

GROTON CONSERVATION COMMISSION

Minutes

October 10, 2006

Chairman Evan Owen called the meeting to order at 7:00 p.m. in the 2nd floor conference room in Town Hall. Members Craig Auman, Bruce Clements, Marshall Giguere, and Peter Morrison were present. 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 26, 2006, as drafted.

Attorney Bob Collins has requested a partial Certificate of Compliance or a letter confirming that the housing off Sandy Pond Rd. is excluded from the Rocky Hill subdivision wetlands filing. Members agreed to discuss this with Mr. Collins when he arrives later in the meeting.

The filing for the expired Order of Conditions for Academy Hill will require the payment of at least \$8000 in state fees, of which the Town will receive approximately \$4,000. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to waive the payment of local fees under the Wetlands Protection Bylaw.

C. Auman, E. Owen, and P. Morrison voted in favor, while B. Clements and Marshall Giguere voted in the negative.

At 7:10 Attorney Collins arrived and explained that the Order of Conditions for Rocky Hill is recorded as an encumbrance against the entire site due to lot line changes that followed its issuance. The lender, the MassHousing Partnership, has requested a sign off from the Commission indicating the Order does not apply to the affordable housing units off Sandy Pond Rd. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to issue a confirmation that work on Lot 40 is not within the jurisdiction of the Conservation Commission because there are no jurisdictional wetlands within its boundaries.

B. Ganem had prepared certification to this effect which was notarized and submitted to Mr. Collins for the upcoming closing.

7:15 p.m. - 601 Lowell Rd., DEP #169-962

Mr. Collins requested the Commission consider continuing the hearing until the Commission has an opportunity to look at the replication area and the area of the Conservation Restriction at the site. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to continue the hearing to October 23, 2006, following a site visit on October 21.

B. Ganem noted the Commission is particularly concerned that the size and functioning of the replication area be certified by a wetland scientist.

Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to issue the Special Conditions under the Wetlands Protection Act as drafted for the Public Safety Building parking, DEP #169-961.

Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to issue the Special Conditions under the Wetlands Protection Bylaw as drafted for the Public Safety Building parking, DEP #169-961.

7:30 p.m. - Appointment Nathan Pfenninger/Northwoods Conservation Area trail bridge

Eagle Scout Nathan Pfenninger explained he had modified his original plan to include a center board for the bridge to provide greater strength and stability. There is an earthen step-up with a granite block supporting the bridge at either end. He said signs have been installed at both ends of the bridge stating "No Horses". Members congratulated and thanked him for a job well done and upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to send an official letter of thanks to Mr. Pfenninger.

Mr. and Mrs. Pfenninger noted the scout troop very much enjoyed working on this project. In addition, there are six other scouts who are working toward the Eagle level. Commissioners commented there is a similar project at Kaileys Way, the Trails Committee may have recommendations, and there are four bridges to be constructed on Wharton Plantation. C. Auman also suggested trail work on Gibbet Hill. Interested scouts were advised to contact Barbara Ganem to coordinate work proposals.

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

VOTED: to issue the Special Conditions under the Wetlands Protection Act as drafted for the Reedy Meadow Rd. common driveway, DEP #169-960.

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

VOTED: to issue the Special Conditions under the Wetland Protection Bylaw as drafted for the Reedy Meadow Rd. common driveway, DEP #169-960.

E. Owen abstained from both votes.

Condition #35 in the draft Order of Conditions for DEP #169-968 was modified, and upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to issue the draft Special Conditions under the Wetlands Protection Act for 749 Lowell Rd., DEP #169-968 as modified.

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

VOTED: to issue the draft Special Conditions under the Wetlands Protection Bylaw, with the modification of Condition #15, for 749 Lowell Rd., DEP #169-968.

