

## GROTON CONSERVATION COMMISSION

## Minutes

September 26, 2006

Chairman Evan Owen called the meeting to order at 7:00 p.m. in the 2<sup>nd</sup> floor conference room in Town Hall. Members Craig Auman, Bruce Clements, and Marshall Giguere were present. Peter Morrison arrived at 7:02 p.m. Member Bruce Easom was absent. Conservation Assistant Barbara Ganem was also present.

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

VOTED: to approve the minutes of September 12, 2006, as amended.

(P. Morrison arrived at 7:02 p.m.)

Chairman Owen re-counted the history of the Academy Hill filings, including the expiration of DEP #169-783 in 2005. Engineer Cynthia Theriault of Beals Associates, Inc. was present and confirmed that there is a need to re-file for a portion of the development in order to continue the work. The plans have previously been submitted and approved by the Commission. B. Clements advised that the simplest possible solution should be followed, particularly if there are no changes in the plans other than what has already been brought before the Commission. Both he and C. Auman noted the project has been ongoing for several years, and they did not feel work should be stopped while the applicant has an administrative issue to address. Mr. Owen commented he was disappointed that Mr. Beals allowed this to happen. A butter notification and a letter listing the plans, with the latest revision dates, should be adequate for the re-filing.

The amendment for DEP #169-917 for 606 Townsend Rd. can go forward as the expiration date is June 2008. E. Owen asked the progress on the outfall at Townsend Rd., and Ms. Theriault indicated it was not fixed as yet. B. Clements asked who will be responsible for maintaining the turtle habitat, and B. Ganem said the Commission agreed to oversee this process, using the funds set aside by the developer in an escrow account for this purpose. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue an amended Order of Conditions for DEP #169-917 for 606 Townsend Rd.

7:15 p.m. - Lost Lake Drawdown NOI continuation for DEP #169-861

The applicant has notified the Commission of the need to repair the siphon in order to conduct the 7 ft. drawdown. This work will result in the delay of the project until next year according to the applicant. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to continue the hearing for DEP #169-861 to June 12, 2007.

7:15 p.m. - Public Safety Building parking lot NOI continue/DEP #169-961/99 Pleasant St.

Bob Pine explained that engineer Gerry Buzanowski of Ducharme & Dillis had prepared the Stormwater Management form on a pro bono basis. He noted the calculations are very conservative, and two additional 60 ft. trenches will provide additional capacity. The catch basin outfall will be reconstructed and armored with riprap. Natural Heritage has indicated they do not want to see construction started until after November 15<sup>th</sup>, and Mr. Pine did not think this would be a problem for asphalt plants which could be closing around that time. The test pit locations are shown on the recently submitted revised plan and all showed the groundwater at least 4 ft. below the surface. Upon a motion by B. Clements, seconded by C. Auman, it was

VOTED: to close the public hearing for DEP #169-961.

Mr. Pine also noted he has submitted a plan for his house lot at 100 Hollis St. The Commission previously determined a Certificate of Compliance could be issued with a plan showing the demarcation of the work area. Mr. Pine invited members to attend a demonstration project in June 2007 on the restoration of wetland vegetation which he is doing for Beaver Brook Association. When members asked about the progress in removing invasives, B. Pine replied "It will probably take the rest of my life." The notion of managing invasives is on-going, but there is a clear reward in that the area is extensively used by birds and insects. Planning for long-term management is a key concept. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to issue a Certificate of Compliance for 100 Hollis St.

In discussion on the shed at Baddacook Woods, E. Owen noted it is a board and batten shed that was utilized by the Dartmouth Outing Club when they owned the property. Bruce Dubey has offered to remove the shed at no cost to the Town. Chairman Owen questioned whether the Commission should get input from neighbors, and P. Morrison expressed concern about presenting alternatives when the Commission does not want the responsibility or liability of having structures on conservation land. M. Giguere noted it becomes an attractive nuisance. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to request Bruce Dubey to remove the shed from the Baddacook Woods Conservation Area.

