

GROTON CONSERVATION COMMISSION

Minutes

March 17, 2009

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, and David Pitkin were present. Peter Morrison arrived at 7:13 p.m. Conservation Assistant Barbara Ganem was also present.

7:00 p.m. – Gleason/Lot 1 Kemp St. NOI (under Wetlands Protection Bylaw)

In response to Chairman Giguere's request for an explanation of the scope and benefits of the project, Attorney Ray Lyons stated he and engineer (surveyor) Stan Dillis represent the owner, David Gleason. Mr. Lyons provided a brief overview of the previous filings for Lot 1 Kemp St. The septic line work has been completed, and the Order of Conditions has expired, but no Certificate of Compliance has been issued. A Request for Determination of Applicability was filed, and the Commission determined additional wetlands on the site triggered jurisdiction under the Wetlands Protection Bylaw. A follow-up filing resulted in the driveway being moved and the house shifted over.

Mr. Dillis said approximately one-third of the house and re-grading of a lawn area is within a resource area under the Bylaw or the buffer zone under the Act. The septic system is outside the buffer zone entirely. A sewer force main has been constructed through the wetland, and the area left to return to its natural state. S. Dillis displayed a plan showing the entire lot and use area. Human activities are restricted to the area immediately adjacent to the house, the building envelope. R. Lyons said Fisheries & Wildlife was looking for some type of restriction on the use of the remainder of the lot as this is habitat for Blanding's turtles that migrate toward the Throne from the Squannacook River. Natural Heritage asked that most of the lot be preserved as habitat. Mr. Lyons said this proposal goes further as restrictions on both structures and grazing on the upland portion of the lot are proposed in exchange for a small disturbance for the development of the house. Mr. Lyons maintained this is a significant public and environmental benefit.

Member Pitkin asked if the major change is that it will be a deed restriction, and Mr. Lyons replied there will be a building envelope and a restricted area where no grazing of livestock, no structures, and no lawn areas will be allowed. In effect, there will be no changes to the landscape with the exception of about 18,000 SF for the lawn and house. Six concrete bounds are proposed to be installed at the corners of the disturbed area.

(P. Morrison arrived at 7:13 p.m.)

M. Giguere commented the Commission may look for additional demarcation under the Bylaw, i.e., conservation markers.

Member Auman pointed out a structure is prohibited within the 100-ft. Adjacent Upland Resource Area under the Groton Wetlands Protection Bylaw. He read into the record Section 215-7 A from the Code of the Town of Groton: "Adjacent upland resource areas are presumed significant to the

protection of wetland resources and interests because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operations or maintenance of such activities. Such adverse impacts from construction and use include, without limitation, erosion, siltation, loss of groundwater recharge, degradation of water quality and loss of wildlife habitat.

(1) Prohibited Activity. For the aforementioned reasons, the adjacent upland areas, within 200 feet of rivers and streams and 100 feet of other wetland resource areas protected by this chapter, are deemed valuable resources under this chapter. Therefore this chapter strictly limits any disturbance within adjacent upland areas by prohibiting the following activities or uses...

(b) Erection of permanent structures, including, but not limited to, barns, garages, or attached structures.”

The area of disturbance involves about 17,700 square feet for the building envelope according to Stan Dillis. C. Auman pointed out contradictory figures were presented in the plan and in the narrative accompanying the Notice of Intent. The correct square footage of disturbance is the 17,722 SF given on the plan. Mr. Auman also noted the Commission issued an Enforcement Order in connection with the septic installation. Mr. Dillis acknowledged the contractor had been a little careless and the site was left open when a 3”- 4” rain event occurred just before the Commission visited the site. The ends of the force main are now located in uplands. Natural Heritage has been very specific that no trench is to be left open overnight, and he anticipated the remaining trench work could be done in a 24 hr. period.

Mr. Auman asked if the proponent would agree to record the Order of Conditions promptly, and Mr. Lyons requested 90 days in order to get beyond the appeal period. W. Addy asked how the re-filled trench area would be stabilized, and Mr. Dillis said it would be back-filled and then could be re-seeded or allowed to grow in naturally. Mr. Addy said he preferred to see re-seeding rather than allowing the area to grow in naturally as it was likely to be faster.

Mr. Giguere asked if there were plans for maintenance of the upland area proposed to be restricted. Mr. Lyons said no structures and no development will take place there unless whoever owns the property comes back to the Conservation Commission with a filing. M. Giguere questioned whether mowing was contemplated, and Mr. Lyons said he was not saying mowing is a bad idea. P. Morrison had no comments or questions.

