

GROTON CONSERVATION COMMISSION

Minutes

February 6, 2007

Chairman Evan Owen called the meeting to order at 6:45 p.m. in the basement floor conference room at the Groton Senior Center. Members Craig Auman, Bruce Clements, Bruce Easom, Holly Estes, Marshall Giguere, and Peter Morrison were present. Conservation Assistant Barbara Ganem, Town Planner Michelle Collette, Town Accountant Valerie Jenkins, Water Commissioner Gary Hoglund, and Interim Administrative Officer Jeff Ritter were also present.

Michelle Collette explained the Planning Board is considering submitting a warrant article at the April Town Meeting to enable board members to miss one meeting without having a board decision challenged. Known as the Mullin rule, this could apply to all adjudicatory hearings if adopted by the Town. Currently, a member who misses a meeting should not vote on the final decision, and adopting this rule would allow a member to miss one meeting and still vote. B. Easom questioned how this would affect applicants who appear before the Commission, and P. Morrison pointed out if four Commissioners miss two meetings, the project is automatically approved. That's why it's so important for members to be present at every meeting. M. Collette added if the case is litigated, a town decision could be overturned. B. Easom asked whether this would apply only to new cases or to cases in process now, and Ms. Collette responded this is a question for Town Counsel. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to join the Planning Board in adopting the Mullin rule.

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

VOTED: to appoint Peter Morrison as the Conservation Commission's representative
at the February 9th District Court hearing on 1 Lost Lake Dr.

P. Morrison abstained from the vote.

Interim Administrative Officer Jeff Ritter noted this is a good time to approach state representatives for funding for proposed projects that perhaps do not fit under a traditional access to funds. The representatives may consider an amendment to the main budget for the Commonwealth or a special act of the legislature. P. Morrison suggested the Commission consider including the GPS unit or brush-hog mower. B. Clements recommended some of the parcels currently under consideration by the Commission. Mr. Ritter commented they may have value because they are contiguous to existing protected lands. B. Clements noted the Town is also required to provide public restrooms for the Rail Trail. Other ideas include Fitchs Bridge, the Station Avenue project, and a monument for the Eliades Conservation Area.

Member Easom reported he met with Town Accountant Valerie Jenkins on the issue of clearing up final expenses associated with the Surrenden Farm project. The Board of Selectmen applied for Community Preservation funds that included the cost of the land purchase but did not include any extra costs for acquisition costs. He explained he also talked with Kathleen Roth of the Community Preservation Coalition and with Bob DeGroot, Chairman of the Community Preservation Committee about the issue. Mr. Easom said the interest on the bridge loan for the Self-Help grant, which is a reimbursable grant, is due July 17, 2007.

Commission members reviewed a print-out prepared by Ms. Jenkins which showed the legal costs incurred in the closing of the Surrenden Farm project. She noted these represent legal bills that are due or past due, and the goal is to develop a way to distribute costs in a fair manner. She noted there is a risk in asking Town meeting to raise and appropriate for these costs, the CPC may consider accepting an application out of their usual cycle. This could be appropriated from free cash or from the Stabilization Fund (requires a 2/3's vote), or could be an operational expenses. Other sources include the Conservation Fund, the CPC administrative fund, or the 2007 Reserve Fund which is supposed to be for emergencies.

Member C. Auman commented the print-out anticipates funding from the CPC in the amount of \$19,425. He asked if this is to be the subject of a CPC article for Town Meeting.

Water Commissioner Gary Hoglund said the legal expenses attributed to the Water Department were incurred to preserve water rights to the new Town Forest well and the 10 acre water parcel previously given to the Water Department. He pointed out the Water Department did not gain anything, just fought not to lose anything. It was the understanding of the Water Department that these costs were going to be picked up by the Board of Selectmen. He did not feel it did anything for the Water Department in particular and the funds should be covered as part of the overall Town project. He acknowledged the full Water Commission has not voted on the legal bills as yet.