7:30 p.m. - 601 Lowell Rd. NOI continuation - DEP #169-962

Attorney Bob Collins said the applicant has met with the Commission on two previous occasions, and he had prepared a laundry list of items which are still pending. He pointed out the storage of cars within a building is an environmental benefit, and he, as well as Tom Orcutt, Superintendent of the Water Department, submitted documentation with supporting regulations and DEP publications dealing with uses near public water supplies. (B. Clements left at 7:32 p.m.) Contamination from non-point sources is a very real concern, and even though it is unlikely hazardous materials will be stored on site, it is a well-known fact that all cars periodically lose fluids which is evident in parking lots and on roadways. (B. Clements returned at 7:35 p.m.) The first line of defense in preventing such contamination is having an enclosed building. He said he was a little taken aback by the Commission's request to provide evidence.

The memo from T. Orcutt includes an excerpt from 310 CMR 22.21 (2) (1) 5 for wellhead protection zoning and the assertion that the two car garage at this location would provide containment for potentially leaking vehicles.

Mr. Collins further explained a site plan has been prepared which shows Mr. Kiley's 3-acre lot, as well as the 12-acre lot to be subject to a Conservation Restriction. The CR has been re-drafted, and will be faxed to the Commission tomorrow. Stan Dillis also submitted a copy of a statement from Brandon Ducharme of his office, certifying the success of the wetland replication. The applicant understands there will be no construction allowed until all items are taken care of.

M. Giguere questioned whether the concrete is impervious, and Mr. Kiley said he would seal the garage floor with an epoxy resin that hardens and would prevent any gas or oil from penetrating. B. Clements said he felt a lot of effort has been expended in circumventing our system. He questioned whether it is likely motor vehicles will be restricted from entering all parts of a Zone II or if residents will be required to always park in a garage. Mr. Clements indicated he could not approve the project.

C. Auman pointed out that vehicles are currently not restricted from entering even the 100-ft. buffer even though there is overwhelming evidence that structures should not be allowed there. Given the risk, he questioned whether motor vehicles should be allowed at all. He asked how potential pollutants will be contained within the garage, and Mr. Kiley said there will be a slight lip at the entrance to the garage. B. Ganem noted that there remain outstanding items in Mr. Collins' laundry list of August 22, 2006 which should be addressed: Certificates of Compliance for the outstanding Orders of Conditions, the approval and recording of the Conservation Restriction, and the recording of the Common Driveway agreement, including extinguishing the easements over the Water Department property.

P. Morrison said he was on the Commission when this project first was proposed. He thought Mr. Orcutt was a member of the Commission at that time as well. DEP identified the issue of a public roadway passing so close to a municipal water supply well as a major problem. Mr. Morrison maintained a garage had been discussed during that filing although there does not appear to be a record of the discussion. He indicated he would like to see the matter have some closure although he believed all the loose ends should be resolved before the garage is built. E. Owen said he thought the project had some redeeming value for the public good, but he was disappointed we do not have better evidence supporting the need for a garage. The garage will be approximately 750 ft. from the well, not within the 400 ft. protective radius required for Zone I of a well.

Mr. Collins pointed out the Bylaw allows for circumstances which do not fit neatly into the Bylaw and Regulations. He added there are no places outside of the 100-ft. buffer on this lot, and there is scientific evidence regarding the potential for petroleum contamination. Mr. Clements argued that he was not dealing with the larger issue in which there are vehicles parked there all the time. He emphasized the need to deal with the whole neighborhood in a consistent manner. Mr. Collins recalled that this is a compromise, worked out to replace a road that runs between the pump and the well. Mr. Kiley's property was an extremely important component of the resolution because it meant vehicular use could be moved outside the 400 ft. protective radius of the public well. He noted it is not a perfect solution, but it is an improvement on prior conditions. No houses would currently be permitted in Zone I, but structures are allowed within Zone II. The interests protected by the Wetlands Protection Act include groundwater and surface water supplies. The Wetlands Bylaw does not currently allow structures within 100 ft. of wetlands. It may have taken 15 years to re-locate the driveway, but C. Auman insisted the garage proposal must link to the driveway to be considered a public good. He urged the Commission to assure there is adequate justification to allow a garage.

