

GROTON CONSERVATION COMMISSION

Minutes

April 13, 2010

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

Chairman Easom noted that John Maynard was planning to be here to discuss maintaining land in front of his house at 102 Joy Lane, but is unable to make it due to a change in travel plans. The Request for Proposals (RFP) went out last July, but some of the recipients did not receive them in the mail. John Greenhalgh has recently indicated he would like to submit a proposal. The RFP did not state whether haying or row crops were preferred, and in the end the Commission decided haying would be the best use. B. Easom asked the Commission if they wished to take the RFP and turn it into a Request for Quotes (RFQ) specifying exactly what we want done. This process would be more definitive and make it easier to compare quotes. C. Auman felt that we need a definitive answer from Fisheries & Wildlife before proceeding any further. B. Easom preferred to see a clear quote on specifics. D. Pitkin asked if we would have to do a RFQ every year. B. Easom said it was the opinion of the Commission that the license should be as long as legally allowed to recognize the farmer who has invested in the land with nutrients, seeds, and clearing. B. Ganem pointed out the Commission's policy allows for a 5 year license with priority given to the incumbent for renewal of the license.

B. Easom indicated the statement could take information gathered in the RFPs and perhaps input from both the Agricultural Commission and Fisheries & Wildlife. The mowing pattern (from the inside out) and the preferred deck height of 7 inches are guidelines mentioned in the section on 'Haying in Turtle Habitat' in the draft Surrenden Farm Management Plan, but it is not clear that the farmer will be held to this standard. Mr. Easom suggested the Commission could conduct a public meeting to answer questions about the RFQ and any answers emailed out would be distributed to everyone so that everyone is on an even playing field when quoting the work.

Farmer Roy MacGregor asked if the Commission was not happy with the mowing he did last year. He stated he understood the Commission sent two bids to Fisheries & Wildlife, and his was at the top. Mr. MacGregor pointed out he could have started work last fall, and he was ready to sign a contract at that time. He stressed his need to know where he stands. B. Ganem mentioned that Fisheries & Wildlife had asked for copies of all the proposals and had made inquiries about using late maturing grasses to protect wildlife at the site.

B. Easom assured Mr. MacGregor that he had done nothing wrong. The process is complicated because Fisheries & Wildlife also has a say in this. Mr. MacGregor maintained his son had talked with someone at Fisheries & Wildlife, and there have been no turtle studies, and they claim that the delay rests with the Commission. M. Giguere said three proposals were given priority by the Commission, and going through the process may appear somewhat unfair. The

RFP is not a commitment, but an opportunity to choose a proposal which is complex because it is under review at Fisheries & Wildlife as we do not have an approved Management Plan for Surrenden Farm. Mr. Giguere indicated we may reach the same conclusions based on a quote as we did with the proposals. He mentioned the development of the Management Plan has a history, and there are parts which remain to be completed which may speak to a lack of cooperation between the partners. B. Easom stated spelling out a specific scope of work is the difference between an RFP and RFQ. W. Addy urged the Commission to pressure Fisheries & Wildlife to make a decision on what has already been submitted. D. Pitkin added that Fisheries & Wildlife is under no obligation to pick any of them.

Farmer Dennis Spiczka was also present and had a question about his bid submittal as the turtle habitat guidelines were in draft form, and he was unclear whether he would be committed to haying every 2nd or 3rd year. He indicated he would not be interested if that was the case. Upon a motion by R. Lambert, seconded by M. Giguere, it was

VOTED: not to issue a Request for Quotes for the farming of the west section of Surrenden Farm.

D. Pitkin and B. Easom voted in opposition.

C. Auman expressed concern that we will lose another farming season and suggested sending a certified letter to Fisheries & Wildlife requesting a response by April 27th. D. Pitkin made a motion, seconded by B. Easom, that an RFQ process be implemented for Surrenden Farm and other parcels to define what we want in the way of agricultural activities. The motion was defeated with a 3 to 3 vote in which W. Addy, M. Giguere, and R. Lambert voted in the negative, and D. Pitkin, B. Easom, and C. Auman voted in favor.