7:45 p.m. - 54 Whispering Brook Rd. RDA

Homeowner Steven Gavin explained that the brook behind his home has been dammed by beavers, creating a large pond. He did not want to siphon water out of his deep well and decided he would siphon water from the beaver impoundment to irrigate his lawn. Member Auman thanked him for providing an extensive letter describing the activity, as well as photographs. He pointed out that grass does not die for lack of water in July or August, but rather becomes dormant. He also noted that the Board of Health must determine that a health or safety hazard exists in order to get permission to remove the beavers. The proposed time for the withdrawal of water (July and August) is the time when the water level is apt to be the lowest and how much is being withdrawn versus how much will remain is a concern. Mr. Gavin said he has not observed the beaver pond running dry and he also did not believe the beavers were still active. Mr. Auman concluded his statement by saying he did not support the withdrawal of water from the pond.

P. Morrison stated he wanted to make sure the depth of the pond was maintained with a maximum drawdown providing assurance that it will not go beyond a certain limit. He advocated taking a close look at the beaver pond water level, but acknowledged more information may be necessary. M. Giguere said he did not believe the beavers were currently active in maintaining the pond. He pointed out this is not an agricultural withdrawal and he felt it was important to wildlife not to

interfere with the water level. E. Owen asked the direction of flow when the water is used for irrigation, and Mr. Gavin indicated the flow is toward the street when the front yard is watered and toward the wetland when the side yard is irrigated. S. Gavin said there is sufficient pressure from the siphon pump to operate sprinkler heads. E. Owen suggested using some kind of monument, such as a stone wall, to monitor the water level. He said he would not be opposed to the activity if there is way to monitor the water level.

B. Clements asked if this is an established wetland resource area. Mr. Owen commented it may be ephemeral if it's dependent on the presence of the beavers. Mr. Clements did not think it a good idea to draw down a standing body of water that has occurred naturally.

Abutter Irene Corsetti (46 Whispering Brook Rd.) said she also operated a pump and siphon but only 20 minutes at a time. She explained there was no water there when they moved in 14 years ago, and the fire pond used to regularly dry up every August. Now it stays full, and she believed the beavers have helped to keep that area wet. P. Morrison urged members to consider only the one filing before the Commission. M. Giguere disagreed, stating members need to take into consideration how many withdrawals they would allow. P. Morrison maintained it comes down to control and monitoring. E. Owen questioned whether the resource area should be considered "land under water". It was noted the water has been standing for at least five years, and B. Clements said it is an established water body, and withdrawing water is not good. C. Auman said he reviewed the regulations to determine what applies to this scenario and could find nothing specific, but the Commission should assure that the impact is minimized. He added the Commission needs to feel comfortable with the potential for others to withdraw. If a positive Determination is issued, the applicant will need to file a Notice of Intent.

M. Giguere noted the Board of Health denied an application for an irrigation well for the maintenance of a lawn. Mr. Gavin indicated he included that newspaper article because this is where is got the idea to siphon water from the beaver pond. Upon a motion by C. Auman, seconded by B. Clements, it was

VOTED: to issue a positive #3 Determination.

C. Auman, B. Clements, and M. Giguere voted in favor of the motion, with P. Morrison and E. Owen voting against the motion.

8:00 p.m. - 147 Gay Rd. RDA

(C. Auman recused himself from the meeting.)

Owner Seth McKibben explained he wished to take down the barn clapboards while taking appropriate precautions to protect the wetland resource area on the site. Originally he had intended to file a Notice of Intent for the razing and reconstruction of the barn, but immediate repairs are needed before winter on the house. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to issue a negative #3 Determination providing erosion control is installed between the back of the barn and wetlands, neither debris nor heavy machinery is allowed to enter the area behind the barn, and a Notice of Intent is filed if the barn is re-built.

It was noted the barn foundation would not be removed and this would act as a retaining wall.

8:15 p.m. - 78 Wharton Row NOI

Matthew Marro, representing the homeowner, explained the plans have been revised to reflect the wetland flagging which was refreshed in the field. The proposed work includes the relocation of an existing play area and the construction of a sunroom, terrace, grassed area to be used as an ice skating rink, and an inground swimming pool. An existing retaining wall was previously approved by the Commission.