Stan Dillis identified the problem as more of a wetland issue than a water protection district problem. In this case, both interests must be considered, but it is unlikely both circumstances would occur again. B. Clements cautioned that having a garage will not resolve the problem of having a spill. Mr. Collins conceded this is not a perfect solution, but it eliminates the Water Department's problem with the overall protection of Zone II, and it is better than nothing, despite not being perfect. C. Auman asked what open items remain, and it was noted the Conservation Restriction should be resolved. Mr. Collins indicated he will be using the wording from the draft Deerhaven Conservation Restriction as a basis for this CR. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to continue the hearing for DEP #169-962 to October 10, 2006.

#### 7:45 p.m. - Massapoag Pond Drawdown NOI

Brian Sargent, President of the Massapoag Rod and Gun Club, explained the goal is to lower the water level approximately 6 ft. for the winter. It is anticipated they will begin to lower the level by mid-October and leave it down until the end of February, just as they have many times before. They will inspect the condition of the dam while the water is lowered.

B. Clements said this filing replaces an expired Order of Conditions, but proposes to do the same thing as has always been done. He added he would like to have input from Natural Heritage before making a decision even though it is a continuing activity with no changes. E. Owen thanked Mr. Stanton for his volunteer work, noting that the ultimate goal is to suppress weeds in Massapoag Pond. Mr. Stanton said he understood the Order can be issued for up to 5 years, and Tyngsborough has agreed to do this. He requested the Commission consider doing the same. Members recommended that an extension be applied for before the Order expires although all towns handle it differently.

Karen Corey (150 Main St.) said she did not understand the process. She noted there was a heated debate at the meeting and a vote, but the newsletter stated there would be no drawdown. She said there doesn't appear to be a rhyme or reason or schedule for the drawdown and that it is at the whim of a handful of people. Chairman Owen pointed out the activity is in an area subject to protection under the Wetlands Protection Act and the regulations. P. Morrison explained the Commission is charged by the state to administer the Act and also has jurisdiction under the Rivers Protection Act and the local Wetlands Protection Bylaw. The Commission is responsible for how the work is conducted. Residents have a right to appeal the Commission's decisions. Mr. Morrison noted the winter timing for the

drawdown is likely to be one of the conditions.

Mr. Sargent said someone from the state had recommended the drawdown be conducted every other year. Others have recommended a yearly drawdown. The ability to make the decision is up to the entire membership, and there was a quorum at the meeting. The timing of the drawdown is typically a Monday after the weekend so that people still have time to get their boats out of the water. Mr. Morrison pointed out the Commission will not set a specific date, but would state something like after October 1 to begin the drawdown and ice out to begin re-filling.

Mr. Sargent maintained the members will decide. Tyngsborough requires reports on how the drawdown went. If we get a lot of rain in June, it will tend to wash fertilizers into the pond. It is hard to make an objective decision on whether it is a good idea to drop the level. The species targeted are the common water lily, milfoil, and fanwort. B. Sargent indicated they could report to the Groton Commission, as well as the Tyngsborough Commission. P. Morrison said some drawdowns have required a complex plot count and detailed reports of the work, but the Commission may decide not to require reports on the Groton portion of the drawdown.

The level of drawdown where Mrs. Lantz lives is affected by the sand bar across the mouth of the cove, as well as beaver activity. Mrs. Lantz (63 Island Pond Rd.) said the cove tends to become muck when the water goes down. B. Sargent pointed out the effect can change, depending on whether we get snow that insulates the ice. K. Corey said the water in the Groton portion of the lake goes down approximately 2 ft. in the Island Pond area and 4 ft. in Baker's Cove. B. Clements asked if residents have a problem with the drawdown, and Ms. Corey stated she lived at the lower pond and it's weedy and mucky. The ground does not freeze in the majority of the lower lake, and she did not believe the drawdown worked. She also indicated she felt there should be some control over when it is done, especially with no proof or documentation that it works, and it is done at random with no review. She urged the Commission to take into consideration the whole lake not just one section, and she is looking for a schedule and some kind of proof it is working. The Commission agreed to hear from Natural Heritage before making a decision. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to continue the hearing to October 10, 2006.