7:15 p.m. – 36 Anthony Dr. NOI

Engineer Tim Beauchemin explained he has slightly revised the plan based on the site visit. Four major trees will come out for the construction of the septic system, and the gas and water lines have been included on the revised plan. A minor amount of fill will be added around the backyard to allow drainage to the edge of the lawn. The septic system mound will be approximately 5 ft., but only spot elevations are provided on the plan. Mr. Beauchemin indicated he expected the Board of Health to act favorably on the permit application as the Nashoba Board of Health has already approved it, using ground water at the surface as the basis for the design plan.

Members asked if a tight tank was an option, and Mr. Beauchemin said it would be unlikely as he has shown a way a septic system could be constructed on the lot, and the state generally prefers a system to a tight tank. Chairman Easom said the area looks like an Isolated Land Subject to Flooding (ILSF) based on the amount of standing water observed on the lot during the Saturday site visit. With a water table at 0, that would be one definition of a wetland and this would be putting a septic system in the wetland. In the past there has been some discussion of extending the sewer line up Anthony Ave., and members asked about this option.

B. Easom said the soils did not support a depth of peat, and there was very little silt. He maintained the system was 50 ft. from the wetland, at the edge of existing lawn which has settled over the years. In addition the area does not have the vegetative growth that supports a wetland finding and is not in the sewer district. Many other residents have already put in septic systems, and sewer is not a possibility. Mr. Easom pointed out ILSF is defined as a ¼ acre of wetlands with an average 6 in. of depth. Puddling was observed at both the back and sides of the lot. Mr. Beauchemin maintained there was no standing water where the Sewage Disposal System is proposed.

Land Use Director/Town Planner Michelle Collette suggested the engineer evaluate the site with an eye to the impacts of bringing this amount of fill in and indicated he may not be aware of the extent of flooding problems on adjacent residences. The fill could pose an alteration to stormwater patterns whose effect might not be felt for 100 years. The flooding experienced at Mill Run is an example. Mr. Beauchemin estimated 500 cubic yards would be brought in, and he did not feel this would have any impacts. Members questioned whether a peer review would be necessary, and T. Beauchemin asked if this is customary for a single family house. Members said they understood the need for a septic system, but this site poses some complex issues. Mr. Beauchemin pointed out the current leach pit is entirely within the water table so the new system represents an improvement.

Prior to a continuation of this hearing, members expressed a need for a construction sequence and identification of materials to be used under the deck. Upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to continue the hearing to May 25, 2010.

7:30 p.m. – Appointment Michelle Collette

Ms. Collette explained the Commission had issued an Order of Conditions for a restoration project on James Brook in 2009. Some of the work has already occurred, but the remainder will take place this spring and summer. Several months have been spent on the planning and design of a kiosk to serve as the educational component of the project. Nashoba Tech students are building the kiosk which was designed by Giatinno Design. It will be necessary to install four sonatubes between the Nashua River Rail Trail and the wetland. The locus, specifications, and design were previously emailed to Commissioners. Nancy Turkle has designed the information to be displayed on the panels which will touch on the topics of railroad history, the Department of Conservation and Recreation, and stormwater management to provide the public with information on the purpose of the overall project. These educational materials will be changed out periodically, but the emphasis on water quality protection will be permanent.

