

## GROTON CONSERVATION COMMISSION

### Minutes

January 27, 2009

Chairman Marshall Giguere called the meeting to order at 7:00 p.m. in the 2<sup>nd</sup> 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 - Town Forest Committee/abutters to access to Ames Meadow

Chairman Giguere explained that members of the Town Forest Committee could not be here because of a miscommunication on the posting of a board meeting so the Conservation Commission is not holding a joint meeting as originally intended tonight. M. Giguere said the Conservation Commission is in the process of investigating the access for the parcel sometimes referred to as the ‘pumpkin patch’. Part of the discovery process has revealed the access from the Town Forest is partially on private property. He indicated he would like to restrict tonight’s discussion to the Town Forest trail access as no other decisions about the use of the Ames Meadows parcel have been made.

Member P. Morrison offered a historical perspective on the property. He noted Ames Meadow was farmed by the previous owner, Marion Campbell, and was used at one point to grow pumpkins. He pointed out the access for the lot was also historically via the Town Forest. The Commission has been attempting to keep the property in field trim with mowing once or twice a year (*actually every other year*) to keep it in an open condition. He thought it would be necessary to widen the trail as it is the primary access for the Ames Meadow property.

Chairman Giguere stated the Commission would be using parliamentary rules to conduct the business of the meeting with anyone wishing to speak requesting the permission of the Chairman and identifying themselves and providing their address. Sue Bisceglia (139 Wharton Row) said she wished to clarify that she and her husband have granted the Commission access through their property in order to cut the field at Ames Meadow. P. Morrison pointed out, for the record, that this does not give the Town a right of access, but the Commission is very appreciative of the Bisceglia’s past kindness in allowing equipment access. He stressed that there needs to be a permanent access to the property, and the purpose of tonight’s discussion is to move the current Town Forest trail, which provides access to Ames Meadow, off private property.

Beth Lindstrom (161 Wharton Row) explained her husband, Ray Murphy, was unable to attend tonight’s meeting on such short notice, and she requested and received permission to read his letter into the record. (See attached letter.) She noted that commercial use of the property is a violation of the deed restriction, and she warned this was a lawsuit waiting to happen.

Chairman Giguere requested that Vin Bisceglia (139 Wharton Row) hold his comments until the direct abutters to the access trail have an opportunity to speak. Direct abutter Ned Cahoon (151

Wharton Row) said he preferred to see the access remain a single track trail. Noting abutters were quite concerned about the noise and smell when motorized vehicles were allowed to use the Town Forest, he stated that widening or moving the trail will lead to people bringing in vehicles and launching boats on the Nashua River. He pointed out there is significant wildlife use of the property, including Great horned owls and fisher. He felt there would definitely be an impact to wildlife since this trail goes through a wetland area and protested that the experience of trail users would also be impacted.

Another abutter, Dave Schwabe, (159 Wharton Row) worried that widening the trail would increase public access to the River. He did not think it appropriate to farm the land as it is in many people's backyards. He added the land was not very suitable for farming as it is muddy and equipment will sink. He echoed Ms. Lindstrom's comments that this is a lawsuit waiting to happen.

Vin Bisceglia (139 Wharton Row) submitted photographs (which he signed and dated) that show Ames Meadow can flood in the spring, summer, and fall. The drainage easements flood, and he asserted this is not farmable land. Bruce Dubey (*who has brush cut the fields for the Commission*) has had to stop before he gets to the property because of wetness. While Mr. Bisceglia stated farming is a wonderful initiative, farming this area is a disaster waiting to happen. He then presented a letter to the Commission, signed by many Wharton Row abutters.

Member Morrison set another expectation, pointing out that someone has come to the Commission with a request to lease land for agriculture. In response to a question from the audience, Mr. Morrison acknowledged he could not recall the individual's name, but it can be found in the Commission's meeting minutes. The proposal is to farm approximately 3 acres of land, and they would use a pickup truck for access.

M. Giguere said there is a long way to go to study how we will get access as the Town Forest trail goes across private property which is not right. P. Morrison added that the Commission is not proposing making the access a right-of-way as it is under the jurisdiction of the Town Forest Committee. That body makes the decision about motor vehicle use, and it could be gated and locked if that is the decision of the Town Forest Committee.

Jeff Binder (138 Wharton Row) pointed out this area is within the Riverfront Area, and the property has no agricultural exemption. He maintained it would be necessary to file to conduct farming in the area, and he questioned whether the owner (the Town) or the farmer would have to file before the Commission. P. Morrison acknowledged the Commission may have to file, but the purpose of tonight's discussion is to move a Town trail off private property as there is no established access to this property although there has been informal access via the Bisceglia property. He assured those present the Commission takes the filing of a Notice of Intent incredibly seriously, especially if it involves a stream crossing. He added he would not anticipate that engineering expenses would be paid by a farmer who wishes to use the property. Mr. Binder maintained this is a significant wildlife corridor with vernal pools, beaver dams, and eagles, and he expressed concern that the proposed use will eliminate habitat.