8:00 p.m. - 235 Riverbend Dr. RDA

Lisa Wiesner of Ladybug Gardening explained her client wished to remove scrub pines that varied from 2 ft. to 45 ft. or 50 ft. in height. They proposed to remove hazardous trees and then to keep the healthiest of the pine trees. This will allow the natural ground cover, and such trees as birch and hophornbeam to flourish. The area will be managed intelligently, managing some things while letting others return to their natural state. Ms. Wiesner noted the area beyond the fence, which was previously managed as lawn, has been allowed to convert to meadow and is not mown.

Member Auman noted there are several letters which have been submitted and should be read into the record. He read the letter from the Partridgeberry Woods Homeowners Trust, dated September 20, 2006, noting that there is no plan to remove trees from the land owned in common. Mr. Auman also reported there is a petition to stop tree removal around Partridgeberry Woods Pond signed by ten people. Wetlands consultant David A. Sperduto also submitted a letter, dated September 26, 2006, on behalf of Chris Petroff of 227 Riverbend Dr. to review the Request for Determination of Applicability filed by Dan and Lynn Sheehy. Mr. Auman commented the Commission had visited the site on September 23, 2006.

Ms. Wiesner explained she has been a horticulturist for 8 years, in practice for herself for the past 4 years. She indicated some of the tree cutting is a matter of safety and forestry management. Her clients also wish to maximize their vista to the pond. The Wetlands Protection Act and Bylaw allow vista pruning, and it is her clients' intention to remove some of the trees, particularly those that are likely to be hazardous. Mr. Sheehy said only those trees that are shallow rooted and tall enough to reach the house or pool should they fall are considered hazardous. He explained they had one fall this past winter. Some of the trees are too close together to grow in a healthy manner, and they tend to be skinny and have few branches. It was determined that all cutting will be done on property owned by the Sheehys. M. Giguere asked what percentage is to be removed, and Ms. Wiesner estimated 30% will be cut. Commissioners noted less than 50% of the woodland is to be removed. B. Clements questioned whether it would be better to mark the trees that will be left.

Probably three trees with a DBH of 8 in., height of 45 ft., and defoliated with the exception of branches at the very top, present a safety hazard. Although some members may prefer to have individual trees marked, E. Owen said he understood how the tree cutting can evolve as you proceed. He noted the small tree on the site is *Carpinus caroliniana*, and recommended that no stumping or grinding take place. Mr. Sheehy indicated there is no intention to expand the lawn. B. Clements pointed out most of the trees are probably less than 1 in. in diameter.

Wetland consultant David Sperduto explained he has had his own wetlands delineation business for 10 years and has been a surveyor for 20 years. He noted there had been a 2004 Order of Conditions which required that all vegetation remain uncut in the 50 ft. buffer. Mr. Sperduto thought that trucks and bobcats were likely to disturb the soils and oil and gas pose a risk. Birds such as woodpeckers will miss dead trees and the thinning could affect other wildlife as well. He argued that forestry management is appropriate if you are looking at the yield from a woodland, but he judged the trees to be in a healthy condition despite being slender which is a normal condition for white pine. Mr. Sperduto maintained there is no evidence of disease or insect infestation, and it is not an issue of health. He noted the clearing for the pool exposed the remaining trees, and there could be a danger of falling trees. The clearing also let in more sunlight which favors the growth of white pine seedlings. He pointed out this is alteration by increment, and species such as sweet birch like shade and moist conditions and will not react well to opening up the site to more sunlight.