P. Morrison inquired as to the current level of the CPC administrative fund, and J. Ritter replied it was \$42,500. Monies left over at the end of FY'07 would be returned to the unencumbered CPC fund. V. Jenkins cautioned that any division of legal expenses would have to be defensible before the Town's auditors. She recommended the costs not be divvied up as a percentage, but as the legally allowed costs under the purposes of either the Conservation Fund or the CPC administrative fund. B. Easom estimated the CPC administrative fund would be spent down to \$38,400 when the anticipated costs for hiring an assistant and purchasing a computer were included. He noted it may be possible for the CPC to consider accepting an out-of-cycle funding proposal for the interest on the bridge loan for the Self-Help grant.

(Member Clements left at 7:25 p.m. as he was expected at another meeting.)

Member Morrison suggested the Commission consider splitting the legal expenses 50%-50% with the CPC as a starting point in the negotiations. Had the original Surrenden Farm proposal included legal expenses, it is likely the CPC would have authorized the expenditure. V. Jenkins commented the bill has to be paid in a defensible manner, but she did not recommend reducing the CPC administrative fund to such a level that they would be unable to recover.

(Chairman Owen left at 7:34 p.m. to attend another meeting.)

P. Morrison acknowledged there are encumbered and unencumbered portions of the Conservation Fund. He questioned whether these funds could be used, and then the Commission could re-apply in the fall for additional funds to the Conservation Fund from the CPC. This would provide a valid reason for them to support the application.

M. Giguere asked for clarification on whether this is an allowed use for the CPC portion of the Conservation Fund, and he was assured that costs associated with the acquisition of land are permitted. C. Auman questioned whether there is any promissory note guaranteeing the Commission these funds next year if we pay the bill this year.

CPC member Rick Hughson pointed out there will be additional acquisition costs associated with the planned transfer of Lot 8 south of the Surrenden Farm property at the April Town Meeting.

The total legal expenses at this point are \$26,537.50. P. Morrison said he will float the idea of the Conservation Fund being used for these expenses, and B. Easom indicated he would support it. C. Auman felt the money should come from the CPC administrative fund. He agreed it is certainly a benefit to the Town to have the land, and he's very grateful to see the land preserved, but questioned what kind of guarantee the Commission has that the Conservation Fund will be reimbursed. It was noted that at least 10% of the funds collected under Community Preservation will be devoted to open space according to the law.

G. Hoglund recommended these funds be requested at Town Meeting to resolve cash flow problems involving unforeseen expenses. He noted it is all one big town project.

(CPC Chairman Robert DeGroot arrived at 7:40 p.m.)

A motion made by P. Morrison and seconded by B. Easom to pay for legal expenses in the amount of \$22,528 from the CPC portion of the Conservation Fund (\$26,537.50 - the \$4,009.25 amount tentatively owed by the Water Department) failed with C. Auman, H. Estes, and M. Giguere voting in the negative, and P. Morrison and B. Easom voting in favor.

R. DeGroot announced the CPC is scheduled to meet in this space, and the Conservation Commission is the first item on their agenda. P. Morrison suggested to Mr. DeGroot that the board meetings run concurrently with Mr. DeGroot chairing the joint committee meeting.

Mr. DeGroot called the CPC meeting to order indicating they would follow Robert's Rules of Order in conducting the meeting. He invited the Commission to make a presentation, and Vice Chairman Marshall Giguere summarized the results thus far by noting the Conservation Commission did not pass a motion to pay approximately \$23,000 in legal expenses associated with the Surrenden Farm project. Mr. Giguere indicated some of the discussion has revolved around whether any of these expenses could be picked up from the CPC administrative fund. P. Morrison noted that different funding scenarios have been discussed, based on the table prepared by Val Jenkins. CPC Chairman Bob DeGroot communicated that his committee is in an information-gathering mode and is open to hearing any and all solutions.

B. Easom said he did not feel the Conservation Commission should spend more time in figuring out what to do with the legal bills. He recommended the bills be voted on tonight as all of the information was before the Commission. Rick Hughson argued that the CPC should hear different positions as there were questions raised about the \$418 legal expense already paid by the CPC and there is still the Lot 8 south transaction to come. He also noted the \$100,000 endowment fund for the stewardship of Surrenden Farm appears to have vaporized. V. Jenkins urged the group to consider some method of compromising. C. Auman indicated he shared that logic and understood the need to be able to justify the costs to the auditors. He asked what would be palatable to the CPC. Ms. Jenkins said either the CPC or the Conservation Fund could be used to pay the entire amount. The costs from each of the two legal firms are defensible. G. Hoglund protested that charges are being foisted on the Water Department, and he felt the vote of the Water Commission should be in place.

