the Groton Wetlands Bylaw. Mr. Smyers noted the Bylaw protects freshwater wetlands that are isolated and vegetated. He questioned the functional values of this area if it is determined to be a wetland.

Member Auman noted it is disappointing land disturbances occurred before the Commission had an opportunity to look at the site, especially since it was formerly mostly wooded. He recommended the estimated area of 15' by 15' be flagged and the Commission then review the delineation. Mr. Smyers said he was not convinced the Bylaw gives the Commission jurisdiction over this area and questioned the practice of protecting tire ruts. P. Morrison said, prior to denuding the land, the Commission typically looks at the overstory and how it might protect an area. He commented the tire ruts point to the high water table at the site.

Mr. Smyers asserted he spends a lot of time in front of Conservation Commissions and in the field. He said the depression may have water at the surface in the spring, but this does not make the area a wetland. He maintained the area is likely to develop an upland community of plants in the next 20 years, and there is no evidence the soils have been scraped or changed.

C. Auman said it has to meet the definition of freshwater wetlands. Bruce Ringwald said it is not necessarily a vegetated wetland. S. Smyers questioned what the Commission is protecting. He apologized for the applicant's past actions, but asserted he has not observed anything different from the surrounding area. Commissioners acknowledged this wetland may have marginal functions, but they would not want to set a precedent on that issue. B. Clements urged the applicant to flag the perimeter of the wetland, noting this area should be protected. P. Morrison pointed out many of the plants that were present are listed as facultative or FACW. He commented the Commission has protected, in previous applications, wetlands as small as 10' by 10' identified as "manure pits" with a full 100 foot buffer.

Bruce Ringwald pointed out the landowner was previously told by his consultant that there were no wetlands on the property. It wasn't until he decided he needed other advice that this filing was made. Mr. Ringwald said the current group of consultants agrees that it is not a wetland under the Wetlands Protection Act. He maintained it does not fall under the Bylaw either. He noted the immediate area has been extensively studied, and no one has labeled the site as a potential vernal pool. He urged the Commission not to penalize the landowner for what the previous consultants advised. He explained they were trying to right a wrong, and he did not believe there was enough evidence to support a determination of wetlands.

Chairman Morrison assured Mr. Smyers that Oxbow Consultants, Inc. is held in the highest regard, and thanked him for coming on the scene and giving the Conservation Commission a voice on the project. Mr. Morrison pointed out the Commission identified such issues as estimated habitat, the impact on the Bylaw, and the area being in Zone III in a memo dated November 18, 2004. E. Owen questioned whether the study that occurred on the Sandy Pond property near the power lines was also conducted on this property, since it was owned by a different person. Mr. Smyers said the UMASS turtle team tracked turtles around the Spectacle Pond area several years ago. B. Easom said he was not persuaded by the "oops" defense. He questioned whether it would be plausible that the skidder went through a vernal pool and created ruts with water at the bottom. He also said the landowner may be able to seek legal damages from the previous consultants, but this was not the Commission's problem. He recommended the delineation of the area with a buffer and the replacement of trees to remediate the effects of the skidders.

M. Giguere said it is impossible to know the prior conditions, but there appear to be hydric soils there now. B. Clements indicated it could have been a vernal pool with a low area close to the groundwater table. The hydric soils appear in the lower depths of the depression. There are no stumps apparent on the site. M. Giguere argued topsoil may have been removed as there are rocky sandy areas which clearly have been heavily disturbed. Bruce R. said it may have been excavated 80 or 100 years ago. Scott Smyers acknowledged topsoil may have been removed from the site, but not in the low land.

Members stressed that the area is likely to fall within Commission jurisdiction although the exact perimeter is undetermined. Mr. Smyers asked for the specific definition of an isolated vegetated wetland. He noted there were oak saplings growing within the depression, and there is no evidence of flooding or leaf staining. There may be some

runoff or some groundwater, but he did not agree it is jurisdictional or providing a great benefit. B. Clements commented perhaps the Commission could look at the criteria for replications. B. Ringwald suggested the applicant may be able to create a wetland better than what was destroyed. P. Morrison questioned whether we were getting ahead of ourselves, since the purpose of this filing is to determine yes or no as to whether there is a jurisdictional wetland. B. Easom pointed out there have been studies in which 50% or better of created wetlands fail. Mr. Smyers said it is possible to oversize it and layer soils to contain water. B. Clements pointed out we are working around the problem; the basis is whether the majority of the Commission says it's jurisdictional.

Mr. Smyers asked how the Commission could find the pond at Partridgeberry non-jurisdictional and then find this one jurisdictional. Mr. Ringwald maintained the pond was dug in order to excavate materials for the construction on the property. It is also for stormwater management and functions as a wetland as the drainage calculations show that it is connected to the Nashua River. Commissioners felt Partridgeberry was mostly a stormwater feature over which the Commission does not have jurisdiction. K. Corwin commented we do not have a line we can verify on this project. Mr. Smyers said, given the tenor of the discussion, he would like to continue the hearing. A follow-up site visit will be done at 8:15 a.m. on January 14th, and soils will be examined. Abutter Frank Castelucci (28 Sunset Rd.) said he used to hunt on the property, and the area where thick pine was growing was used as a deer yard. He did not remember water in the depression. Upon a motion by C. Auman, seconded by B. Easom, it was

VOTED: to continue the hearing to January 24, 2006.