Mr. Sperduto added that the plan is not very descriptive of what is to be cut. He pointed out Mr. Petroff had doubts that the previous work was conducted in accordance with the plans, and he thought it would only be prudent to mark the trees to be left. P. Morrison commented there will be stumps left in the field. Mr. Sperduto urged the Commission to require that the trees to be removed be survey located in the field and on a plan. P. Morrison questioned whether Mr. Sperduto considered the very tall trees healthy and what he expected their life expectancy to be. Mr. Sperduto conceded it would be hard to say as it depends on the conditions of the roots and soil which determine how long they will remain standing. He did not feel that hand drawn plans showing an area of disturbance was adequate, especially given the proximity of the property line. P. Morrison advised that the Commission does not consider property lines, but all property owners must sign off.

L. Wiesner explained that her plan was based on a 2004 survey plan, a copy of which was also submitted with the filing. This plan shows the 50 ft. and 100 ft. offset to wetlands. P. Morrison said the proposed work is allowed under the Bylaw. E. Owen said the house fell under the old Bylaw and Wetlands Protection Act. Mr. Sperduto questioned whether this is an area that is previously disturbed or a new area of disturbance. Mr. Sheehy stated he has photographs of the site showing what it looked like originally. B. Clements noted that if the previous Order of Conditions specified no further cutting and that vegetation should be maintained in perpetuity, he would not be comfortable ignoring that condition. P. Morrison recalled the Commission requiring the area be left alone, but in the context of not extending the lawn or adding fertilizers. B. Clements reiterated his concern that the Commission not go against the previous Order of Conditions.

E. Owen reminded the Commission that, in the case of the Allens Trail Order of Conditions, the Commission voted to take away the condition that no fertilizers be utilized in perpetuity. M. Giguere thought it would be a good idea to encourage natural groundcovers, but he did not want to see lawn. The applicant, Dan Sheehy, said a number of neighbors were concerned that they were proposing to clearcut the woodlands to the edge of the pond. Some of the people who signed the petition feel they were misled. He submitted a letter, which he read into the record, from his neighbor, Steve Pike (243 Riverbend Dr.) who indicated he had no issues with the proposed thinning of trees.

Arborist George Brackett will do the work, and L. Wiesner said it can be accomplished without heavy machinery. She noted that opportunistic species will take over, unless some management can encourage the hardiest of the pine trees. This is helping the process of natural selection. She assured the Commission they would take great care not to offend neighbors as they conduct the work, taking down mature trees that are a danger. The arborist can climb and remove trees without harming the surrounding landscape.

Abutter Chris Petroff (227 Riverbend Dr.) said he had no issues if the work is done according to the plan, but he anticipates there will be the same issue in store as in the previous filing in that what is left is not what was permitted. He argued that the trees were older than the development, and anyone can start cutting them. E. Owen said vista

pruning is allowed providing the applicant files an RDA. Mr. Petroff said the removal of a 15 ft. wide understory will affect wildlife. Chairman Owen asked him to limit future discussion, and Mr. Petroff responded saying "wild turkeys use the trail and use the understory. Both spotted and painted turtles use the area, and additional heat and light will discourage wildlife." D. Sperduto maintained that the filing lacks an appropriate level of specificity. B. Clements said his only concern is what trees will be left. E. Owen commented they have indicated no more than 30% will be selected for cutting. In general it is a small project, and he thought it would be an undue burden to require a survey of each tree. Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to issue a negative #3 Determination to permit thinning of trees, subject to no stumping, heavy machinery shall not be used, no less than 50% basal area shall remain, and other than the three tall trees identified as potential hazards, no trees with a DBH (diameter) greater than 2" shall be removed.

All were in favor.

#### 8:15 p.m. - 233 Nashua Road RDA

Homeowner Roderick McLeod explained he wished to replace an existing deck with a 14 ft. by 18 ft. deck at the same location and no closer to the wetland. B. Ganem noted the house lot backs up to the pond and the wetland area crossed by the new trail bridge at the Northwoods Conservation Area. No tree cutting is proposed, and Mr. McLeod said they are replacing the arsenic treated pressure treated wood in the 15 year old deck. Gravel will be placed under the deck. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination providing no landscape debris or grass clippings are deposited in the 100 ft. buffer zone to wetland resource areas.

