

GROTON CONSERVATION COMMISSION

Minutes - Open Session

December 9, 2008

Chairman Marshall Giguere called the meeting to order at 7:00 p.m. in the 2nd floor conference room in Town Hall. Members Craig Auman, Bruce Easom, and Peter Morrison were present. Wayne Addy arrived at 7:01 p.m., and David Pitkin at 7:02 p.m. Member Ryan Lambert was absent. Conservation Assistant Barbara Ganem was also present.

7:00 p.m. – Mavilia/Redskin Trail RDA continuation

Resident Michael Mavilia stated the tree he wishes to remove is hollow and has been eaten by ants.

(W. Addy arrived at 7:01 p.m.)

He would like to cut the tree down before it falls and destroys his dock. The other component of this filing is the installation of a stockade fence to provide privacy. He plans to remove the railroad ties and use them for retaining walls or a garden at his house across the street from this property.

(D. Pitkin arrived at 7:02 p.m.)

C. Auman noted the Commission prefers that stumps be left in place. Members reminded Mr. Mavilia that his dock needs both a wetlands permit and a state Ch. 91 license. For an existing dock some kind of documentation of how long it has existed is necessary. Upon a motion by C. Auman, seconded by B. Easom, it was

VOTED: to issue a negative #3 Determination in which the tree stump shall be left in place, the applicant files for the dock, and the railroad ties are removed off site.

Upon a motion by C. Auman, seconded by W. Addy, it was

VOTED: to approve the Executive Session minutes of November 22, 2008 as drafted.

B. Easom abstained from the vote.

Upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to approve the Open Session minutes of November 22, 2008 as amended.

B. Easom abstained from the vote.

Upon a motion by C. Auman, seconded by W. Addy, it was

VOTED: to approve the Open Session minutes of November 25, 2008 as drafted.

M. Giguere and D. Pitkin abstained from the vote.

Upon a motion by C. Auman, seconded by W. Addy, it was

VOTED: to approve the Executive Session minutes of November 25, 2008 as drafted.

M. Giguere and D. Pitkin abstained from the vote.

Upon a motion by B. Easom, seconded by W. Addy, it was

VOTED: to issue an Order of Conditions for DEP #169-1004 for 102 Weymisset Dr. under the Wetlands Protection Act.

Upon a motion by B. Easom, seconded by W. Addy, it was

VOTED: to issue an Order of Conditions for DEP #169-1004 for 102 Weymisset Dr. under the Groton Wetlands Protection Bylaw.

7:15 p.m. – 276 West Main St. RDA

Homeowner Eric Huoppi explained he wished to cut down several storm-damaged trees and clear the logs and brush. He does not plan to bring in equipment and will attempt to preserve saplings that have been bent over as he wants to have a treed buffer between his neighbor and his house. He intends to have three burn piles and to leave one foot high stumps. B. Easom asked if any trucks will be used to remove the wood. Mr. Huoppi replied “No, the work will be done by hand with a chain saw with the brush moved to the burn piles.” Mr. Easom encouraged him to leave some of the slash on the forest floor as it provides good habitat and will protect the soil for new growth.

Mr. Huoppi stated he will rake the ash piles off and then re-seed the burn areas. Mr. Morrison recommended distributing any wood chips throughout the site. Upon a motion by D. Pitkin, seconded by C. Auman, it was

VOTED: to issue a negative #3 Determination in which the applicant shall minimize the burn piles and keep tree stumps above a foot in height.

In discussion on the Order of Conditions for the Gibbet Hill Restaurant sewer conditions, members noted there is an outstanding Order for the construction of the restaurant itself. The applicant has ignored a previous letter about this issue. B. Easom and P. Morrison did not feel it appropriate to tie this Order into the outstanding Order. Upon a motion by B. Easom, seconded by P. Morrison, it was

VOTED: to issue an Order of Conditions for DEP#169-1005 for Gibbet Hill Farm LLC,

striking conditions #21 and #25 and re-working condition #44 under the Wetlands Protection Act.

P. Morrison acknowledged there remains a snow removal problem at the site as they are currently pushing snow into the wetland. There are designated places to stockpile snow outside of the buffer zone. Upon a motion by B. Easom, seconded by W. Addy, it was

VOTED: to issue an Order of Conditions for DEP#169-1005 for Gibbet Hill Farm LLC striking conditions #5 and #11 under the Groton Wetlands Protection Bylaw.