Member B. Easom, reading from the recorded document, questioned how future management of the restricted area could be reconciled with the Declaration of Easements & Restrictions view easement granted to the abutter on the 20,737 square foot portion of the proposed restricted area “View easement on a portion of Lot 1 for the benefit of Lot 2. Easement C shall be used and maintained as a meadow or pasture, and no structures, except septic systems and their supporting appurtenances, shall be allowed within Easement C. The owner of Lot 2 may enforce Lot 1’s obligation to (1) maintain and use Easement C for meadow or pasture purposes and (2) preserve the view into and across Easement C from the current house on Lot 2. This easement does not provide Lot 2 with any right of access or right to use Easement C. Fences may be built within Easement C provided they do not materially block the view from the current house on Lot 2 into and across Easement area C. Lot 1’s obligation to maintain the view into Easement C is limited to structures and activities within Easement C. No motorized vehicles, except lawn and hay mowers and other vehicles need (sic) for agricultural or silvicultural activities are allowed within Easement C.”

Mr. Lyons explained this view easement is enforceable by the abutter, the owner of Lot 2. He indicated the management does not need to be in conflict with what is proposed for the restricted area of Lot 1. If the land is mowed as agricultural land, it would maintain the view easement area in field condition. He suggested a 6 in. minimum height, with a fall mowing. It would be the responsibility of the Lot 1 owner to mow once a year. B. Easom said he liked the idea of producing a meadow environment as there is not a lot of this type of habitat in town. Migratory birds and turtles are likely to be active in the spring, and this would avoid that window according to M. Giguere. Mr. Lyons added this would be a significant environmental and public benefit to offset the house development. He pointed out the owner of Lot 2 has no obligation to enforce the view easement and could decide to let it go back to forest. Lot 1's future owner would have the right to mow on an agricultural basis which would allow them to further the interests of the Bylaw.

Mr. Easom asked whether this would mean driving a tractor through wetlands. Mr. Dillis said the force main was installed through the stream in the summer at a dry time of year, and the subsurface was mostly sand. R. Lyons said the Commission could condition it to take place between October and March to protect the interests of the Bylaw. W. Addy questioned whether the Commission could require the mowing or find the proponent in violation if it was not done. Mr. Lyons maintained the parcel was too small to be valuable for ground nesting birds unless Lot 2 is also managed in a similar manner.

Chairman Giguere clarified by saying you are asking the Commission to make it possible, but not difficult, to mow. Regarding the grading in the buffer zone, S. Dillis said they had attempted to minimize disturbance and kept the grade changes to less than 2 ft. For a grade that exceeds 5%, which this does, the elevation changes are required to be 1 ft. or less to meet the definition of minor grading under the Bylaw. P. Morrison asked if the Commission wants more disturbances in the buffer area to create less of a slope. It would result in carving off more of the hill in order to keep the building area compact and would have the effect of bringing the work closer to the wetland on the west side of the lot. S. Dillis maintained that runoff would be minimal from a 5 to 1 slope. Runoff would dissipate over a gentle, grassed slope before reaching the wetland.

C. Auman noted that wildlife habitat is one of the interests protected under the Act and Bylaw. Pasture provides better habitat than does a house, lawn, and driveway. There should be no loss of habitat elements such as food, shelter, breeding areas, migration areas, and travel corridors. He said the Commission needs to determine whether this mitigation offset is sufficient. He disagreed that the restriction proposal is as good as having a conservation restriction in perpetuity. R. Lyons argued that it is as legally strong as a conservation restriction because the Conservation Commission has to approve any future changes. He stated it is very difficult to write a conservation restriction that envisions everything that might happen in the future. Mr. Lyons reiterated the deed restriction is as strong as a conservation restriction but it allows for circumstances to change, i.e., a future owner can run it by the Commission under an amendment or a new Order of Conditions without having to go to the Board of Selectmen and the Executive Office of Energy and Environmental Affairs. He pointed out circumstances can change in five years, and this would be a significant environmental and public benefit. He stated the protected uplands exceed the disturbed area by a 3 to 1 margin. C. Auman said this would be in perpetuity unless someone comes to the Commission.

Abutter Lynn Petropoulos (18 Kemp St.) asked for clarification on where this restriction is proposed, and Mr. Dillis pointed to the corn crib that is shown on the plan and will be within the restricted area.

