

GROTON CONSERVATION COMMISSION

Minutes

May 8, 2007

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, Bruce Easom, Holly Estes, Marshall Giguere, and Peter Morrison were present. Conservation Assistant Barbara Ganem was also present.

Upon a motion by C. Auman, seconded by H. Estes, it was

VOTED: to approve the minutes of April 24, 2007 as drafted.

Members E. Owen, M. Giguere, and B. Easom abstained from the vote.

In preparing the Wetlands Protection Act (WPA) Order of Conditions for 6 Hazelwood Ave., P. Morrison suggested pertinent conditions from the boilerplate special conditions, and with a second by B. Clements, it was

VOTED: to approve the special conditions to be issued under the WPA for DEP #169-979 for 6 Hazelwood Ave.

Member B. Easom abstained.

Again working from the boilerplate special conditions, upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to approve the special conditions under the Wetlands Protection Bylaw for DEP #169-979 for 6 Hazelwood Ave.

Member B. Easom abstained.

7:15 p.m. - 731 Martins Pond Rd. RDA

With no applicant present, the Commission agreed to temporarily table discussion.

A letter has been received from Natural Heritage about 4 Birchwood Ave., and they have no concerns about rare species. The Commission agreed to issue an amended Order of Conditions reflecting the original with a reference to the revised plans. B. Ganem noted the Commission has adapted a new format under which separate special conditions are issued under the Act and Bylaw, and the Commission agreed to this modification. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue an amended Order of Conditions for DEP #169-912, referencing the revised plans, for 4 Birchwood Ave.

B. Ganem explained a Groton resident at 901 Townsend Rd. is experiencing flooding due to a collapsed culvert under the railroad bed as it passes behind Hannaford's market in Townsend. Member Holly Estes, Townsend's Conservation Agent, reported she just met with the MBTA Engineer of Operations about the collapse. It may take weeks to resolve the problem. There is some question about whether the Groton resident's septic system is affected, and Health Agent Ben Cutone will determine this. Gary Shepherd of Townsend has offered the use of his heavy duty pumps to pump water over the railroad tracks into land owned by Fisheries & Wildlife which contains a stream and extensive wetlands on the other side. H. Estes estimated the impounded area probably covers more than 10 acres. The Milton Starr conservation land is also extensively flooded. Ms. Estes noted the MBTA recently did emergency repairs on a trestle on this unused railroad line. The box culvert is totally under water at this point.

B. Clements clarified the issue as work needing to be done in Townsend, but the affected resident lives in Groton. P. Morrison questioned what kind of jurisdiction the Commission may have for a problem that crosses town lines. The Groton resident has contacted Representative Hargraves with his concerns. E. Owen noted the MBTA probably has plans showing the

construction and location of the culvert. It was noted there are turtles on the Bertozzi land, and it is likely this is priority habitat. Commissioners felt that the Selectmen should be aware of the issue since it crosses political boundaries. B. Easom suggested this could be a good opportunity to improve a serious situation.

7:30 p.m. - 57 Old Ayer Rd. NOI

Homeowner Paul Riley explained he purchased the property in 2004 at which time a new septic system had been installed. Now, with an opportunity to connect to town sewer, they would like to remove approximately 1,000 cubic yards of material from the backyard. The materials may be re-distributed on the property or trucked out. M. Giguere commented this will involve filling within the buffer zone of the wetlands and could disrupt vegetation.

Mr. Riley said DEP has not yet issued a number for the project. Commissioners stated the Board of Health may have concerns about potentially contaminated materials being spread in the buffer zone or elsewhere. P. Morrison added the Bylaw does not apply as this is a previously disturbed site. P. Riley stated the raised area is currently unusable, and they would like to return it to a more level grade. The Earth Removal Committee may also have something to say about the project. C. Auman urged that the materials be removed off site. Natural Heritage should also be notified as a portion of the property is within a rare species polygon.

H. Estes pointed out that most leachate is going to be going down vertically so some of the fill may be clean. Mr. Riley thought there were three pressurized pipes that may be contaminated only at the core. This area would have to be filled with 300 yards of topsoil. Upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to continue the hearing to June 12th.