Mr. Marro said the intention is to reclaim a portion of the 50-ft. no-disturb buffer with native plantings which will blend in with the wetlands on site. Excavated materials will be stockpiled outside of the 100-ft. buffer zone. Erosion control measures are proposed throughout the project.

M. Giguere noted there are two outstanding Orders of Conditions against the property. He questioned how much of the work is new and asked whether vegetation will be removed or whether all of the work is on existing lawn area. The area where the pool is proposed currently is densely forested with 20 ft. to 25 ft. white pines. B. Clements commented the work appears to improve conditions in the 30-ft. to 50-ft. buffer zone. Mr. Marro indicated the goal is to keep the 50 ft. no-disturb buffer zone intact in order not to conflict with the local bylaw. There is no structure proposed within the 50-ft. buffer zone. The cabana area is new, but it is in existing lawn, and the owner intends to leave a privacy screen of trees next to the pool.

He noted there are new impervious surfaces which he is not happy about. He added the existing retaining wall intervenes between the wetland and the proposed restoration area, and he questioned the benefit to the environment especially with the removal of a lot of trees. He also asked why the issue of the outstanding Orders of Conditions has not been previously resolved. The residents, the Figueroas, explained they are the original owners of the lot. Mr. Marro emphasized that the pool will not be treated with chlorine, and it will be possible to reduce the size of the patio.

P. Morrison also urged that the matter with the outstanding Orders of Conditions be resolved before additional work takes place. He indicated he did not have a problem with work in the 50' to 100' buffer zone and questioned whether a section of the retaining wall could be removed to better integrate the wetlands and the restoration area. M. Marro cautioned that this would require grading within the 50' no-disturb buffer. Mr. Morrison recommended the applicant consider ways to make proposed impervious surfaces permeable such as pervious concrete. The homeowners noted there is currently crushed stone at the roof dripline for the house. P. Morrison encouraged the applicant to integrate some recharge measures into the new project.

E. Owen suggested this also be considered for the concrete apron around the pool and asked if the plans could be stamped. Mr. Marro, noting that the retaining wall is short in height, objected to an additional intrusion into the 50-ft. no-disturb buffer. C. Auman questioned whether the original filing had any prohibition against further tree cutting. He added that the 1997 filing preceded the updating of the Wetlands Protection Bylaw.

Chairman Owen summarized the requests of the Commission as resolution of the matter of the previous Orders of Conditions, determining whether the previous Orders of Conditions prohibited tree cutting, tweaking the patio design, and generally making the project more pervious. Homeowner Kerri Figueroa said the retaining wall was determined to be permanent demarcation under the second filing. Members asked that the pervious concrete information submitted under the filing for 749 Lowell Rd. be sent to Mr. Marro. The Commission could visit the site on October 21 to see whether there is compliance with the previous Orders. Members also requested that the driveway be shown on the reference plan. With the applicant's concurrence, upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to continue the hearing for 78 Wharton Row to October 24, 2006.

8:30 p.m. - 57 Lower Dam Way (Massapoag Pond lowering)

Brian Sargent, President of the Massapoag Rod & Gun Club, explained that DEP issued a Dunstable DEP number for this filing. He also provided a copy of a letter from Natural Heritage specifying the drawdown dates. Mr. Sargent stated he intends to disseminate information about the drawdown to allow people to pull their boats ahead of October 22nd. Commissioners agreed to send comments to the Dunstable Conservation Commission, but to issue a decision under the Wetlands Protection Bylaw. P. Morrison noted the applicant can either continue or close the hearing, or withdraw the filing. He suggested the Commission continue the hearing to see whether DEP can clarify the filing process with the Dunstable Conservation Commission. It appears that Mr. Sargent should appear before the Dunstable Commission for a public hearing. The dam itself is in Dunstable, but 35% of the Pond is within Tyngsborough, 50% is in Dunstable, and 15% is in Groton. The Commission's environmental concerns are based on suggested state guidelines which should be followed.

