

GROTON CONSERVATION COMMISSION

Open Session Minutes

July 14, 2009

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

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

VOTED: to approve the Executive Session meeting of June 30, 2009 as amended.

Members R. Lambert and B. Easom abstained from the vote.

Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to approve and issue the draft Order of Conditions for DEP#169-1019, as amended, for the Baddacook Pond Weed Harvesting Project under the Wetlands Protection Act.

Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to approve and issue the draft Order of Conditions for DEP#169-1019 for the Baddacook Pond Weed Harvesting Project under the Wetlands Protection Bylaw.

During the site walk this past Saturday, members observed a derelict boat trailer pulled out of the Sawtell Conservation Area by Trails Committee members. Members noticed an area of slumping on the trail just south of the culvert crossing Unkety Brook. Water appears to be flowing well through the culvert, but there is erosion, perhaps caused by an animal digging, beyond the culvert itself. The problem might be remedied by adding some stone, but members suggested contacting Tom Delaney to get his professional recommendation and if he volunteers to do the work, that would be fine.

The state has commenced work on the repair of the seating areas abutting the Groton School Pond off the Nashua River Rail Trail. They have requested an extension because their Order expires in August. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to extend DEP#169-964 for improvements to the Nashua River Rail Trail by one year.

The Trails Committee has reported an issue with encroachment adjacent to the approach to the Groton Hills Conservation Area off Kaileys Way. It is difficult for trail users to find their way to the conservation area because the homeowner is mowing the path as a lawn area. Members requested the site be added to the site visits on July 25th.

Members reviewed, via email, sketches and an aerial photograph where New England Forestry Foundation plans to improve its beaver flow leveling device at Groton Place. The arc of the fencing will be extended, and shrubs and saplings will be cut from the dam. Members agreed that it would require the filing of a new Request for Determination of Applicability.

7:15 p.m. – 302 Lost Lake Dr. RDA

Resident Timothy Jones explained he purchased the property in September 2008. It has a deteriorating retaining wall constructed of stone and concrete block, and he would like to remove the old wall and replace it with something sturdier. He noted the wall will be precast stone, approximately 5 ft. high, and extend 40 ft. to the right of the dock and 30 ft. to the left. The existing wall will be removed using a sledge hammer and jackhammer with the materials removed off site. C. Auman commented the area above the wall needs repair, and it's important to make sure materials do not go into Lost Lake/Knops Pond.

Mr. Jones indicated he could stake haybales or install a silt fence. He has a friend with an excavating company who will help with the design. He does not plan to bring any equipment down to the shore. Member Giguere reminded him that the Building Department will look for engineering plans if the wall exceeds 4 ft. in height. Mr. Jones plans to stockpile materials in his driveway. Members questioned whether he would consider doing the work during drawdown when he could use the lake bottom to get materials to and from the site. Mr. Jones thought this would work well as the retaining wall is between 4 – 8 ft. from the Lake under normal conditions, but 8 – 12 ft. during the drawdown. He plans to use pre-manufactured, stackable landscape blocks for the wall. B. Easom mentioned that disturbed areas should be re-vegetated. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination requiring the placement of erosion control measures, seeding of any exposed areas, work conducted during the drawdown, and materials shall be removed off-site.

7:30 p.m. – Groton School RDA

Attorney Robert Collins was delayed and the appointment was left open.

It was noted the Commission is proposing to submit 3 LAND grant proposals, including the Mattbob property, the Fuccillo property near the power substation, and the Red Line offset trail. B. Easom explained he met with the Board of Selectmen and got the approved signatures from Chairman Peter Cunningham. The applications are due by 3 p.m. tomorrow. This is an opportunity to get a 60% match from the state, up to \$500,000. The match depends on the Town's demographics. It is necessary to have Town Meeting approval to apply for the LAND grants even though the Commission may expend monies from the Conservation Fund at its discretion. The final amounts offered for the properties will be reviewed during Town Meeting.