Returning to discussion on 731 Martins Pond Rd., upon a motion by P. Morrison, seconded by B. Clements, it was

VOTED: to issue a negative #3 Determination, providing the applicant allows Commission access to the lot during construction, erosion control measures are in place, and that an NOI be filed if work on the proposed house or septic system is within the 100-ft. buffer of the vernal pool on the site, and actual elevation datum is provided on the plan if feasible.

7:45 p.m. - 147 Lowell Rd. RDA continuation

Neither Peter Olson nor consultant Sean Hale of Ross Associates was present. Commissioners indicated Mr. Hale found there was no wetland present due to the lack of wetland vegetation. He did agree, however, there were hydric soils below the pond. The applicant has agreed, however, to fill in the pond which leaks and started to spill over during the recent rain event. M. Giguere noted it may be a marginal wetland with jewelweed patches below the pond in what could be considered former pasture. The site appears hydric below the dam and has been mowed. It would definitely be wetlands filling under the original plan of 2001 which clearly delineated wetlands in the area of the pond. B. Easom expressed reservations because he anticipates the use of heavy machinery at the top of the hill and thought the scale of the project may require an NOI. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a positive #5 Determination in which the area is found jurisdictional under the Bylaw but no NOI will be required providing the applicant follows the conditions outlined in Stormwater Management Permit #2007-06, restores the pond to existing adjacent grades, all activity is enclosed within a circle of haybales/silt fencing and that no further sediment is allowed to enter the intermittent stream, the work is done at a dry time of year, and vegetation is re-established across the entire site prior to late fall, 2007.

If the applicant fails to follow the above conditions to fill in the pond, the Commission will require the filing of an NOI. B. Easom voted in the negative, but the motion carried with all others voting "aye".

8:00 p.m. - 1 Lost Lake Dr. DEP #169-978 continuation

Both applicants, Chris Tofte and Dana Lorden, were present. Mr. Tofte reported that a representative from DEP had visited

the site two weeks ago. She thought the siltation fence was adequate and noted that the underground propane tank was acceptable in the wetland buffer under state law. She was not aware of the limitations put on the site by Natural Heritage to assure that turtles are not disturbed. Natural Heritage specified the landscaping was not to be completed until after October. Clerk B. Easom read an email into the record from MaryAnn DiPinto of DEP dated April 30th. According to Mr. Tofte, she did not think the applicant should be required to pay the \$500 for filing the Notice of Intent. Ms. DiPinto wants to see the site stabilized as soon as possible with the driveway paved and grasses planted.

Mr. Tofte complained it is difficult to show houses with haybales across the driveway. Mr. Morrison pointed out the email from Ms. DiPinto specifically calls for haybales which is what the Commission has requested all along. He indicated that had the applicant followed the submitted plans, we would not be here tonight.

B. Clements thought generally the letter from DEP makes a lot of sense, but the problem is Natural Heritage's position on the timing of the landscaping. The stabilization should have been done before May 1. Mr. Clements indicated the Commission would not authorize something to go forward if there is a conflict with Natural Heritage's opinion. C. Auman pointed out the local Wetlands Protection Bylaw prohibits underground fuel storage in the wetlands buffer, and this is a local, not a state, regulation. P. Morrison protested the lack of adequate erosion controls started last August and the issue of haybales across the driveway began early too. It is a two way barrier, 1) to control sediment and 2) to keep turtles out of the site. The haybales are necessary until the site is stabilized. It was noted that fines are continuing because the haybales have still not been placed across the driveway. Mr. Lorden promised they would be in place by tomorrow. He asked if it would be possible to install them in a horseshoe shape. Commissioners indicated they wished to have a siltation barrier protecting the wetlands. Mr. Lorden said it is his intention to plant trees per the landscaping plan.

The Commission requested an engineered plan showing the proposed work which had already been done. This does not have to be an as-built plan, but it can be. E. Owen suggested using a tube filled with wood chips to control erosion, noting the Commission is willing to work with the applicants to resolve the control of sedimentation. Mr. Owen thought these siltation logs might be available at the Bay State Water Works in Littleton.