7:30 p.m. – Fitchs Bridge Rd. RDA

Gary Wilkins stated he wished to improve the access to his farm land on Fitchs Bridge Road for his farm equipment. He pointed out he was repairing a Town road (Fitchs Bridge Rd.) at no cost to the Town. Groton Highway Surveyor has submitted correspondence in which he recommends at least an 8-in. layer of road millings to prevent potholes from re-occurring. Chairman Giguere mentioned that DEP does not consider road millings to be hazardous waste providing they are spread. Mr. Wilkins noted that he was filling holes where gravel washed out during spring flooding, using the same materials as the Town has used on other roads. He did not think he would be able to spread the stockpile until the weather warms up. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue a negative #3 Determination in which the applicant is required to spread the materials as soon as is practical, weather permitting, and attaching the letter from Highway Surveyor Tom Delaney.

Members thanked Mr. Wilkins for his stewardship of the land, and C. Auman commented that local farming is likely to become increasingly important with the rise in fuel prices and fertilizer costs. Mr. Wilkins said his farm had been a topic for a locally made movie which was featured in the Lowell Sun, and this publicity has helped him stay afloat.

7:45 p.m. – Cremin/52 Redskin Trail RDA

Resident Ron Cremin reported he has put hay on the side of the hill where the excavation occurred and plans to seed it and put in plants in the spring. Member Easom urged him, in the future, to talk with the Groton Conservation Commission before doing any work near Lost Lake/Knops Pond. Some of the trees that were removed are outside of the 100-ft. buffer zone however. P. Morrison reminded Mr. Cremin of that filing a Request for Determination of Applicability is a relatively simple process. Upon a motion by C. Auman, seconded by B. Easom, it was

VOTED: to issue a negative #3 Determination requiring the site be stabilized with vegetation and, for future projects, the applicant is required to file before doing the work.

Mr. Cremin indicated that we have had one serious rainstorm, and the slope has not been undermined. Chairman Giguere added the Commission does not want to see any silt going into the Lake.

B. Ganem reported that a Certificate of Compliance has been requested for 2- 8 Hollis St., DEP #169-973. A letter from their consultant confirms what work has taken place, and the Certificate could indicate under ‘Complete Compliance’ that no additional work is proposed and under ‘Partial Compliance’ exactly what components were completed. There are continuing conditions as well. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue a Certificate of Compliance for DEP #169-973, checking both Complete and Partial Certification and including the ‘in perpetuity’ conditions.

In discussion on potential forestry operations on conservation land, B. Easom recommended dealing with a forester, such as those available through New England Forestry Foundation, who will prepare a forestry management plan in exchange for part of a timber sale. He felt it was best to have the same forester prepare the management plan and the cutting plan. This also involves approval from the Natural Heritage Program and then the cutting plan is sent out for bid to loggers. The Farmers and Mechanics parcel is just south of the Taisey parcel along the Nashua River which was recently logged. Chairman Giguere questioned whether the Williams Barn forestry management plan is up-to-date and ready to be bid out. B. Easom suggested B. Ganem get quotes from licensed foresters to prepare a plan with or without their participation as the forester.

8:00 p.m. – Baker/Island Pond Rd. NOI, DEP #169-1007

Surveyor Stan Dillis said he has the green receipt cards which he will bring into the Conservation office at a later date. A letter from the Natural Heritage & Endangered Species Program arrived today addressing the filing under both Wetlands Protection Act and the Massachusetts Endangered Species Act issues. Mr. Dillis stated this 9-acre lot is owned by Mr. Baker and two siblings. The plan for the development of the lot provides for a driveway that will follow an existing road and involve the construction of a single family house and septic system. Two dry wells are proposed to handle roof runoff. There will be a berm on the wetlands side of the driveway to direct surface runoff into a catch basin and then into a sub-surface basin for infiltration. All of the proposed work for the house and septic system is outside the 100-ft. buffer zone. The septic system is out of the Riverfront Area. The wetland delineation was reviewed under an Order of Resource Area Delineation. The plans include a recharge system, cross section of the driveway and slope restoration, and a construction sequence.

Chairman Giguere expressed dismay at the amount of disturbance that has already occurred on the lot in connection with testing at the site. He felt that more of the area was torn up than the Commission was led to believe. He questioned the square footage of Riverfront Area on the lot, as well as the amount that will be disturbed with the proposed project. Mr. Dillis estimated that 7% of the lot will be disturbed as a result of the project, and Mr. Giguere reiterated the question about how much of the lot is within the Riverfront Area.