Commissioners advised Mr. Sargent apply ahead of the expiration date for an extension if the Order is issued for a 3 year period. The Tyngsborough Commission requires reports on the drawdown. The Town of Groton will go with what the Dunstable Conservation Commission says, given the confirmation from Natural Heritage that there is no impact to rare species. Upon a motion by P. Morrison, seconded by C. Auman, it was

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

Members said that it will not be necessary for Mr. Sargent to appear on October 24th. The Commission will close the hearing

at that time if there is no further information on the filing.

DEP has scheduled a site visit to consider issuing a Certificate of Compliance for Groton Residential Gardens, Superseding Order of Conditions #169-871, on Friday, October 13th at 10 a.m.

9:00 p.m. - 21 Moose Trail RDA continuation

At the applicant's request, the hearing was continued to November 14, 2006.

Certificates of Compliance have been requested for two filings for 134 Shelters Rd. B. Ganem reported there is an additional structure located on the lot, a 3-bay garage, which was not shown on the original Notice of Intent plan for the construction of the house. Members requested that a new filing be done for this work, and the matter of the Certificates can be resolved when the Order is issued.

An inquiry has come in from the Trails Committee about the status of the Paquawket Path right-of-way to the Rail Trail. The discussion was dropped around the time Mr. Striebel complained about beaver flooding behind his home at 100 Paquawket Path. M. Giguere agreed to look into whether the Water Department GPS unit could give a more accurate reading of the ROW. Members also suggested it may be possible to apply for CPC funding for a survey to resolve this access issue.

National Grid has inquired whether the Town would like Mike Callahan from Beaver Solutions to leave a pipe and two boxes (water leveling device) at the downstream location for the beaver impoundment on the power line ROW. He anticipates this will be the next location where the beavers will begin dam construction. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to permit the beaver leveling device to remain in place.

C. Auman reminded Commissioners to submit their comments for the personnel evaluation for B. Ganem.

B. Clements expressed reservations about how the Commission enforces the prohibition on buildings or structures within the 100-foot buffer zone, in accordance with the local Bylaw. He questioned whether the Commission should consider making it less restrictive. P. Morrison disagreed, stating this would be a mistake. E. Owen thought the Regulations spell it out a little more clearly, but there are ways to work around it. M. Giguere agreed with Mr. Clements' assessment. P. Morrison said the Bylaw is intended to save areas not already developed as single family homes. It is a way to address big development, not penalize individual homeowners. C. Auman saw the problem as how to apply the Bylaw correctly and not just give it all away over time. He noted the 78 Wharton Row filing is an example as the house was built in 1997, before the updated Bylaw went into effect. The haybale demarcation did not include the trees, but now they are proposing removing them for a pool.

P. Morrison said the first 50 feet should be sacred, and B. Clements added there are severe limitations for the outer 50 feet to 100 feet of the buffer zone. In the 601 Lowell Rd. filing, the Water Department Superintendent has told the Commission that a garage is essential to protect the public well. B. Clements stated he worries about the lack of consistency in applying the Bylaw and Regulations. Members suggested including clear verbiage in the Findings section of the Order of Conditions to support decisions. It was also noted that we don't know about 'wins' under the Bylaw because we receive no filings for work that is designed to be outside of the 100 foot buffer zone.

B. Ganem reported there is some discussion about how to float the \$500,000 Surrenden Farm Self Help grant (if approved) from the time of the Surrenden Farm closing until the state reimburses the money. Consideration may be given to using the Conservation Fund to bridge the gap or using the Conservation Fund to pay interest on a short term loan. The previous Self Help grant for the Hurd property was used to reimburse the Conservation Fund, but the interest payments would not be reimbursable. No decisions have been made at this time.

Members reiterated the need to fund land management through line items in the regular Conservation Commission budget.

There being no further business, the meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as amended October 26, 2006