B. Easom summarized the Commission's position, suggesting contact with Natural Heritage to determine whether they are willing to allow the landscaping to occur after May 1, the deadline stated in their most recent letter. Any correspondence from them should be copied to the Commission. In the meantime, haybales should remain across the driveway when no one is working at the site. P. Morrison urged that they do nothing until the siltation barrier is taken care of. Removal of the propane tank would have to be in accordance with the local Bylaw. The addition of a driveway in the buffer is also a problem in the proposed plan. Mr. Lorden said they plan on getting the driveway paved in a week or so. Members said no work should occur on the stream side of the silt fence. Commissioners asked if this was their first house, and Mr. Tofte and Mr. Lorden said they had built many houses, but usually in New Hampshire.

B. Clements advised clarifying the issue of fines. When the fines were originally stopped, upon the filing of a Notice of Intent, the amount had accumulated to \$1,600. These have not been paid, and the applicants were again advised they are accumulating at the rate of \$50 every other day once the second Enforcement Order was issued. The Enforcement Order was issued because the original plans were not followed and sediment was crossing the road. Mr. Tofte protested that Groton required the water main be installed at that location. B. Clements added he would be looking for the payment of fines. Mr. Tofte said this was something for the courts to resolve, and P. Morrison pointed out the recent fines remain outstanding. B. Ganem noted the applicant does not have an Order of Conditions. DEP has a plan showing the field changes, and Mr. Lorden questioned why an as-built plan was necessary showing everything at final grades. H. Estes asked whether he understood why he was asked to file a Notice of Intent. Mr. Lorden said he didn't agree with it, but he had filed it. Chairman Owen added he originally suggested the applicants access the site from Lowell Rd. and it looks as though that was good advice. Commissioners decided they had covered what needs to happen and suggested the applicants have MaryAnn get in touch with B. Ganem with any questions. With the applicants' concurrence, upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to continue the hearing to May 22nd.

8:15 p.m. - 60 Boston Road, DEP #169-974 continuation

The applicant has requested a continuation, and upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to continue the hearing to May 22nd.

B. Clements abstained from the vote.

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

VOTED: to authorize the installation of the identification sign for Flavell Crossing by Bruce Dubey.

C. Auman abstained from the vote as Mr. Dubey is his neighbor.

B. Ganem reported two bids were submitted for the hayng of the west side of Surrenden Farm - \$20/acre from the Smigelskis and \$360 from John Greenhalgh. B. Clements asked how important the dollar amount is. He noted John Greenhalgh has done this work for several years, and it would be convenient for him to be able to use the barns near the site. He commented he thought Mr. Greenhalgh relied upon this work as part of his livelihood. P. Morrison pointed out the Smigelskis would be improving the soils. He thought theirs was a bigger operation with more equipment and more reliability. C. Auman added the Commission will have to justify why we are doing something if we do not go with the highest bidder.

B. Clements asked if it is our objective to improve the land and to benefit agriculture as the use of herbicides could damage wildlife. P. Morrison, with a second by B. Clements, made a motion to accept the Smigleski bid for a one year term with the intent of turning it into a longer term lease once we figure out the mechanics. B. Clements questioned whether crops could be raised without the use of herbicides. P. Morrison pointed out the Commission has a fiduciary responsibility, and we cannot change the bid responses now. The Smigelskis are offering \$720 per year (\$20 for 36 acres), but they anticipate a number of years to bring the field into full production. M. Giguere objected to committing the Commission to a long term process. P. Morrison withdrew his original motion and made a second motion, seconded by B. Easom, to

VOTE: to approve a one year contract for \$720 with the Smigelskis for the haying of the west side of Surrenden Farm.

B. Clements voted in the negative, E. Owen abstained, and the remaining six members voted in favor of the motion.

The Commission visited the new trail bridge at Groton School on May 5th. Questions have been raised about the safety of the bridge for horseback riders. P. Morrison recommended a box frame be placed at either end of the bridge to create a ramp. The frame should be filled with compactable gravel or soils. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to authorize Groton School to install a box frame to act as a ramp at either end of the trail bridge. The box will prevent materials from migrating into the wetland resource area and will be filled with compactable soils or gravel.