Chairman Easom has prepared a reconciliation of the accounting for FY'09 for the Conservation Fund and the funding received through the Community Preservation Act, including a breakdown of interest earned by each component of the fund. He reminded the Commission they had reviewed and approved a similar breakdown for the period FY'04 – FY'08. He requested

members approve or make changes in this reconciliation, noting that going forward Town Accountant Val Jenkins would begin tracking these as separate funds in FY'10. In reviewing some of the expenses, Mr. Easom pointed out he felt several could have come from the operating budget. P. Morrison complimented B. Easom on his extensive work and noted the Commission has never been this much on top of the expenditures. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to accept the reconciliation for Conservation/CPC fund expenditures for FY'09 as presented by B. Easom.

B. Easom commented this accounting procedure addresses the application language requiring an appropriate account of the use of CPC funds.

Four parcels are under consideration for farming, and the following bids have been submitted: Groton Local and the Smigelskis have proposed use of the Jenkins Rd. property. Dragonfly Farm, Dennis Spiczka, Groton Local, Roy MacGregor, and Charles Dance have proposed use of Surrenden Farm, and Roy MacGregor has proposed use of the Eliades parcel. P. Morrison suggested the Commission decide on the Eliades parcel since there is only one proposal. B. Ganem cautioned there needs to be discussion about the agricultural use and balancing with wildlife habitat. B. Easom requested the discussion be postponed due to scheduled appointments.

7:45 p.m. – Wenuchas Trail RDA – Assessors' Parcels 130-73, 74, & 75

Surveyor Stan Dillis explained that a septic system was designed for this lot approximately 5 – 6 years ago. The Request for Determination of Applicability has been submitted to do new soil testing. A backhoe with rubber tires will be used for the testing. This work will require that the equipment leaves the roadway, but Mr. Dillis assured Commissioners it would not be left overnight. He did not feel erosion control was necessary as the hole will be dug and backfilled in less than a day. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination requiring that equipment not remain overnight at the site, and the pit will be opened and closed in the same day.

With Robert Collins' arrival at the meeting, the Commission returned to the subject of the Groton School trail bridges. Mr. Collins explained that six trail bridges are proposed on the former Gunderson property where several trails are used by the cross country team. The work will be done by hand, and the bridges will span the resources areas. Mr. Collins noted the Commission has previously issued negative Determinations for such work.

Member Giguere visited the site with John MacMillan, assistant to Building & Grounds Superintendent Tim Dumont. Some of the crossings were not readily visible because they were in the forest. Mr. Giguere noted this is probably the largest resource area. He also noted it is unclear whether the trail will lead back to the field house as there is no flagging in place. Mr. Collins noted this trail system will keep students from crossing through wetlands. M. Giguere noted there was significant flow in all the swales, and someone appeared to have gone through one of them with an ATV or mower. Mr. Collins pointed out all of the bridges will span the wetlands and be at least 15 ft. long.

At 8:00 p.m., Clerk David Pitkin read the notice for 993 Boston Rd. NOI DEP#169-1020. Noting the applicant failed to notify abutters, and upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to continue the hearing to July 28, 2009.

Resuming the discussion on the Groton School trail bridges Mr. Collins said he suspects there is a specific route for the cross country track team. The agricultural drainage channels do connect to resource areas. Each of the structures will be supported by 4 x 4 pressure-treated posts set into packed gravel, and the work will be done without jeopardizing the resource area itself. Members advised the use of environmentally-friendly pressure treated wood. P. Morrison said the crossings for the manmade drainage structures do not seem to be as big a deal, and Groton School has a history of doing good work. C. Auman noted the Commission could continue the hearing for those areas where we have questions. Upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to approve four of the trail bridges as identified by Mr. Collins on July 14, 2009, with the balance of work delayed until the Commission's determination after a visit to the site on July 25th, the work shall be done with appropriate erosion control measures in place using environment-friendly pressure-treated wood, and materials shall not be allowed to enter the resource area.

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

VOTED: to continue the meeting to July 28, 2009 for the remaining two bridges.

The Commission will visit the site on July 25th to see the locations for the two remaining bridges, and Mr. Collins assured members he will have a map of the trail available.

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

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

VOTED: to continue the hearing for DEP#169-1007 to August 11, 2009.

Returning to the subject of the farming proposals, members questioned under what conditions the party interested in farming the Eliades parcel would be willing to work. B. Easom noted there are two conflicting interests – haying vs. habitat for birds, and the Commission should discuss the merits of both. P. Morrison pointed out the adjacent hospital field is currently being worked, and the Commission has been trying to develop agricultural areas. This field has no value for hay if it is let go too long. In these budget times it is important for the Commission to consider this as a management tool.