C. Auman asked what kind of lumber will be used, and it was noted pressure-treated is preferred. Material excavated for the sonatubes will be removed off site. The proposed location is staked in the field, and the old kiosk will be moved to Ayer. D. Pitkin asked if the kiosk was covered in the Order, and B. Ganem said the Notice of Intent and accompanying narrative both state that a kiosk is planned. This is an opportunity to get more specific details on its installation and design. B. Easom questioned whether electricity would be necessary, and Ms. Collette said GELD has agreed to provide it from a nearby pole. There will no need to do any trenching. The locus is on

the west side of the paved Rail Trail. Ms. Collette explained there will be an Earth Day celebration that includes a dedication of the kiosk at 11 a.m. on April 24th, followed by the dedication of the Bruce W. Clements Trail at Williams Barn Sorhaug Woods at 1 p.m. Upon a motion by R. Lambert, seconded by C. Auman, it was

VOTED: to accept the plans, locus, and specifications for the kiosk proposed under DEP#169-1018.

7:45 p.m. – 27 Whitney Pond Rd. NOI continuation

Shelley Cobleigh of R. H. Wilson explained Mr. Wilson was unable to attend because of other commitments. This project was first presented in October 2009. The plans include the razing of an existing house and construction of a sewage disposal system. The hearing has been kept open in order to allow Board of Health action. C. Auman outlined the changes as the location of the system across the street, which requires a variance from the Board of Health, and a retaining wall no higher than 4 ft. Upon motion by M. Giguere, seconded by R. Lambert, it was

VOTED: to close the hearing.

Upon a motion by R. Lambert, seconded by M. Giguere, it was

VOTED: to approve the minutes of March 23, 2010 as drafted.

D. Pitkin abstained from the vote as he was not present for the meeting.

The Town-wide forestry request for proposals is to include lands under the jurisdiction of the Water Department and the Conservation Commission. One of the issues of particular interest to the Commission is the management of invasive plants. B. Easom mentioned the Commission is also concerned about work within 100 ft. of wetlands and the percentage of canopy cover that is to remain after a harvest. M. Giguere urged members to take a broad look at the request as forestry cutting plans would address the specifics on individual parcels. Forestry activities that are intensive in nature might be combined with a project that is more straightforward, and the forester would advise on this matter. As an example Mr. Giguere indicated invasive control might be bundled with something more productive. Members agreed to discuss this further at the May 11th meeting.

8:00 p.m. – 35 Common St. NOI continuation DEP#169-1037

Applicant David Elliot said he has decided to manage his land as a hayfield. B. Easom commented there had been discussion of the time period that it will remain in agriculture, such as at least 5 years. He pointed out this is mitigation for damages to a wetland that already occurred. M. Giguere said there is somewhat of an obligation to fulfill the agricultural improvements. Mr. Elliott indicated he may not actually undertake the agricultural activities. C. Auman commented the alternative to carrying out the agricultural activities, a plan for which Mr. Elliot has submitted, could be an enforcement order.

M. Giguere said the siting of the barn in a wetland area is inappropriate. Members recommended locations closer to the road. Mr. Elliot said he would like to put the shed where the barn was

formerly located, but he has decided not to build the shed. Mr. Giguere noted the Commission had asked him to select which options he would select from those presented in the plan. He said Field #2 appears hard to get to and difficult to maintain, and M. Giguere inquired whether it could be maintained as wildlife habitat. Mr. Elliot responded “no” because it was his feeling there would be no wetlands there once the ditches are cleaned. He said he wants to hay the whole area.

Reviewing the alternatives offered in the Conservation Management Plan, Mr. Elliot stated he did not wish to use chemicals and would like to plow and lime the field and plant it in winter rye in preparation for a hay field. He plans to cut invasives and keep them cut. Members asked what erosion control measures will be in place when the soil is tilled, and D. Elliot stated he would seed it right away. Members asked if he could preserve a 20’-25’ ft. buffer zone next to the wetland or stream. When asked when work would start and when he expected to have it done, Mr. Elliot said he may never do it and did not want to make any promises. He would like to have things in place so that it could be done.

In discussion on drafting an Order of Conditions, M. Giguere noted the Commission could decide to deny the project as timing would have to be included in the Order of Conditions. The Commission could also consider issuing an Enforcement Order if the work is not started by a certain date. W. Addy pointed out implementing the Conservation Farm Plan would be in lieu of an Enforcement Order. The Order of Conditions could initiate fines as mitigation for the previous wetland violation. B. Easom suggested the Order include a time line and on-going fining process. Members could also consider a bond to complete the special conditions.