#### 8:30 p.m. - Reedy Meadow NOI continuation

(E. Owen recused himself.)

Stan Dillis explained he is still working with the Planning Board, but the plan has been revised to pull the stormwater outfall and riprap further back from the wetland resource area. They will leave a larger buffer, but the work is still within the Commission's jurisdiction. The scope of the NOI has been narrowed to include the riprapped swale. The Planning Board has discussed a requirement that all trees to be removed be surveyed onto a plan. Commissioners asked if the work qualified as minor grading under the Bylaw, and Mr. Dillis acknowledged some of the grading will involve changes of as much as 2 ft. B. Ganem read the section of the Regulations pertaining to the definition of minor grading.

Mr. Auman said that he would prefer to not have two entrances to the sites because of work within the 50 ft. no-disturb line. E. Owen questioned whether the beehive drainage structure behind the house would tie in with the catch basins to handle the surface runoff. Mr. Dillis said the bottom of the swale will be 2 ft. lower than the existing contours but it will be filled with riprap. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to close the hearing for DEP #169-960.

Mr. Dillis noted the project cannot go forward if they do not also have Planning Board approval.

#### 8:45 p.m. - 749 Lowell Rd. NOI, DEP #169-968

At the request of the applicant and upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to close the hearing for DEP #169-968 for 749 Lowell Rd.

#### 9:00 p.m. - Highway NOI continuation, DEP #169-951

Mr. Delaney has requested a continuation, and upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to continue the hearing to October 24, 2006 for DEP #169-951.

9:15 p.m. - 21 Moose Trail RDA continuation

With the applicant's assent and upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to continue the RDA meeting on 21 Moose Trail to October 10, 2006.

Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to issue an Order of Conditions under the Wetlands Protection Act for DEP #169-967 for 104 Longley Rd. as drafted.

Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to issue an amended draft of the Order of Conditions under the Wetlands Protection Bylaw for 104 Longley Road.

B. Ganem reported she had attended two recent workshops on farming, one on agriculture and the Wetlands Protection Act, and the other on managing horses. She noted both the USDA and DEP speakers reiterated that the Commission can request receipts to prove the applicant has a commercial operation and has a goal of making a profit. Such receipts do not have to become a part of the record if the Commission returns them to the applicant. Conservation staff from other towns cautioned against allowing a misconception to form when Agricultural or Right-to-Farm bylaws are passed by communities. Groton's proposed bylaw does include the "raising of livestock including horses and keeping of horses for commercial or recreational purposes". Many of these activities do not qualify for agricultural exemptions under the Wetlands Protection Act. Dan Lenthall from the Natural Resources Conservation Service provided lots of brochures on managing horse pastures and manure. P. Morrison requested a copy of the information packet.

E. Owen questioned the status of the Conservation Plan for Groton Center Farms and whether there has been a follow-up filing to construct new roads near the pond.

The Commission reviewed the site plan for Brooks Orchard, revised 9/06. B. Clements advised there is a newer plan, but members said they appreciate the lack of density shown on the current plan and support the concept. There may be concerns about increasing the use of the existing driveway and its proximity to wetlands. The applicant should also be advised of the need to do a MESA filing.

Members reviewed a letter from the homeowners at 38 Fitchs Bridge Rd. concerning a previously filed RDA. Rather than constructing the garage on sona tubes, they are proposing a 4 ft. frost wall foundation. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to accept the proposed change in plan and allow the substitution of a frost wall for the originally proposed sona tubes.

David Moulton has notified the Commission of his intent to do the wetland crossing portion of the Rocky Hill subdivision in the next two weeks. Mr. Moulton indicated the cost of directional drilling for the installation of the water line would be too high due to the presence of a large number of stones. Members agreed to take a look at the site when the opportunity arises.

There being no further business, the meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Barbara V. Ganem  
Conservation Assistant

**Approved as drafted October 10, 2006**