C. Auman said he, too, was disappointed at the amount of damage already done to the land and trees just to perform testing. He noted there were foot deep ruts at the site. S. Dillis explained these were due to the excavator. Mr. Auman pointed out there is a likely vernal pool on the property, and he felt a wildlife habitat study may be necessary to determine the potential impact to wildlife from the proposed project. A review of the drainage infrastructure and calculations

may also be necessary. A paved driveway is proposed, according to Mr. Dillis, because this is the best way to handle runoff for a driveway with a slope over 5%. Paving is also required by Town regulations.

A retaining wall is proposed north of the house and along the driveway. Its height will be approximately 5 ft. A Cultec infiltrator system placed on stone and filter fabric is planned for the infiltration area. The catch basin will require maintenance annually or when the sediments reach more than half the sump. C. Auman indicated the Groton Wetlands Protection Bylaw prohibits building within 100 ft. of wetlands or 200 ft. of streams unless the proponent can demonstrate there is no harm to the resource area itself or to wildlife. M. Giguere questioned whether any type of mitigation was possible. The cuts and fills for the development will balance, and all materials will remain on the site. The Bylaw limitation on grading applies to the Riverfront Area. S. Dillis said the driveway will generally follow the existing grade, and he would be happy to provide a profile. C. Auman noted that buildings are prohibited within 200 ft. of a stream under the Bylaw and so the house would not be allowed in its present location. It will be necessary for the proponent to provide documentation that there is no other route and that there is no harm to the resource area or to wildlife.

Attorney Bob Collins, representing applicant Richard Baker, stated it may be possible to move the house out of the 200-ft. Riverfront Area, but it is likely to involve more disturbance. He assured the Commission they could look into how the plan could be massaged. M. Giguere noted Natural Heritage has weighed in, but they are focusing on rare wildlife only. Mr. Collins indicated they would arrange for an analysis and investigate to what degree they can mitigate for the project. Mr. Auman said the house cannot be within 200 ft. of the stream as the Bylaw is non-negotiable for structures. S. Dillis said he would look at the whole site to see if there is some upland on the other side of the vernal pool, but it would require a very long driveway. D. Pitkin asked if there were any plans to replicate disturbed habitat, and M. Giguere said this would be required if they actually disturb a resource area.

Charles Todd (104 Island Pond Rd.) read his letter of December 9, 2008 stressing the sensitivity of the area and noting that an extensive gravel operation was originally proposed on the parcel. His family has offered to purchase the land from Mr. Baker in order to put portions of the land into conservation. Chairman Giguere thanked him for his input and asked if anyone else in the audience had comments. Robert Pine, on behalf of the Groton Conservation Trust which owns the adjacent Red Line property, also read a letter (dated December 9, 2008) for the record. David Black, a trustee of the Groton Conservation Trust, said he was delighted to hear the Conservation Commission is interested in hiring a wildlife specialist as he is aware of at least two rare species and two recently de-listed species that utilize the area, and there is potential habitat for many others. He felt this is a very important wildlife corridor where disturbances as close as 50 ft. could seriously impact habitat values. Dr. Black said he looked forward to reviewing a study across the entire spectrum of wildlife in the context of landscape ecology.

Sean Gaines (16 Island Pond Road) concurred with the need for an environmental study, especially within the context of the already aggressive approach to testing at the site. He noted the applicant failed to comply with the Commission's directive about having haybales on the site and no overnight parking to minimize impacts during the testing phase. He submitted

photographs showing an excavator parked within 44 ft. of the wetlands and expressed a lack of faith the applicant will comply in the future. He felt the credibility of the builder, owner, and attorney were in question, especially with regard to environmental impacts.

Bob Collins stated that, for the record, he has not represented the owner for work across the street. S. Dillis agreed that it was an oversight not to have haybales at the site, but the contractor had mechanical problems with his excavator and was not able to move it off site after the completion of testing. The machine was vandalized that night when hydraulic lines were cut. M. Giguere noted the contractor did not report what had happened to the Conservation office at the time.

Andrew Jenner (24 Island Pond Rd.) maintained that haybales should have been supplied. B. Easom pointed out both Mr. Baker and Mr. Dillis responded immediately when notified of the problem, and Mr. Dillis said no erosion was observed. Mr. Baker also indicated that he paid a \$50 fine in connection with the violation. He maintained that the Todd's offer to purchase the land for \$115,000 was not in keeping with the assessed value of \$280,000 for a potentially developable lot. He also felt that their purpose in purchasing the land was to meet zoning requirements so they could construct a downstairs bedroom. He assured the Commission he intends to comply with all rules and regulations imposed by the Town as he has made a fairly large investment in the preparation of documents for permitting purposes.