P. Morrison protested that residents are jumping the gun when talking about farming the land as that would involve another hearing. He pointed out there is a problem with access unless abutters are willing to grant easements and an indemnification to the Town. The Commission would not have been aware of the private property issue had someone not expressed an interest in using the land. He acknowledged the informal access via the Biceglia property may work well for brush-hogging every other year, but there are no guarantees going forward. This becomes an issue for both the Conservation Commission and the Town Forest Committee. Mr. Bisceglia said he personally considers the disturbance of this land disastrous.

Mr. Morrison indicated all abutters within 300 ft. will be notified if and when a Notice of Intent is filed, and the Commission will give residents an opportunity to comment. The next step will be a joint meeting with the Town Forest Committee to discuss the access issues.

Selectwoman Anna Eliot said she was on the Planning Board at the time the subdivision was approved, and it was their intention not to land lock the property. It was her recollection that there was an access easement to the property, and she recommended contacting Town Planner Michelle Collette for clarification. The recorded subdivision plan shows drainage easements, but no access easements. Chairman Giguere thanked those present for their time and input while assuring them there would be ample notice to all abutters of Parcel D or Ames Meadows.

7:15 p.m. – Appointment – Don Black – Cow Pond Brook sports fields

Mr. Black explained the wetlands were flagged by Colin Duncan of TRC, and the proposed fields sited to avoid the 200 ft. Riverfront Area of Cow Pond Brook, as well as the 100 ft. buffer zone. He hoped that the Commission and the Parks Commission can work together on this project and schedule a site walk in the spring.

Members recommended the filing of a Request for Determination of Applicability (RDA) as soon as possible. This is part of a Community Preservation application, subject to Town Meeting approval. Mr. Black asserted that everything has been designed to be outside the wetland buffer zone. Mr. Morrison said he understood the goal, but the presented plan is an aerial photograph at a small scale, not an engineered plan. D. Black pointed out there is a vegetated berm separating the work area from the wetlands. The plan is to start construction in mid-July if Town Meeting votes in favor of the application. They would install silt fencing between the work area and the wetlands. In summary, a RDA will be filed, with a larger plan, showing the wetland flagging which was based on vegetation. The Commission may continue the meeting until after snow melt in order to schedule a site visit. B. Ganem cautioned that Natural Heritage should be contacted immediately because the site is within Priority Habitat. An application is necessary under the Massachusetts Endangered Species Act (MESA) whether or not a Notice of Intent is required. A FAQ sheet on MESA was given to Mr. Black.

7:30 p.m. – Chicopee Row NOI

At the applicant's request, and upon a motion by B. Easom, seconded by P. Morrison, it was

VOTED: to continue the hearing to February 10, 2009.

Upon a motion by C. Auman, seconded by R. Lambert, it was

VOTED: to approve the Open Session minutes of January 13, 2009 as drafted.

Upon a motion by C. Auman, seconded by R. Lambert, it was

VOTED: to approve the Open Session minutes of January 24, 2009 as drafted.

D. Pitkin abstained from the vote.

Upon a motion by C. Auman, seconded by R. Lambert, it was

VOTED: to approve the Executive Session minutes of January 13, 2009 as drafted.

B. Easom reported the draft \$100,000 application for Community Preservation funding for the Conservation Fund was submitted on a timely basis. The Committee will provide feedback at their meeting on February 2<sup>nd</sup> at Legion Hall at 8 p.m. Chairman Giguere said he plans to attend. The Committee will comment on completeness and whether the minimal standards are met. The final application is due by February 13<sup>th</sup>. It is hoped that letters of support from the Selectmen, Greenway Committee, Nashua River Watershed Association, and Groton Conservation Trust will be part of the final submittal. B. Easom said he would make a report of the financial status of Community Preservation funding at a later time.

8:00 p.m. – 47 Boathouse Rd. NOI

Applicant Philip DeFreitas explained he was making this filing with the hope of closing out an Order of Conditions filed 7 years ago. He acknowledged this is a post-work NOI for some of the work. He has not done the pergola, screen room, hot tub, deck extension, or dock reduction at this point, but everything else, including the new shed, already exists as shown on the submitted plan. All of the work is within the buffer zone of Lost Lake/Knops Pond. C. Auman observed that most of the site is now cement. P. Morrison asked why the size of the dock is being reduced, and Mr. DeFreitas replied that he has to reduce the square footage of the dock and boathouse in order to qualify for the <600 SF Ch. 91 simplified licensing process. He indicated he would save \$500 by doing this.

