

GROTON CONSERVATION COMMISSION

Minutes

December 23, 2008

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

7:00 p.m. – Appointment/Brian Milisci Nashua River Rail Trail modification

Brian Milisci of Whitman & Bingham and Rick Nikitas of the Department of Conservation & Recreation were present to discuss the bid specifications for DEP #169-964 for proposed improvements to two viewing areas along the Nashua River Rail Trail. Mr. Milisci explained the Order of Conditions was issued in August 2006, but the work has not been done due to budget constraints. For two viewing areas on the Groton School Pond the project will involve the rescue of several granite blocks which have fallen into the water. They plan to recreate the slope with a plateau for a seating area. Mr. Nikitas said it would be possible to do the work with in-house contractors, and 7 pages of details were included in a letter, dated November 10, 2008, from Mr. Milisci. Instead of pulling the granite blocks out of the water, they plan to use them as the edge to contain the riprapped slope which will stabilize the soils. Concrete benches (940 lbs.) will be anchored to a slab to provide seating. There will no change in the scope of the work, but the granite stones will be moved around. The proponents expressed the hope that the Commission would be amenable to the change in details and find it unnecessary to re-open the hearing.

Chairman Giguere pointed out that boulders were originally proposed to retain the slope, and the original detail called for crushed stone about which the Commission expressed concern. Mr. Nikitas explained the details now call for a graded dense material base similar to stone dust but mixed with a polymer stabilizer. This material has been used in walking trails and will keep the dust down, and traffic can run on it. The areas are about 400 square feet each in size. Mr. Nikitas indicated the product is produced in Amesbury or Newburyport. M. Giguere questioned whether it is permeable, and Mr. Milisci said “yes”. The platforms for the benches will be retained by a short retaining wall on the downhill side.

C. Auman said he is familiar with the site, and they are very popular spots for people using the trail. It is anticipated that most of granite pieces will either be re-used or removed from the water. The areas must be wide enough but still discourage people from walking down to the water. He noted that people walking to the edge of the water and causing soil erosion and the question of how the riprap will be held in place were the chief issues. Mr. Milisci said erosion will be controlled by the placement of 15 – 18” riprap forming a base about 2 ft. thick underlain with filter fabric. They have eliminated the use of crushed stone.

P. Morrison thought these three issues were well addressed in the revised design details. B. Easom raised questions about the original construction – were the granite blocks brought in or

were they left over from railroad construction, and why did they fail? R. Nikitas stated there has been some erosion from the surfacing and foot traffic, but he felt the foundation for the granite blocks was inadequately designed in the first place. He cautioned that the Commission needs to be aware of the geology of the site. P. Morrison pointed out the railroad property widened out in this area, and there clearly had been filling in the wetland to build the rail line. He indicated the viewing areas were designed to take advantage of this widened area. No additional filling of the wetlands is proposed.

B. Easom thought this would be a good opportunity to see stone dust tested out as a trail surface. He questioned whether it would remain permeable and how long the binder will last. Mr. Nikitas said it would be necessary to broadcast the liquid stabilizer every few years. Mr. Easom asked if any of the ingredients are toxic and then requested the MSDS sheets for the product. Versa-Lok concrete blocks will support 2 ft. of soil. The blocks will not be obvious as only the tops and wing walls will be visible as the grade drops off.

Mr. Nikitas said it is their hope to do the project this spring with in-house staff although it will be necessary to rent equipment to move the granite blocks around. Smith Road is the closest access point to the work area. C. Auman requested that Mr. Milisci sign and date the submitted detail plans. P. Morrison pointed out the design is certainly within the spirit and intent of the Order of Conditions as the changes will reduce impacts to the wetlands. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to accept the minor changes outlined in the plans dated December 23, 2008 and signed by Brian Milisci, R.P.E., and not require the re-opening of the hearing.

7:15 p.m. – Gleason/Kemp St. NOI continuation, DEP #169-1003

Surveyor Stan Dillis and attorney Ray Lyons were present as representatives of the owner David Gleason. To refresh the Commission's memory, Mr. Dillis noted there had been an Order of Conditions in place which has since expired. This involved a wetland crossing for a sewer force main which was installed. The septic system is on one side of the wetland, and the house is on the other side with the force main to connect them. Mr. Dillis said that, at the time an extension was requested, the Commission noted an erosion problem and also additional wetlands were discovered on the property west of the site and across the street. The new filing is to address how the house and driveway will fit into the lot.

Mr. Dillis submitted a plan showing the watershed contributing to the stream that runs through the site. He explained that he had flipped the driveway out of the buffer and reduced the footprint of the house to 1600 SF. He indicated there were no grade changes greater than 2 ft. On the east side of the property he took a soil sample at the closest point to the house which, in his view, supported the old (2003) wetland delineation. The soils have been compacted through agricultural uses over time, but the upland soils were clearly orange. Soils were utilized in the previous delineation due to the lack of vegetation because of grazing.