Mr. Elliot said the adjacent school (South Middle School) would appreciate having the swales and drainage pipes cleaned out and maintained as it would reduce the amount of water coming in their direction. Members felt the work should be implemented within this growing season. Upon a motion by M. Giguere, seconded by C. Auman, it was

VOTED: to close the hearing for DEP#169-1037 for 35 Common St.

8:15 p.m. - 58 Old Lantern Rd. NOI continuation DEP#1691031

At the applicant’s request and upon a motion by M. Giguere, seconded by C. Auman, it was

VOTED: to continue the hearing for 58 Old Lantern Rd., DEP#169-1031 to May 25, 2010.

8:15 p.m. – Appointment/Keith Hooper 178 Townsend Rd.

Mr. and Mrs. Hooper were present and explained their driveway was flooded out during recent storms, and they had cleaned out debris and an old crushed culvert and added clean crushed stone and graded. They indicated they have animals on the other side of the stream and were unable to get to them because of the collapsed driveway.

After viewing the site during the Saturday site visit, R. Lambert advised cleaning out the stone that washed into the stream and wetland. B. Easom mentioned there is an expired Order of Conditions for driveway repairs. K. Hooper said they did not do the work because it was super

expensive, and they have no intention of completing the work outlined in the Order. Mr. Easom reminded them the old Order should be closed out. Members also explained it is a good idea to give B. Ganem a call to explain what is proposed under an emergency situation. Specifics such as the culvert diameter and how deep it is set into the stream bed are important. It could be more difficult if the crossing has to be re-constructed after repairs are made.

Members noted the outlet appears to be about 1 in. above the grade of the stream bed. They recommended adding rock at the bottom of the culvert to raise the grade, providing it is of sufficient size to not get washed downstream. Members also advised that silt should be cleaned out of the stream. W. Addy thought the site was fairly stable providing the rock on the west side was removed. Mrs. Hooper made a formal request that a Certificate of Compliance be issued for DEP#169-896 for the formerly proposed driveway improvements. In reviewing the plans filed with the old Notice of Intent for DEP#169-896, Commissioners observed that the engineer recommended three culverts for the 2004 Notice of Intent (NOI) filing. Chairman Easom asked the Commission if a new NOI is necessary for this emergency repair. W. Addy suggested that probably the next step is to file a NOI. C. Auman made a motion, seconded by B. Easom, to require the filing of an after-the-fact NOI for 178 Townsend Rd., to include an analysis of the upland drainage area and appropriately sized culvert(s).

Mr. Hooper protested the astronomic fee of \$500 to file a NOI for a stream crossing. He maintained he had improved what was there and would scrape up any materials the Commission requested and would shore up the sides of the driveway. He asked if the fee could be waived, and B. Ganem said this is the fee charged under the Wetlands Protection Act, but the Commission could waive the Bylaw filing fee. Commissioners questioned how it would work if the original Order has expired and some of the work has been re-done. M. Giguere pointed out there is a defect on the title of the property with a recorded Order of Conditions. An engineer looked at the site once and suggested three culverts. K. Hooper argued he is being penalized because nature plugged and washed out the driveway. Mr. Auman said he has empathy for the situation, and members reviewed the appeal process with an Emergency Certification (*i.e., The Department may, on its own motion or at the request of any person, review: an emergency certification issued by a conservation commission and any work permitted thereunder; a denial by a conservation commission of a request for emergency certification; or the failure by a conservation commission to act within 24 hours of a request for emergency certification. Such review shall not operate to stay the work permitted by the emergency certification unless the Department specifically so orders. The Department's review shall be conducted within seven days of: issuance by a conservation commission of the emergency certification; denial by a conservation commission of the emergency certification; or failure by a conservation commission to act within 24 hours of a request for emergency certification. If certification was improperly granted, or the work allowed thereunder is excessive or not required to protect the health and safety of citizens of the Commonwealth, the Department may revoke the emergency certification, condition the work permitted thereunder, or take such other action as it deems appropriate.*)