M. Giguere suggested the farmer could consider growing a cold season grass mix that matures late and could be harvested later in the season. It will be necessary to have Town Counsel approve any license we enter into. Roy MacGregor (Maple Shade Farm, 284 Old Ayer Rd.) said

there has been a study that shows bobolink will not stay in fields that are not maintained, and B. Ganem requested a copy of the study.

C. Auman said his position would be that the field be mowed as late as possible in July while acknowledging the Commission has been generally supportive of agriculture in town. D. Pitkin pointed out the bid is about \$150 to hay the Eliades parcel. Ryan said he would like to see the parcel hayed. P. Morrison commented the Commission will have to address this issue on every single parcel that we manage. He noted that, in some years, the hay has already gone by as of July 4th so the crop is very weather dependent.

A question was raised about managing the Smith St. portion of the Eliades parcel, as well as the 3 detention basins on the property. Mrs. MacGregor pointed out plowing land can really disturb bird habitat. C. Auman commented this particular area has been identified as bobolink habitat all along, and the Commission is trying to balance wildlife habitat management and agriculture uses. Most of the land the Commission manages is forested. M. Giguere suggested the Commission essentially accept all the proposals and members can make their evaluation at a future meeting. He said he just received the packet and did not feel comfortable making an immediate decision on how they stack up.

B. Easom recommended requesting B. Ganem draft an agricultural license. P. Morrison noted the weed problem will just worsen. M. Giguere noted the Commission will still need to have maintenance done on the detention basins and area on Smith St. R. MacGregor asked if waiving the license fee to control the buckthorn on Smith St. was under consideration. B. Easom and P. Morrison thought maintenance and farming should be kept separate as these bids are competing for farming. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to request that B. Ganem draft an agricultural license for the Eliades parcel, to be reviewed by Town Counsel.

Members noted the Commission could recommend to the licensee that he be as avian sensitive as is practical, but did not want to hamstring him. The Commission is accepting all of the proposals in terms of their timeliness.

8:30 p.m. – Field of Dreams RDA

Don Black of the Parks Commission explained that Town Meeting awarded Community Preservation funding for this project at the spring meeting. It includes a ball field, fence barriers, lighting, and a scoreboard so that tournaments can be safely conducted. Last Tuesday a representative from the state (Natural Heritage & Endangered Species Program) visited the site. He noted that Laura Lefebvre had put together the application package, assisted by botanist Colin Duncan.

Member Auman commented there were minor field adjustments to the delineation but, in general, the Commission agreed with the wetland boundary. He noted he has picked up turtles on the way to the Transfer Station. Natural Heritage has recommended a gate be installed on the existing cart path, and a new road constructed for access to the field. The path would then be used for emergency purposes only. In the past Mr. Black explained the Parks Commission put

boulders in at the top of the cart path during the winter months. This path has been in use for 40 years. The issue is that it runs between two vernal pools, and additional costs will be incurred to construct the new road.

P. Morrison questioned whether the cart path will just have 1 or 2 cars per game. M. Giguere said he was aware there are Blanding's turtles at the site, and this is the primary reason for limiting access. Mr. Black indicated paying for the cost of the road is a concern. There are as many as 80 cars for a series of games, with estimates reaching 100 cars with the addition of the new field. This increased travel would occur during the breeding season. Natural Heritage has indicated the site could be open from October 15th through April 15th.

Members expressed concerns about how to control limited access. P. Morrison suggested having multiple locks with coach and vendor access. B. Easom said he preferred to see it locked with access allowed for emergency or safety vehicles. Additional traffic will be added to the existing road. Commissioners stressed that they take the guidance of Natural Heritage very seriously as there is a benefit to protection of wildlife habitat. R. Lambert commented the difficulty with limited access is making sure it stays limited. The coaches can use another access to get to the fields. D. Black pointed out it is likely the cart path would have to be sealed at the top and then near the vernal pools.

Rick Hughson (9 Fawn Terrace Lane), member of the Community Preservation Committee, noted there has been discussion about more fields for the baseball players since 14 acres was set aside at Surrenden Farm. He said there is inadequate parking at Cow Pond Brook, and this project will eliminate 3 acres of an existing parking area. The effort to expand fields has met with delays and unexpected costs which Mr. Hughson found illogical.