Attorney Lyons stated there is deeded access for the benefit of Lot 1 for the construction of the septic system. M. Giguere requested a copy of the deed. S. Dillis also noted the sewer force main

is installed within a sleeve with connections outside the wetland area. Chairman Giguere commented that the biggest hurdle is that the house is within the 100-ft. buffer zone, and it is considered new construction under the Bylaw.

R. Lyons maintained the Commission can make a finding to approve the project if the conservation interests, such as agriculture, forestry, and wildlife, are protected in accordance with Ch. 215-5(C) of the Bylaw. C. Auman pointed out that the remainder of that section of the Bylaw Ch. 215-5(D) goes on to state the Commission may deny projects which fail to meet the standards. He asked Mr. Lyons to help the Commission understand how there is a public or environmental benefit from the proposed project. Member Auman added 1/3 of the house is within the buffer zone, and Ch. 215-7 specifically prohibits structures within 100 ft. of wetlands. Looking at Ch. 215-7 (A) 3, he questioned how a house will “not increase adverse impacts on that specific portion of the adjacent upland area or associated wetlands”.

Mr. Lyons said that allowing the project ties up the remainder of the lot permanently in accordance with Natural Heritage requirements. This would leave about 3.5 acres undeveloped. C. Auman questioned whether the owner is willing to put a conservation restriction on it.

Member Morrison commented the Commission previously permitted a house as they had a valid Order of Conditions which has since lapsed. The timing is a difficulty, but he felt the lot was buildable at one point, and he has a problem with now finding it unbuildable. He felt this was a change in the ground rules.

B. Easom said he did not have a problem with buildable vs. unbuildable as the applicant failed to delineate the wetlands correctly in the initial phase. He stated he does have a problem with grazing cattle and manure in the wetlands. If a deed restriction prevents cattle from grazing in this area, he would consider it a win.

M. Giguere questioned whether the resident at 18 Kemp St. has some kind of arrangement with Dr. Gleason. R. Lyons provided a plan of the area showing a 1.65 acre part of the wetland subject to an easement to the benefit of the owner of 18 Kemp St. In addition there is a walking easement providing access to the NEFF parcel to the west. He stated these areas are available for agricultural purposes. B. Easom expressed a preference for having a hayfield there, not pasture. Mr. Lyons acknowledged there was no way to restrict the deed, and B. Easom pointed out this was not going to eliminate nutrient loading because the cows would still be grazing there.

Mr. Lyons agreed to see if Dr. Gleason has any type of legal arrangement with Mr. Petropolis at 18 Kemp St. He acknowledged there is merit in having at least a 25-ft. buffer next to the stream. He also estimated there is approximately 1.9 acres of land not subject to the easement. C. Auman said this seems inadequate mitigation and asked whether he owns any other property with ecological value. R. Lyons explained there is a parcel of land which he is considering donating to NEFF, but placing a conservation restriction on the land would diminish its value. The parcel is currently wooded, but forestry would be allowed. Questions arose as to whether the land could be restricted until the land was sold to someone or donated to NEFF. M. Giguere wondered if this was ancillary to the whole discussion. B. Easom maintained there is no net benefit for this

project if the land is to go to NEFF anyway. P. Morrison questioned whether a right of first refusal might work in this instance.

Mr. Lyons thought this was a viable resolution with a right of first refusal giving the Commission something of value in an Order of Conditions. M. Giguere questioned whether the right of first refusal means anything in this case, and C. Auman added "particularly if the Commission does not have the funds to buy the parcel at the time." Mr. Lyons reiterated the idea could work if an offer is made for the property, but if donated to NEFF there is no problem. B. Easom urged him to look into a restriction on grazing within the 4 acres to make it worthwhile. C. Auman questioned whether 4 acres was adequate mitigation for giving up a basic tenet of the Bylaw.

Members agreed to a ten minute recess in the hearing during which time Mr. Lyons could try to contact his client, Dr. Gleason, and the Andrews deed could be downloaded from the Registry web site.

Vice Chairman R. Lambert filled in while Chairman Giguere made the necessary computer connections. Upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to approve the Open Session minutes of December 9, 2008 as drafted.

R. Lambert abstained from the vote.

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

VOTED: to approve the Executive Session minutes of December 9, 2008 as drafted.

Based on the estimates for pine signs and recycled plastic signs, Member Morrison estimated the cost of 9 signs to identify conservation areas would run about \$2400, but there are additional costs involved for shipping and handling and the installations. W. Addy urged that the signs be backed with wooden boards as they appear easy to crack with a bat. B. Ganem noted there is time to find out more about the costs before we place an order. The recycled plastic signs reuse a product that would otherwise enter the waste stream, and the company offers a 20-year warranty on the materials.

Members were asked to review the draft 2008 Annual Report and get back to B. Ganem with any changes or corrections before the end of the month.