The Commission has received a request from resident Leo Laverdure for an informal discussion prior to filing for work on the Ogilvie land on Chicopee Row. These parcels were previously reviewed by the Commission in connection with a Request for Determination of Applicability for access to do septic soil testing. It is likely this will be filed as a limited project involving a wetland crossing. Approval of limited projects is discretionary under the state Wetlands Act. E. Owen added the Commission will have to determine whether it is of value to the Town. Members agreed this is a tough site that could involve a lot of money to engineer with no guarantees of a permit in the end. B. Easom urged the Commission not to stonewall the applicant. M. Giguere asked if the Planning Board holds informal discussions before plans are presented, and B. Clements said it is likely to be a very limited discussion. In response to a motion by B. Clements to have a GPR representative and Mr. Laverdure in for discussion, P. Morrison said he did not want to require the applicant to have an engineer present. Upon a motion by B. Clements, seconded by B. Easom, it was

VOTED: to have any person(s) interested in purchasing the lots in for a discussion.

P. Morrison abstained from the vote.

Conservation Assistant B. Ganem explained the Commission has received some complaints about the Truax lot at 124 Mill St. The owner is repairing and selling pallets and has a number of them stacked on the property. While there is a stream at the

back of the site, the owner maintains there is no work occurring near the wetlands. Commissioners agreed to include the site on the next site walk.

Regarding the Academy Hill deed and Conservation Restriction, member B. Clements expressed reservations about the clause dealing with the liability of the Town for damages to the land. C. Auman added Pg. 8 could be a problem and asked whether the Town would be liable in the event something catastrophic occurred. It seems as though the state wants the burden to fall on the owner of the property. Natural Heritage will be able to define areas that are off limits because of wildlife. Bikes are not allowed, but it appears hunters with dogs would be permitted. The owners of the land can make rules and regulations, but generally Fisheries & Wildlife will want to allow hunting unless there is a compelling reason it should not be. The Commission will have the option. Commissioners agreed to postpone approval of the documents until Town Counsel weighs in on the liability issue.

B. Clements pointed out the Commission should consider annual inspections on land for which the Commission holds Conservation Restrictions. Maintaining a record of inspections is also important. B. Easom noted the process of gathering baseline documentation for each parcel was begun last year, but suggested perhaps another route should be pursued. P. Morrison indicated that the New England Forestry Foundation has property stewards who inspect, fill out a form, and generally are aware of what is happening with their individual properties. Getting people interested in doing this is difficult.

B. Easom said the group that met last year had decided to do the CR work after Saturday site visits. He suggested resuming the Saturday visits. The Commission could also consider placing an article in the newspaper requesting stewards for conservation-restricted property. They could be associate members who identify hazards or encroachment issues. As an example, member Easom stated his wife has been mowing the Kaileys Way entrance, but it was noted this is actually a property owned by the Town. B. Clements commented there are legal liability issues for the Town if CRs are not appropriately monitored.

A workshop on stewardship of conservation-restricted lands is to be held at the Doyle Center on June 2nd. Three members - Holly Estes, Bruce Clements, and Bruce Easom - expressed an interest in attending what is likely to be a free workshop. M. Giguere noted he has been using the Site Survey Form for his visits to Town-owned conservation parcels.

B. Clements reported the Coverts weekend workshop was intensive and very worthwhile with excellent speakers on forestry management for a healthy forest and wildlife habitat. It included a visit to a farm which was putting these techniques into practice.

Returning to the subject of the flooding experienced at 901 Townsend Rd., C. Auman urged that the Selectmen be notified and perhaps they can exert pressure on legislative representatives and the MBTA. It appears jurisdiction would have to be established as Townsend has the culvert, but the wetlands problem is in Groton. E. Owen suggested contacting the MACC Forum. B. Easom pointed out there is no downside in recommending the situation be cleaned up. It was agreed to send a letter to the Selectmen outlining the problem. H. Estes expressed reservations about how quickly the MBTA can act and thought a joint letter from the Towns' Selectmen might have a greater impact. The Groton Board of Health has been notified of the issue, and they may have some influence if it is a question of public health or safety.

Chairman Owen submitted a letter of resignation effective June 1. Commissioners urged him not to resign until there is a replacement. An advertisement for an additional member has been placed in the *Groton Herald*. B. Easom reported he ran into an individual on the Acorn Path trail who may be interested in the opening, and he will attempt to contact him. It was noted that E. Owen cannot continue on the Earth Removal Advisory Committee if he is not a member of the Conservation Commission according to the regulations associated with that Bylaw.

There being no further business, the meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as amended 5/22/07.