Attorney Collins stated there are several matters which should be looked into before returning to the Commission for discussion on the non-negotiables on the table. Mr. Giguere pointed out the assessed value of a property frequently does not coincide with the actual value. With the applicant's consent, upon a motion by B. Easom, seconded by P. Morrison, it was

VOTED: to continue the hearing for DEP #169-1007 to January 27, 2009.

8:15 p.m. – Haywood/15 Moose Trail RDA

Resident Clifford Haywood explained that he has cleaned the property of accumulated debris and done some landscaping. He noted he has been so busy doing everything that he hasn't had an opportunity to follow procedure. Chairman Giguere said that conditions were looking a lot better on this property. Mr. Haywood stated he has installed an 8 ft. long berm that is raised about 38 in. which has been planted with several trees. He observed that rocks have been placed at the boat ramp to prohibit access and indicated he has no problem with blocking access for snowmobiles and boaters, but he does like to have his firewood delivered on the ramp side of his property. He requested permission to install a post and rail fence that will involve the digging of several post holes. Mr. Giguere reminded him of the need to let the Commission know in advance of work near the Lake and noted the filing process for a Request for Determination of Applicability is relatively simple.

Member Easom thanked Mr. Haywood for cleaning up the site as there is always a worry that something could leach into the Lake. He also apologized for the Commission having caused rocks to be placed on his property and assured Mr. Haywood the matter would be straightened out. Mr. Haywood estimated the fence will go almost to the first rock that blocks access to the boat ramp. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue a negative #3 Determination requiring that the fence be critter-friendly.

8:30 p.m. – Lowell Rd. Notice of Intent continuation, DEP #169-1006

Attorney Bob Collins and Engineer Steve Marsden were present. Mr. Collins stated that DEP lost the filing but cashed the application check, and that is the reason it has taken so long to assign a DEP number. Mr. Collins explained he has looked into alternative accesses to the lot. Next door neighbor John Sheedy has no interest in an easement across his property to provide access to this lot. The neighbor on the other side, Chuck Brindle, has a small lot, and Mr. Collins maintained that an additional driveway there would have abysmal sight distance entering onto Rt. 40.

Engineer Marsden indicated he has reduced impacts from the construction of the driveway. Chairman Giguere read a letter from DEP outlining the items which DEP is looking for, including a 401 Water Quality Certificate and possible filings with the Army Corps of Engineers and MEPA. Mr. Marsden said all of these concerns are eliminated if the amount of wetland filling is below 5000 SF. The revised plan has a 10-ft. wide driveway with 1-ft. shoulders. The entrance has been shifted slightly, using more dry land. This eliminates over 2000 SF of filling. The length of the driveway has been reduced and the septic system re-designed.

In response to the Commission's concern about maintaining the flow of water across the site, Mr. Marsden added leaching catch basins at the low points in the driveway. There will be a 1-ft. wide retaining wall with guard rails on either side of the driveway. Each culvert will be placed on a crushed stone base. The culverts will allow water to equalize across the site, addressing the Commission's concern that the driveway could act as a dam. Mr. Marsden said he was no longer filing this as a limited project, and Mr. Collins added the plan is to create more wetlands than are being disturbed. Mr. Marsden and Mr. Collins indicated they had looked at all possible measures for approaching the site and had reduced the amount of disturbance by a third with a major re-design.

Chairman Giguere pointed out the applicant is still crossing a wetland in order to get to an upland so the project should be viewed as a limited project. He questioned whether the area between the haybales was included in the calculations as this is considerably more than 5000 SF of disturbance – probably as much as 10,000 SF of wetland disturbance. He added that the streams on the property were not shown on the plans, and any crossings should be done according to the state's stream crossing guidelines. The guidelines recommend that culverts be 1.2 x the width of the stream and have open bottoms. Mr. Marsden said no streams show up on the USGS map. He noted that 4-ft. open bottom box culverts are proposed, and he thought the streams were about 3 ft. in width. The downstream culvert in the Sheedy's driveway is 12 in. Members noted that a wildlife habitat evaluation is necessary and that the grading associated with the septic system and driveway exceeds the definition of minor grading in the Bylaw. The Bylaw also requires a 3 to 1 replication ratio.

Chairman Giguere gave Mr. Collins a copy of the comments he prepared for the previous meeting when the hearing was continued. The limit of disturbance will be a rock wall in front of the house to discourage future encroachment into the wetland. P. Morrison requested the BVW logs around wetland flag 209. B. Easom questioned whether the culverts were included in the

calculations for the amount of total disturbance, and Mr. Marsden replied they were incorporated into the calculations. The shade and interference with wildlife movement created by culverts does constitute disturbance of the resource area.