8:15 p.m. - 160 Townsend Road NOI continuation

Attorney Douglas Deschenes explained the project consultants were reviewing the report from Epsilon. There seem to be several action items relating to the replication area, including the base elevation, a cross section plan, and the density and types of plants. The recommended special conditions appear reasonable and acceptable, but there will need to be a thorough review. Once LandTech and Norse Environmental have acted on the recommendations, it may be necessary to have Epsilon review the response.

Mr. Deschenes indicated it was his understanding that Judith Nitsch Engineering, Inc. will again review the drainage calculations for the project once final plans are submitted. He said there were few outstanding items due prior to the submittal of paperwork for a Building Permit Application. Some of the questions raised by Epsilon include the location of the two (nitrate) monitoring wells, how long they will function, and who will do the monitoring. The plan should show the well locations. The applicant will also have to provide baseline documentation. Upon a motion by M. Giguere, seconded by C. Auman, it was

VOTED: to continue the hearing to February 14, 2006.

8:45 p.m. - Malloy/155 Indian Hill Road NOI continuation

(B. Easom recused himself from discussion because his wife has a financial arrangement with the applicant.)

Jack Visniewski, engineer for Ms. Malloy, has submitted correspondence in which he states the applicant has moved the proposed upgraded septic system to the house side of the road. Upon a motion by B. Clements, seconded by M. Giguere, it was

VOTED: to close the hearing.

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

VOTED: to issue a Notification of Non-Significance for Murray for 223 Whiley Rd.,
DEP #169-928.

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

VOTED: issue the draft Order of Conditions, as amended, for the W. Groton Water Treatment Plant for DEP #169-938.

In discussion on the amended Order of Conditions for DEP #169-828, members P. Morrison and M. Giguere stepped down from the table, but remained in the room. Upon a motion by E. Owen, seconded by C. Auman, it was

VOTED: to issue the amended Order of Conditions as drafted for 57 Burntmeadow Rd.

K. Corwin voted in opposition with E. Owen, B. Clements, C. Auman, and B. Easom voting in favor.

K. Corwin protested the applicant did not follow the plan, and the Commission just rubber stamped it. B. Clements said perhaps the Commission should consider issuing a nominal fine as there should be some repercussions for not following plans. E. Owen agreed it would send a message. Upon a motion by K. Corwin, seconded by B. Clements, it was

VOTED: to issue a fine of \$50 for not conforming to the Order of Conditions which requires all changes to be presented to the Commission.

Commissioners agreed to check on the status of the dam at the next site visit

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

VOTED: to accept the deed for 6.29 acres of conservation land associated with the Amelia Way subdivision process.

Commissioners asked if boundary markers or signs will be put in by the developer.

Upon a motion by B. Easom, seconded by M. Giguere, it was

VOTED: to authorize Bruce Clements to sign off on payroll forms for Conservation Assistant Barbara Ganem. Craig Auman will serve as an alternate.

B. Ganem reported an Eagle Scout, Casey Smolka, has expressed an interest in doing a volunteer project for the Conservation Commission. Members suggested signage and maps for Gibbet Hill, steps at the entrance to the Kaileys Way trail, a map for Kaileys Way, clearing invasives, or installing signs. Chairman Morrison explained there must be three components to an Eagle Scout project: a fundraising element, organizing volunteers, and something in perpetuity.

In discussion on the filling occurring on the James Reynolds property at 27 Cypress Rd. and upon a motion by K. Corwin, seconded by B. Easom, it was

VOTED: to send a letter to Mr. Reynolds requiring a filing by February 14th, stating the Commission's intention to issue a fine if compliance is not forthcoming.

Upon a motion by B. Easom, seconded by M. Giguere and a roll call vote of B. Clements, K. Corwin, E. Owen, C. Auman, M. Giguere, B. Easom, and P. Morrison, it was

VOTED: to suspend the Open Session to go into Executive Session for the purpose of discussing litigation, to return to Open Session at the conclusion of the Executive Session.

The meeting was suspended at 9:50 p.m. and reconvened in Open Session at 10:10 p.m.

The MACC Annual Meeting is coming up, and B. Ganem asked that all members get their workshop preferences in as

soon as possible.

The FY07 budget meeting is scheduled for Tuesday, January 17, 2006 at 9:40 p.m. This meeting will be with the Board of Selectmen.

Members discussed the proposed changes in the Bylaw Regulations, in particular the definition of freshwater wetlands. Both the soils and vegetation could be used as criteria. C. Auman suggested the Commission look to the Wetlands Protection Act regulations 10.55 (2) for a description of Bordering Vegetated Wetlands. B. Easom questioned how the definition of disturbed and undisturbed will be handled. Another issue is how to handle stormwater management measures in the future. K. Corwin and M. Giguere agreed to work on the revision of the Bylaw Regulations in segments. They estimated they would take 15 minutes of the Commission meeting on January 24th to discuss the changes.

There being no further business, the meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as drafted 1/24/06