At 8:20 p.m., the proponents for Dr. Gleason, DEP #169-1003, reassembled and the hearing resumed. The deed from Peter and Laurie Andrews was submitted for the record. The deed shows access for installation and maintenance of a septic system on Lot 1 via a 14-ft. access over the driveway and lawn. Ray Lyons explained he was unable to reach Dr. Gleason during the recess, but will ascertain the substance of the agreement between Dr. Gleason and Mr. Petropolis. In addition he will pursue the idea of a right of first refusal on Parcel A. Chairman Giguere expressed a preference to have protection tied up and a restriction on cattle grazing before the hearing is closed. C. Auman recommended that he review the section of the Groton

Wetlands Protection Bylaw that refers to a significant public or environmental benefit. He indicated he did not believe he had heard enough to make the project rise to the level of “significant”, and he did not want to set a precedent by allowing a low bar. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to continue the hearing for DEP#169-1003 to January 13, 2009.

Chairman Giguere noted there are sufficient funds in the land management revolving fund account to do a forestry management plan. Members agreed the forester should be available for a public meeting and a site walk to review the marked trees. M. Giguere said it is important that members are clear about reasoning behind this effort which could, at the same time, provide funds for additional land management or land purchases.

P. Morrison cautioned about how the Commission includes public comment in this process as it's inappropriate to have people tell the Commission what we can or cannot do on conservation land. He and B. Easom suggested including the discussion as an agenda item during a regular meeting. C. Auman added that inviting neighbors is important, and the forester can explain the purpose of the cutting and explain what is planned. Preparing the forestry management plan will involve an initial discussion with the forester so that he is clear on the Commission's goals about what is to be removed. Some of the tree cutting is likely to involve a firewood cut to thin the forest stand and maximize productivity for future sustainable harvests. The income will depend on the current market for specific forestry products.

M. Giguere said we need a forestry management plan for the Farmers & Mechanics parcel, and we could begin implementing the plan already developed for the Williams Barn Sorhaug Woods parcel. P. Morrison commented that management is an important tool especially when some of the trees are old and dangerous. Chairman Giguere preferred seeing a diversity of trees, not a white pine plantation. B. Easom stated the Commissioners must clearly be in favor of doing the harvest if we are to move forward.

Commissioners reviewed the proposal outlined by the Venturas for the use of Ames Meadow for agricultural purposes. The main problem is the access, and it appears that portions of the cart path from the Town Forest may cross onto an abutter's property. Steve Babin of the Town Forest Committee has indicated it is likely to require moving the cart path. Chairman Giguere volunteered to go before the Town Forest Committee to discuss the access. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to authorize the Chairman to seek permission from the Town Forest Committee to expand or alter the cart path so that it can provide access to the Ames Meadow conservation area.

P. Morrison said that the Commission has historically had use of this access, and he is willing to accompany M. Giguere for the meeting.

Member B. Easom reported on his meeting with Celia Riechel and Melissa Cryan of the Division of Conservation Services (DCS) concerning the Commission's recent LAND (formerly Self-

Help) grant application which was not approved. He had requested a critique of the proposal, and they informed him that a specific amount of LAND funds (\$3.46 million) were allocated and appropriated for the successful applications. However, there is a second grant round coming up. He pointed out that all of the projects were ranked on a score sheet according to specific parameters. The Groton project was one away from the cut-off, gaining 44 points out of a possible 100 and coming in at 12 out of 21 applications. Our application scored low on the working landscape category as it is not Ch. 61 land. Other demographic factors, such as median income and environmental justice, also come into play.

Mr. Easom pointed out that parking was not a specific item in the ranking, but might serve as a tie breaker if the ranking numbers between projects are close. The letters of support play no part in the score assigned to the project, but they do consider this a bridge-building exercise especially if the project involves partnerships. For instance it is possible for towns to submit a joint application.

Concerning the financial aspects of LAND funding, B. Easom said an Environmental Bond Bill in the amount of \$5 million is proposed every 5 years. The DCS will not see the funds until the governor has designated a specific amount. Ms. Riechel and Ms. Cryan said Conservation Commissions can be helpful in approaching their local state representatives for support on the Bond Bill and reminding them of the projects that have been successfully funded in their district. It is also useful to support the governor in his annual authorization for expenditures.

Applications for the new grant round are due by March 12, 2009, but the close out date for any project is still June 30th, the end of the state fiscal year. B. Easom said they need a certified copy of the Town Meeting warrant article. The project does not qualify for other grant funding opportunities, such as the Drinking Water Supply grants. They did suggest The Trustees for Reservation as a possible source of funding. The Town is not competing with MassAudubon as only municipalities can apply. The score is determined by what the facts are on the ground.

B. Easom said he was willing to re-submit an updated application. Questions arose as to whether the appraisals would have to be updated, and if two are still necessary. The landowner has to be informed that the closing date is fast approaching, and it may be necessary to approach the Community Preservation Committee for additional funds. B. Easom stated we need to address any attributes of the project that we did not document correctly in the original LAND application. This is an excellent opportunity to leverage CPC funds which are already matched by the state. Chairman Giguere thanked Mr. Easom for all his work in pulling this project together.

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

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

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as drafted 1/13/09.