C. Auman pointed out that the fact is the applicant has created his own hardship when the opportunity was there for access to both lots. He questioned at what price the neighbor might accept having an easement across his property. Mr. Collins indicated he was disappointed things did not work out with Mr. Brindle. The open issues remain the 3 to 1 replication ratio, the grading within the buffer zone, and the limited project designation which is the only type of wetland filling allowed under the Bylaw. Mr. Auman confirmed that he has a problem with an applicant who created his own hardship and the significant amount of disturbance in a wetland.

Mr. Collins said the revised plan will be sent to DEP and he would try to talk to Mr. Sheedy again. B. Easom asked how high the driveway surface will be above the wetland, and Mr. Marsden estimated it to be 1 or 2 ft. Mr. Easom questioned whether beaver impoundments downstream could result in this area becoming flooded as he has noted flooding at Schoolhouse Rd. The total width of the driveway will be 14 ft., allowing for 10 ft. of pavement, 1 ft. shoulders, and 1 ft. retaining walls. The retaining wall will consist of 8 in. blocks stacked about 2 ft. tall. The applicant's consultants agreed to work on the response to DEP's and M. Giguere's letters.

The owner and applicant, Bill Gale, explained he and his wife purchased the land in good faith as a buildable lot. He has lived and worked in Groton for 77 years although he is now semi-retired and has moved out of town. He expressed the hope that the Commission will consider allowing the project within the law. Chairman Giguere urged him to consider options, particularly whether it is a doable project. He pointed out it is a very challenging site and the Bylaw must be considered. He expressed a preference for not continuing to make changes unless we can come to an agreement. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to continue the hearing for DEP#169-1006 to January 15, 2009.

In discussion on the Crosswinds WHIP grant, B. Ganem reported that saplings continue to re-sprout and the times for mowing are limited and possibly disruptive to turtles. At the same time, the brush mower tends to scarify the land surface, making it more suitable for nesting turtles. Herbicide applications may be more effective treatments for woody growth and brambles at the site. The pitfalls of using an herbicide include: dealing with the public, questions about how the herbicide acts, how long it acts, is a cut stump or foliar application more appropriate, time of year, costs, re-entry time for people, pets, amphibians, etc. The WHIP grant may be modified if Commissioners feel the site can be more appropriately managed with an herbicide application. This would be an adjunct to the current every-other-year mowing regime. Members felt that using chemicals would be a very hard sell with all the neighbors to the property. B. Easom recommended that we continue the mowing and reserve the use of herbicides for the treatment of invasive plants. P. Morrison added that mowing returns nutrients to the soil. Members asked whether it would be appropriate to substitute mowing for the planned 2009 re-seeding with native grasses.

B. Ganem informed Commissioners that she had visited Ames Meadows with farmers Frank and Sue Ventura who have expressed an interest in leasing the land for organic farming. It appears that the existing field on the property is between 3 and 5 acres in size. They questioned whether it would be possible to withdraw water from the Nashua River if they needed to irrigate their crops. Many farms do this routinely, and it is not likely to affect the resource area unless they are withdrawing from a small source such as a vernal pool. Commissioners strongly supported the idea of having this parcel farmed, but expressed a preference for more details before making a final decision. P. Morrison said there has been a history of using the Town Forest to access the parcel and recommended checking the deed to determine whether this use is in conflict with wording in the document. B. Ganem anticipates the Venturas will be providing more details in the near future.

Leslie Chaput has contacted the Commission office with her plans for the Shattuck/Lewis property on Martins Pond Road. She has decided she does not want to continue grazing her horses next year, but is willing to try to mow the property in December. Members requested a confirmatory communication go to Ms. Chaput to avoid any conflict in the future. M. Giguere said the Commission can use the licensing process for managing the land as either farm land or pasture, usually for a 3 to 5 year period, without going to Town Meeting. Concord and Westford have similar processes in place. B. Easom pointed out that for the management of Surrenden Farm, a lease of 10 years is preferable to assure continuity. Upon a motion by B. Easom, seconded by P. Morrison, it was

VOTED: to submit a warrant article for the upcoming Town Meeting in which the Conservation Commission will request authority to enter a 10-year lease for the management of the Surrenden Farm West property.

Upon a motion by W. Addy, seconded by B. Easom, and a roll call vote of W. Addy, B. Easom, C. Auman, D. Pitkin, P. Morrison, and M. Giguere, it was

VOTED: to enter Executive Session for the purpose of discussing a land purchase, not to return to Open Session at adjournment.

There being no further business, the meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as drafted 12/23/08.