Member Pitkin pointed out Mr. Hooper was not being penalized because it is in his best interests to be sure the driveway is stable and safe and that this doesn't happen again. He explained this is the Commission's interest in requiring a filing. C. Auman withdrew his motion. Upon a motion by M. Giguere, seconded by W. Addy, it was

VOTED: to issue an Emergency Certification in which the owner of 178 Townsend Rd. must assure A.) Emergency erosion control measures (haybales, silt fencing, crushed

rock) shall be on site to prevent sedimentation into the wetlands; B.) the release of water shall be done at a controlled rate; C.) side slopes shall be stabilized with vegetation (conservation seed mix) or temporarily with salt marsh hay or straw; D.) excess materials shall be removed from the wetland by hand; and E.) the culvert outlet shall be raised through the addition of adequately sized stones to allow wildlife travel.

The motion passed by majority with B. Easom voting in opposition.

Members informed the Hoopers they have 30 days in which to implement the conditions.

Commissioners reviewed photographs of an emergency culvert installation at 69 Schoolhouse Rd. by owner Peter Myette. W. Addy commented the headwalls appear to be incorrectly installed, and the culvert is liable to be crushed because there is little material covering it. An Emergency Certification was issued for the work, but it was noted there was a substantial increase in the sizing of the culvert. Upon a motion by M. Giguere, seconded by D. Pitkin, it was

VOTED: to ratify the Emergency Certification for 69 Schoolhouse Rd. advising A.) Emergency erosion control measures (haybales, silt fencing, crushed rock) shall be on site to assure there is no sedimentation into Martins Pond Brook; B.) the release of water shall be done at a controlled rate; C.) side slopes shall be stabilized with vegetation or temporarily with mulch or salt marsh hay or straw; and D.) a follow up Notice of Intent shall be filed no later than April 30, 2010.

Due to a substantial release of water from Flat Pond due to a ruptured beaver dam, damage was incurred to Townsend Rd. across from 718 Townsend Road. Members observed the repair of the pavement as well as silt that washed into Flat Pond Brook during the Saturday site walk. Members reviewed the draft Emergency Certification for the site, and upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to issue an Emergency Certification requiring A. Emergency erosion control measures shall be implemented as needed to assure there is no further sedimentation into Flat Pond Brook; and B.) side slopes of culvert outlet and downstream side of Townsend Rd. shall be stabilized with a conservation mix seeding covered with salt marsh hay or straw; and C.) the applicant shall follow up with the filing of a Request for Determination of Applicability for the installation of the Clemson beaver flow leveling device.

The Conservation Commission is requesting \$30,000 of Community Preservation funds be allocated to the Conservation Fund at the upcoming Town Meeting. The Community Preservation Committee has asked that each applicant make a presentation for their article. The Commission's basic argument is that the Fuccillo purchase will cost the Town \$60,000 once the state reimbursement comes in. Because of the reduced level of CPC funds, the Commission only requested \$30,000 to replenish the Conservation Fund. M. Giguere volunteered to make the presentation again this year. Commissioners discussed whether a new letter agreeing to make up any CPA shortfall would be advisable. B. Easom said if the state match drops below 11% it is

likely the payment for Surrenden Farm would be affected. He agreed to double check that number. Upon a motion by M. Giguere, seconded by W. Addy, it was

VOTED: to send a letter to the Board of Selectmen stating the Commission's willingness to make up from available funds in the Conservation Fund any shortfall in Surrenden Farm payments.