B. Easom pointed out one of the issues with the earlier wetlands filing is that roof runoff apparently was not handled appropriately. Mr. DeFreitas said he did not believe the Order called for anything having to do with roof runoff. B. Ganem read Condition #27 from DEP#169-814 which required recharge structures within 100 ft. of wetlands. Mr. Easom commented that usually the Commission sees a recharge trench or gutters leading to a dry well. Mr. DeFreitas responded it has always been concrete down there. In fact the leaching field was cemented over, permitting the connection of the deck and house. He said it would be tough to put in a dry well, and he is looking for a permit to cover his dock and clean up the outstanding Order of Conditions. Chairman Giguere questioned whether an Order can be changed after the fact and said he preferred to treat the two matters separately, but noted that usually the Commission

prefers closing one project before allowing additional work. Upon a motion by P. Morrison, seconded by W. Addy, it was

VOTED: to close the hearing.

8:15 p.m. – Island Pond Rd. NOI continuation DEP #169-1007

At the applicant's request and upon a motion by D. Pitkin, seconded by P. Morrison, it was

VOTED: to continue the hearing for DE#169-1007 to March 10, 2009.

8:15 p.m. – Appointment - Sarah Mead/access to Gibbet/Angus Hill trails

Member Easom recused himself from the meeting. Resident Sarah Mead asked the Commission if something couldn't be done about the snow blocking the trail head leading to Angus Hill at the corner of Shattuck St. and Martins Pond Rd. M. Giguere noted that this problem becomes the Town's because stockpiles of snow are stored at that location by the Highway Department.

Member Morrison commented that the Highway Department's first priority has to be the removal of snow from the roads with fire hydrants being the next priority. He suggested a prioritized list of which access points are most important to submit to Tom Delaney to see if he would be willing, on an as-available basis, to clear them. Those present indicated a trail access approximately 4.5 ft. wide would be helpful. Hélène Easom added that there are trail posts there so people will recognize the trail entrance, and these posts are more than 8 ft. apart.

Paul Funch, indicating that he was not speaking on behalf of the Trails Committee, said he thought a prioritized list would be good as there are other trail access points about which the Trails Committee members are concerned. An example is the parking area at the old Grolex building. P. Morrison observed that the Highway Dept. is not likely to do anything during a storm except the roads. The hydrants are usually done after the storm has passed. Doing trail accesses may require overtime and will depend on whether resources are available during normal work hours.

Noting that there were 10 people in attendance on this matter, Ms. Easom pointed out that the Town paid for this access when the restriction for Gibbet and Angus Hills was purchased. P. Funch said the Trails Committee is meeting in approximately 3 weeks and will develop their list at that meeting. The primary concerns at this time are the Shattuck St./Martins Pond Rd. access and a trail across from Orchard Lane on Martins Pond Rd. Members were uncertain whether this is an official trail, but decided to communicate to Tom Delaney the concerns about these two accesses. Ms. Easom pointed out both horseback riders and cross country skiers are interested in using these trails. The Commission will follow up in writing with Mr. Delaney after the priority letter comes in from the Trails Committee in 3 weeks. Members thanked those in attendance for coming in to express their concerns.

B. Easom reported that he has been working with B. Ganem and Val Jenkins to reconcile the accounting system to account for expenditures under the Community Preservation Act (CPA)-

generated portion of the Conservation Fund for the period between 2004 and 2008. V. Jenkins has indicated the Town can run a slight deficit so the bills associated with the acquisition of land that were incurred prior to the allocation of CPA funds in March 2006 (but after the CPA approval ATM 10/04) can be counted as a CPC expenditure. He prepared a spreadsheet with each of the expenditures from the Conservation Fund assigned a number and designation. V. Jenkins cannot make a determination from which 'pot' an expense is to be drawn. It is hoped that there can be two separate trackable accounts at the end of FY09. Member Easom indicated it is his intention to take this information to the CPC to show them what we do with the money. He agreed to check with the Department of Revenue on whether the interest accumulated in the Conservation Fund has to be separately tracked under the CPC-generated column vs. existing Conservation Fund monies.

In drafting the Order of Conditions for 25 Ridgewood Ave., members requested that the standard conditions for a septic system be included, as well as conditions requiring hand-trenching, no tree removal for trees over 2 in. in diameter, and that care be taken to assure that fill materials do not enter the resource area or buffer zone when crushing and filling the cesspool. In addition, the pumping record shall be submitted annually and the applicant shall use more substantial erosion control, such as jute netting, in the event disturbed areas fail to become stabilized within 60 days. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue the Order of Conditions for DEP#169-1008 as drafted under the Wetlands Protection Act.

Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue the Order of Conditions for DEP#169-1008 as drafted under the Groton Wetlands Protection Bylaw.

In discussion on the Kemp St., DEP#169-1003 Order of Conditions, C. Auman stressed the Commission will have to document very carefully that the house is clearly within the buffer zone. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to issue the Order of Conditions for DEP#169-1003 as drafted under the Wetlands Protection Act.

C. Auman questioned how the Commission can incorporate a conservation restriction into an Order of Conditions and whether a person checking the deed to a property would be aware of such a conservation restriction. B. Easom thought it would be easy for people to comply if they see a separate document recorded at the Registry of Deeds. Noting Mr. Lyons' concern about the difficulty of amending a restriction, members pointed out there was no mechanism to amend a recorded Order of Conditions either. Commissioners reviewed the draft denial and approval under the Wetlands Bylaw.

M. Giguere acknowledged it muddies the water having approved the first project, but B. Easom pointed out the mistake could be approving the current project. Members questioned whether the incomplete delineation of the wetlands could have been an intentional omission. M. Giguere said

there are several reasons for denying the project. Mitigating opportunities were offered by the applicant's consultants, but then withdrawn. He felt it would be contrived and unfeasible to include these conditions in the Order.

C. Auman noted that the clause about the significant public benefit in the Bylaw was added at the request of the Selectmen in order to accommodate development such as that proposed on Station Ave. P. Morrison pointed out Station Ave. might have questionable ecological benefits, but could be considered a significant public benefit. However, the Station Ave. area has experienced considerable disturbance over the years. This project seems to benefit only the owner or developer, not the public or the environment. P. Morrison urged that any conditions must state absolute facts and be defensible and quantifiable, removing any judgment calls from the decision. C. Auman said while there are costs associated with getting sued, the Commission needs to carefully look at our law and determine whether the applicant meets the standards articulated in the Bylaw.

P. Morrison pointed out the Commission must also take into account the letter from Natural Heritage, and he expressed a preference for not pitting the Bylaw against their recommendations. Members noted Natural Heritage has included three conditions to avoid a take, but they carefully point out that this applies only to rare wildlife. C. Auman cautioned that a judge will not have a clue about the importance of wetlands, and it is the Commission's responsibility to educate and be as specific as possible in the decision. Less interpretation will be necessary if there are only 4 or 5 conditions. C. Auman noted that #7 in the draft is a key presumption in the Bylaw, and B. Easom added this elaborates on why the action is in violation of the Bylaw.

M. Giguere suggested rearranging the points so that the fact the house is in the buffer and that the grading does not meet the definition of minor grading come first. C. Auman recommended the 2<sup>nd</sup> through 5<sup>th</sup> items be consolidated under the 'Findings' section as this outlines the points that give the Commission its authority. Items #1, 7, 10, and 12 – 15 will be omitted, with the remaining items renumbered with modifications. Upon a motion by B. Easom, seconded by C. Auman, it was

VOTED: to issue a denial of DEP#169-1003 under the Town Wetlands Protection Bylaw as amended.

The motion passed with B. Easom, D. Pitkin, M. Giguere, and C. Auman voting in favor, and P. Morrison, W. Addy, and R. Lambert voting in the negative.

Commissioners questioned whether there was any issue of members not having been present at all the hearings. Although the applicant's consultants may have been present, they requested continuations without providing additional information at some of the hearings. Members may miss one hearing and read the minutes and submitted material and still vote on the decision. No one could recall that they had missed one of the hearings associated with this filing.

Member Pitkin asked members to explain the split in the vote. P. Morrison said the Commission conditioned the original filing and, although it is not clear this is a solid proposal, he is falling on the more conservative side. He thought the proposal was as good a job as practical with the

exception of a conservation restriction. The size of the house was reduced and they modified the plans, but he felt the first Order of Conditions added muddiness. He added “bad him and bad us for not catching the additional wetlands.”

W. Addy observed the applicant has invested a lot of money on the expectation he would develop the parcel. He felt the denial was on a procedural basis and the environmental impacts would be the same with these extenuating circumstances.

B. Easom said the Commission has to demonstrate some consistency in providing for the public good, and they have taken everything off the table. C. Auman admitted he felt badly that the applicant invested in the pipe. He pointed out, however, the site was a disaster with significant problems associated with the pipe installation. He also stated the applicant could do other things to mitigate for the proposed project.

There being no further business, upon a motion by P. Morrison, seconded by R. Lambert, and a roll call vote of R. Lambert, W. Addy, C. Auman, P. Morrison, D. Pitkin, 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 9:50 p.m.

Respectfully submitted,

Barbara V. Ganem  
Conservation Assistant

**Approved as amended 2/10/09.**