She mentioned she also holds an easement to move farm equipment in this area. Mr. Lyons said, at this time, she as owner of Lot 2 (18 Kemp St.) has the right, but not the obligation, to enforce the view easement. The proposed restriction also puts that right in the hands of a public entity, but does not change her private rights. The Commission will not force it to be mowed.

Ms. Petropoulos stated that runoff is a problem for grazing her cattle near the northeast corner of the proposed house lot. She questioned whether the addition of the driveway and house could decrease her usable pasture area. R. Lyons acknowledged the addition of impermeable surfacing can result in faster or greater generation of runoff. Stan Dillis said that this will be addressed by the addition of recharge trenches along the driveway and the house drip line. Runoff will go into the ground and not run over the ground. He said this is a very typical way to deal with runoff.

P. Morrison pointed out the Commission typically includes a condition in the Order of Conditions requiring that there be no net increase in runoff from the site. L. Petropoulos questioned how she would prove that runoff has affected her pasture. Mr. Lyons said runoff can become a problem if there is a very large area being developed such as for a subdivision, but this is a relatively small disturbance. S. Dillis said he typically does not analyze pre- and post-runoff conditions for the development of a single family house.

C. Auman said photographs are a good way to document before and after conditions. R. Lyons suggested the Commission include a condition in the Order that there be no net increase in runoff or otherwise the applicant would have to show mitigation. It may be necessary to modify the trench, but it is unlikely. S. Dillis offered to prepare pre- and post-drainage calculations within 7 days. He said this would show the volume of runoff to the Petropoulos property now vs. after adding impervious area with the proposed development. B. Easom asked if this would provide the recharge rate for the trench, and S. Dillis said he would use the TR-55 methodology to determine this. He estimated there is a 1600 SF house footprint, including the garage, and there are no additional structures.

Abutter Sara Noble (44 Kemp St.) said she has observed a mink family, woodcock, deer, and turkeys utilizing the fields and wetlands. She mentioned there are all kinds of wildlife that migrate through the area.

In response to a question from L. Petropoulos, R. Lyons noted no grazing is to be allowed in the restricted area because of the Commission's concern about cows in the wetland. The question is whether the Commission is happier with a house in the buffer than with cows grazing in the wetland.

Abutter Rob Smith (279 Pepperell Rd.) questioned whether forcing a little house into a very small area is an aesthetically pleasing approach. He said there are vernal pools near where he lives and they see quite a few turtles. He also noted there is a lot of ledge and questioned whether blasting will be required in order to construct the house. S. Dillis assured him blasting would be unnecessary as the house will be in front of the ledge area. Mr. Smith asked if fencing would be allowed, and R. Lyons responded "fencing is considered a structure and would not be allowed within the restricted area". He noted the site was approved as a house site years ago, but due to the slow economy, the lot was never sold nor the house built. No further work is proposed within the wetland area as the force main has been installed in a sleeve approximately 4 ft. below the stream bed and access for construction of the leach field will be via a neighbor's lot.

Upon a motion by P. Morrison, seconded by D. Pitkin, it was

VOTED: to close the public hearing for Gleason/Lot 1 Kemp St. under the Groton Wetlands Protection Bylaw.

Mr. Lyons said it would be better for everyone involved if the Commission votes on the Order of Conditions this evening. Chairman Giguere said the Commission typically does that at the following meeting which will take place March 24th. Mr. Lyons said he couldn't wait due to the appeal period. M. Giguere said perhaps the Commission can consider making a decision yes or no. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to approve the Gleason/Lot 1 Kemp St. project in concept subject to the following conditions:

- 1) that no structures are allowed in the restricted area outside of the building envelope shown on the plan labeled the Exhibit Plan for Lot 1 Kemp St., dated June 2008, most recently revised 2/24/09;
- 2) that the drainage calculations be provided within 7 days to be sure there is no net increase in runoff from the site;
- 3) that mowing of the restricted area may occur once a year during the period between October 1 and March 15 to a height no less than 6 inches;
- 4) that there shall be no grazing of animals in the restricted area; and
- 5) that the Bylaw order shall be recorded within 90 days of issuance.

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

The Bylaw Order will also incorporate all the conditions included in the previously issued Order under the Wetlands Protection Act - DEP#169-1003 for Lot 1 Kemp St. Mr. Lyons requested a copy of the draft Bylaw Order of Conditions, and B. Ganem noted it has been Commission policy to not share draft Orders prior to review by the Commission.

With all business concluded, including the signing of several bills, the meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Assistant

Approved as drafted 3/24/09.