B. Easom reported the "TRAIL" signs were installed on the Kaileys Way Conservation Area access on Sunday, and this will make the mowed area clearly a trail. B. Ganem mentioned a contractor is preparing a bid for work on an addition for the resident at 51 Kaileys Way and has asked if he could use the conservation area to access the back of the house. C. Auman suggested the Commission could consider allowing the use providing there is no rutting and the area is stabilized with vegetation. He also thought the individual should be required to install pedestrian steps at the trail entrance which could be landscaped with terracing or the installation of granite or pressure-treated steps.

B. Ganem reported the individual who is planning a birthday party at the castle at Gibbet Hill has requested April 24 as the date with Friday, April 30th as the rain date. In addition to the 30 students, she estimates there will be 20 adults to chaperone.

A complaint came into the Conservation office about erosion onto Autumn Leaf coming from a house that is under construction on Acorn Path. The siltation that reached the roadway and a private driveway has been cleaned up by Dennis Lacombe who is building the house for Don Desrosiers. During the Saturday site walk members observed a depression in the wooded area that was also filled with silt from the work site. B. Ganem re-visited the area and found soils in the area where there is considerable (~3 in.) sediment build-up showing water within 6 in. of the surface, depleted matrix soils (10 YR, 4/2) w/prominent mottling, a mix of red maple and white pine, and some enlarged tree bases showing signs of inundation. It is likely the area qualifies as a wetland under the Wetlands Protection Bylaw and may be located on 11 Autumn Leaf Rd.

Members debated whether separate Enforcement Orders or letters should go to Mr. Desrosiers and the owner of 11 Autumn Leaf Rd. M. Giguere observed that stabilizing the soils with grass could prevent a continuing problem. The repair of erosion control measures is also critical. D. Pitkin, seconded by M. Giguere, made a motion to issue an Enforcement Order requiring the filing of a Request for Determination of Applicability within 30 days to get compliance and fix the problem, but he then withdrew the motion.

Upon a motion by W. Addy, seconded by R. Lambert, it was

VOTED: to request Mr. Desrosiers come in and talk to the Commission, with a copy to the owner of 11 Autumn Leaf Lane.

M. Giguere and C. Auman voted in opposition.

Chairman Easom indicated he is working on determining the boundaries of the Fuccillo property using some of the aerial photographs. The trail, parking area, and signage will be essential parts of the management plan. B. Ganem agreed to prepare comments on the soils and turtle habitat.

In discussion on the encroachment issue at Integrity Way, members noted the Commission has handled this type of issue in different ways including requiring removal (Crosswinds and Northwood) and entering a license agreement (Old Dunstable Rd.) The confirmatory deed for this property went on record on May 5, 2000 while the Building Permit for the house was issued June 16, 2000. There is a certain liability involved with allowing structures to remain. The Commission could require the fence and playground be moved and leave the retaining wall in place, reserving the right to have it removed in the future. A motion by B. Easom, seconded by W. Addy, to allow the retaining wall to remain while the fencing and playground are removed failed with a 3 to 3 vote. R. Lambert, W. Addy, and C. Auman voted against, while M. Giguere, B. Easom, and D. Pitkin voted in favor. Upon a motion by M. Giguere, seconded by R. Lambert, it was

VOTED: to require the removal from the Integrity Way Conservation Area of all encroaching items by the owner of 6 Integrity Way.

The vote was unanimous.

In other pending matters, members agreed to get more quotes for the work at the Redskin Trail Conservation Area. B. Easom reported the meeting with Conductorlab about the Arlington St. access to the Rail Trail was positive. It is likely the trail would have to be built to ADA standards. The owner, Honeywell, has to grant the Town permission to allow access to the land. There have been no takers for the Shattuck fields, and members advised communicating with Springdell about water options.

M. Giguere will meet with the Agricultural Commission on April 14th at 7:30 p.m. in the 1st floor meeting room. He asked what members hope to achieve with this meeting, and the response was “general support for conducting agricultural activities on conservation lands and access for Ames Meadow”. They also may be able to advise on the appropriate trail width for access by farm machinery.

There being no further business, the meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as drafted 4/27/10.