Virginia Bennett (35 Arrow Trail) said she has spent the last 16 years working on turtle rescue and preservation projects. She pointed out the Groton Wetlands Protection Bylaw states we have an obligation to protect migration corridors and nesting habitat. There has previously been discussion of getting additional funding of \$10,000 for this project, and Ms. Bennett questioned what progress has been made. She stated the delay is for a good reason, and there are people who care about wildlife. V. Bennett strongly recommended that the advice given by Natural Heritage be listened to. She urged that parking not be allowed in the wildlife corridor between the two vernal pools and added she had recently certified a third vernal pool to the south of this area.

Mr. Black said the timing was not good for applying for state grants, but there has been a cookie dough fundraiser which has yielded \$10,000 - \$12,000. Some of the preliminary work was done by the Groton Youth Baseball program. The new road is to be built north of the site shown on the RDA maps, and there is a need for more parking. This road is outside of the wetland buffer zone. Upon a motion by M. Giguere, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination requiring that controlled access shall be gained through locked gates at both the top and the bottom of the cart path and that keys be made available only to emergency personnel.

It was noted that the alternate road is out of the Commission's jurisdiction but within the jurisdiction of Natural Heritage.

8:45 p.m. – Appointment June Johnson/634 Old Dunstable Rd.

Attorney Johnson explained she represents Brenda and Jean Francois Hugot of 634 Old Dunstable Rd., formerly Lot 20. Presenting a surveyed plan of the lot, she acknowledged an encroachment of a parking area, retaining wall, and lawn on Lot 20, a tax title parcel dedicated for conservation purposes. Changing the ownership of the parcel would trigger the Article 97 process requiring Commission, Town Meeting, and General Court votes. Ms. Johnson said she thought the cleanest way to clear up the issue would be to have the Commission grant an easement through a license, and she submitted a draft document for Commission review. M. Giguere expressed concern about the proposed period of the license (in perpetuity) although the grantor is given the power to revoke it at any time. He felt it would be necessary to have a specific term for the license or it begins to look like a taking. The property was taken over by the Town for failure to pay taxes and eventually turned over to the care and custody of the Conservation Commission.

Ms. Johnson explained the conditions existed when the present owner moved in. B. Easom said, in general, he is opposed to allowing an encroachment to persist but there are extenuating circumstances in this case. He questioned whether the Commission should give a 5 year license during which period the new owners would figure out how to move the encroachment off the conservation land. D. Pitkin thought the process of going through a Town Meeting and the rest of the Article 97 process was not feasible. B. Easom pointed to the example of Gibbet Hill where the proposal to change a conservation restriction died in committee before ever reaching the legislature. There must be a compelling reason, and he expressed reservations about whether this case would meet the test.

J. Johnson said she always thought the process was carried out by our local government representatives. P. Morrison questioned whether this would rise to the level of adverse possession as a continuing violation for 20 years. The ANR lot was built in 1976. Commissioners questioned whether the owner would pay the legal fees, and Ms. Johnson suggested the \$500 offered for the easement could go toward legal expenses. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to grant the license for the maximum term acceptable to Town Counsel.

Virginia Bennett asked for clarification on the irrigation proposed for the new ball field, and members explained the wetland boundary delineation determines the extent of the buffer zone which in turn governs the area under the Commission's jurisdiction. The ball field itself, as well as irrigation features, are outside the buffer zone and Riverfront Area of Cow Pond Brook.

R. Lyons has prepared a package of material for the Commission's consideration related to the New England Forestry Foundation conservation restriction on the land off Allens Trail. They have concerns about discussing the issue in a public setting and would like to see whether the Commission could have a sub-committee, such as the Conservation Restriction Sub-Committee,

consider the matter and bring back a recommendation to the full Commission. Members will review the issue at the July 28th meeting after reviewing the submittal.

Upon a motion by M. Giguere, seconded by C. Auman, and a roll call vote of P. Morrison, M. Giguere, C. Auman, D. Pitkin, R. Lambert, and B. Easom, 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 9:30 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as drafted 7/28/09.