CPC member Michael Roberts said he had spoken to the state Community Preservation Coalition who stated that unless costs were included in the project proposal, the CPC did not have to pay them. Part of the difficulty may be that it is never clear to an applicant for CPC funds what costs are ancillary or what should accompany a project proposal. Mr. Roberts maintained the administrative fund is to be used for administrative and support work for the CPC and not for any other purpose. He recommended the CPC issue a policy statement along these lines. He felt the previous legal fee was paid as a result of a verbal commitment R. Hughson made to the Board of Selectmen. Mr. Roberts said, "We, as a town, must figure this out."

V. Jenkins acknowledged there are other sources of funds which may be considered which she reviewed prior to the arrival of the CPC. These include the Finance Committee's Reserve Fund for emergencies or unplanned expenses. Also, the Stabilization Fund, which requires a 2/3 vote from Town Meeting, is another option, as is free cash. All impact the tax rate with the possible exception of the Stabilization Fund. The other options are to use monies already collected, such as the CPC administrative fund or the Conservation Fund. CPC member Carolyn Perkins noted that the CPC has an unallocated fund balance that has to be appropriated every year. V. Jenkins urged that the administrative fund not be run too close.

CPC Chairman DeGroot agreed to give the Conservation Commission an additional 10 minutes to discuss a resolution to the issue. CPC member Rick Hughson noted the Water Department was involved because they own the land. Both the CPC and Conservation Commission have Town-wide interests. All of the monies come from the same pocket although they are divided among different buckets. He suggested the CPC provide an estimate of how much they will need for the remainder of the year. It was noted that the Town legal budget is nearly exhausted, and it is the right thing to have it come from one of these two groups. J. Ritter suggested that costs associated with title searches, conveyance costs, or recording documents at the Registry of Deeds for the acquisition of Lot 8 south were unlikely to exceed \$2,000. He indicated the title costs run about \$1.75/thousand in value.

P. Morrison expressed concern that the Conservation Commission has not included maintenance costs for the Surrenden Farm in the budget. B. Ganem pointed out the hay is likely to be marketable.

Conservation Commissioner and CPC member B. Easom questioned whether the DOR has provided an opinion on

what constitutes an unanticipated expense. M. Roberts argued that appraisals or an archaeological survey might be unanticipated, but legal expenses should be considered a normal, although sometimes unplanned, part of a land acquisition. R. DeGroot said the \$26,000 legal bill could have a serious impact on the respective budgets. R. Hughson noted that property acquisitions are likely to involve title searches and closing fees, but he questioned whether mowing or haying could fall under the rehabilitation category for CPC funds. V. Jenkins said she did have a discussion with Katherine Collierie at DOR who indicated that it would not be possible to hire someone to mow or do upkeep on a building restored with CPC funds. She did not feel it would be appropriate to use CPC funds for land maintenance. P. Morrison argued that this is an unanticipated expense for the Commission, and V. Jenkins informed him the stewardship fund has not altogether evaporated as one of the Selectmen is working very hard to have it restored. She pointed out legal costs are allowed from the CPC administrative fund.

Chairman DeGroot acknowledged that the legal bills need to be paid in the short term while being respectful of the long term costs. P. Morrison asked permission to present a motion to the Conservation members, and with Chairman DeGroot's agreement, he made a motion, seconded by B. Easom, and it was

VOTED: to pay, out of the CPC portion of the Conservation Fund, \$11,812.50 for title searches and title insurance included in a bill submitted by Marsh, Moriarty for legal expenses incurred in the closing on the Surrenden Farm project.

C. Auman added "in the spirit of cooperation with the CPC."

B. Easom commented this represents approximately half, plus \$400, of the legal expenses with the Water Department's portion omitted. All members present (Morrison, Auman, Easom, Estes, and Giguere) voted in favor. There being no further business before the Commission, the Conservation Commission members adjourned at 8:30 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant