

## GROTON CONSERVATION COMMISSION

### Open Session Minutes

June 8, 2010

Chairman Bruce Easom called the meeting to order at 7:00 p.m. in the 2<sup>nd</sup> floor conference room in Town Hall. Members Craig Auman, Marshall Giguere, Peter Morrison, and David Pitkin were present. R. Lambert arrived at 7:05 p.m., and W. Addy arrived at 7:35 p.m. Conservation Administrator Barbara Ganem was also present.

Upon a motion by C. Auman, seconded by M. Giguere, it was

VOTED: to approve the Open Session minutes of May 25, 2010 as drafted.

D. Pitkin abstained from the vote.

Upon a motion by C. Auman, seconded by M. Giguere, it was

VOTED: to approve the Executive Session minutes of May 25, 2010 as drafted.

D. Pitkin abstained from the vote.

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

VOTED: to approve the Order of Conditions for 58 Old Lantern Lane, DEP#169-1031 as drafted under the Wetlands Protection Act.

(Ryan Lambert arrived at 7:05 p.m.)

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

VOTED: to approve the draft Order of Conditions for 58 Old Lantern Lane, DEP#169-1031 with the omission of Conditions 5 and 14 under the Wetlands Protection Bylaw.

In discussion on the LAND management plan for the Fuccillo property/Martins Pond Brook II, M. Giguere noted there is hunting within the power lines, and, under state law, there is a 500 ft. buffer around GELD and the houses. D. Pitkin thought a small portion of the back of the property might be open to hunting. Chairman Easom asked whether members wished to allow hunting on the property. Upon a motion by P. Morrison, seconded by D. Pitkin, it was

VOTED: to allow hunting on the Fuccillo land in accordance with state law.

Having reviewed the draft management plan via email, upon a motion by M. Giguere, seconded by R. Lambert, it was

VOTED: to approve the management plan with the change allowing hunting on the property.

During the past Saturday site walk, members walked the first part of the Gibbet Hill trail after parking in the restaurant parking area. C. Auman commented he was glad to see parking is available for users.

The Fuccillo property was also walked and several flags were moved further upland from the edge of the marsh. Member Auman said he would like to see the part with the steep incline made easier with several curves. This would also make it less prone to erosion. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to make the return trail less steep through the use of switchbacks.

The motion passed with a majority, with B. Easom voting in opposition.

#### 7:15 Myette 69 Schoolhouse Rd. RDA

Attorney Robert Collins explained he was previously before the board two weeks ago and had agreed to get additional information on the stream crossing guidelines. Mr. Myette thought it would be a good idea to install flared ends to extend out from the culvert. R. Collins asked if the Commission might want to look at it in two weeks. Stan Dillis has looked at it to be sure it complies with the guidelines. The Commission also had concerns about the inlet being at the wrong elevation. P. Myette said he had raked out some debris from the culvert which could have made it look higher. The Natural Heritage Program has requested photographs and more information before issuing their letter. Upon a motion by D. Pitkin, seconded by P. Morrison, it was

VOTED: to continue the hearing to June 22, 2010.

Chairman Easom asked Mr. Collins the status of the encroachment issue on the NEFF Allens Trail conservation restriction. R. Collins indicated he had studied the record and sent a letter to the Commission and to Attorney Ray Lyons. There was also discussion of a possible land switch with land in tax auction. As a general premise, Mr. Collins said he was very reticent about changing a conservation restriction that has been approved by the state and put on record except in the most extreme cases. He offered to send another letter explaining his suggested resolution. He thought NEFF had met on this recently, and he expects a resolution shortly.

Regarding the Conservation Restriction for The American Baptist Church of Massachusetts (TABCOM), Mr. Collins said he has a version signed by everyone and sent to Boston for approval. Some changes were made, and the original pages are included, but he acknowledged he may need a 'true copy attest' for the Commission's signature sheet. He thought this was ready to go to the next level as well.

#### 7:30 p.m. – 120 Boston Rd./Myette RDA

Attorney Robert Collins explained he was representing Peter Myette to initiate discussion on a new concept plan for this lot. The existing building dates back 60 years, and the plan is to replace

it with a building the same square footage in size but different configuration. He noted it is an interesting site because the wetland buffer crisscrosses in several areas. No additional impervious area would be added to what is there now. It is hoped it will not be necessary to re-work the parking area as the existing drainage system does work, and they have never experienced ponding. Calculations are in process, but the new plan would not increase roof runoff. Mr. Myette would have the retail business at the back and then an office building in the front. This will be a less intensive use rather than large scale repair with sales.

(W. Addy arrived at 7:35 p.m.)

Member Giguere asked if it would be possible to further reduce the impermeable surfacing through the addition of permeable pavement. Stan Dillis indicated the stormwater will probably need pre-treatment. Mr. Myette said he was not yet tied into town sewer. His septic system has been designed to accommodate 80 bedrooms. The existing septic system would be abandoned once he has the building connected to town sewer.

Member Auman commented it was good to see that there would be no additional impacts and suggested this could be a showplace for utilizing low impact development techniques such as rain gardens. Stan Dillis agreed this would be a re-development project in Riverfront Area and share some similarities with the work on the Groton Community School next door.

B. Easom asked about the report that water is coming down Skyfields Dr. and flowing onto this property. The Skyfields development was built in the 1960's before stormwater management became an issue. The Town, through the Conservation Commission, owns the Hurd land which abuts the Myette property. Mr. Myette pointed out that drainage from the walking path on the Hurd land reaches his property too. The Groton Highway Dept. has recently completed a drainage swale on the Myette property to address the runoff from these areas.

Mr. Myette estimated that 50% of the site will be used for retail and parts. The office building will have 2½ stories. Under the stormwater guidelines, the water table should be at least 1 ft. below recharge swales. Under a re-development scenario, the management of stormwater must improve the current situation. Upon a motion by D. Pitkin, seconded by R. Lambert, it was

VOTED: to issue a positive #3 and #5 Determination.

7:45 p.m. – 36 Anthony Trail NOI continuation, DEP#169-1038

Engineer Tim Beauchemin said the Board of Health held their public hearing last night. Commissioners previously requested information on which trees are to be removed and details on the construction sequence which have now been incorporated into the NOI plan. Mr. Beauchemin assured the Commission the area that was observed as wet in the spring has now dried up. The existing cesspool will be pumped and filled with sand. B. Easom said it is unlikely the Commission will approve the wetland delineation as it is a complicated hydrogeological site, and the board realizes it would take extensive engineering to review it.

Members questioned the extent of filling in the backyard, and T. Beauchemin indicated the owners wish to grade from the foundation to the edge of the lawn in order to improve drainage.

He estimated the amount of fill would be between 4 and 6 inches deep. The septic system will be mounded, and no flooding was observed in this area. The Commission is also likely to require conservation markers to define the limit of disturbance. Upon a motion by M. Giguere, seconded by C. Auman, it was

VOTED: to close the hearing for 36 Anthony Dr., DEP#169-1038.

8:00 p.m. – 10 Redskin Trail RDA

Homeowner Rod Lowe explained he located trees proposed for removal on a lot plan. One oak on the property line is showing signs of decay on the back side and the other is leaning over the neighbor's house. In addition several dead birches will be cut, and there will be some pruning of an oak near the road. R. Lambert advised keeping the stumps in place. Grinding the stump is acceptable, but the root system should be left in place.

B. Easom said one other option might be to cut the trees 12 ft. above the ground, and they may resprout in the spring. Mr. Lowe stated it may be necessary to remove a second birch near the driveway as it is quite close to the dead one so this will bring the total number of trees to be removed to 6. Wayne Addy asked if there are any plans to mitigate for what is to be taken out. Upon a motion by C. Auman, seconded by R. Lambert, it was

VOTED: to issue a negative #3 Determination providing stumps are left in place (may grind); the Commission's preference is that the oaks be lopped 12 ft. from the ground, but they may be removed; and a 2nd birch on the side of the driveway may also be removed.

Chairman Easom commented the house at 718 Townsend Rd. did not completely burn during the Fire Department's fire training. B. Ganem replied the developer has 30 days in which to remove the house under the demolition permit.

The Zoning Board of Appeals denied Mattbob's request to remove the over 55 restriction for the Oak Ridge project on Boston Rd., and it is currently under appeal before the Housing Appeals Committee (HAC). David Doneski, an attorney from Kopelman & Paige who specializes in 40B's, and Dick Heaton are working on the appeal. B. Easom's analysis of the economics of removing this restriction will be included in the process. The appraisal submitted as part of the LAND grant application for this parcel is not within the public domain unless the grant application is successful. Mr. Heaton has asked if he could have copies of the appraisals in order to prepare his testimony. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to release the three appraisals to Mr. Heaton.

P. Morrison said he would not second guess the attorney's opinion on this matter. He noted the appraiser was given permission by the landowner to go on the property to prepare the appraisal. If we are potentially using it against him, it could be viewed as a change in the rules. The HAC will hear the matter on June 21.

8:30 p.m. – Groton Electric Light Department (GELD) 23 Station Ave. RDA

Groton Electric Light Manager Kevin Kelly reported the department wished to save replacement costs and minimize their footprint in the Station Ave. area. While they had hoped to acquire the next door property, they were not successful in their negotiations so the plans show work on the Town-owned MacGregor property. Mr. Kelly said he had met with the Board of Selectmen the previous evening to review these plans, and they have agreed, in principle, with the swap of land owned by GELD for the municipally owned MacGregor lot. Altogether GELD owns three parcels where their office, garage, and storage building are located, and the new building would consolidate their facilities.

K. Kelly explained the MacGregor house, garage, and shed were demolished about 7 years ago so the area is all previously disturbed. He marked the corners of the building and parking area prior to the Commission's Saturday site visit. The adjacent wetlands are not wet year-round but do have cattails in the wetter portion. It is anticipated that a small area would have to be filled to accommodate parking, and there is room on the property for mitigation. Mr. Kelly estimated the new structure would take up about one-third of the area the current GELD structures occupy and would leave other land open for the proposed re-development of Station Avenue. It would be possible to improve stormwater controls and incorporate low impact development (LID) techniques into the site plan.

Member Pitkin noted there are lots of invasives which he would be happy to see controlled in some fashion. He thought the plan seemed fairly reasonable, but asked if the replication would be done on another parcel. Mr. Kelly replied he was flexible on this and wanted to facilitate the project as much as possible. GELD does own land on Lowell Rd. and Sandy Pond Rd. R. Lambert said he would prefer to see the replication done on the same parcel and the same body of water. P. Morrison agreed.

The greatest value to the Station Avenue re-development process will come when something is done with Buckingham Bus. GELD plans to have a gravel driveway and perpendicular parking. Entrance to the facility would be via a left from Station Ave. The remaining GELD parcels would be left as park land until the Station Avenue re-development occurs.

Although concerned with the amount of impermeable surfacing near the wetlands, M. Giguere commented something to manage the invasives would be advantageous. K. Kelly said costs are driving this project, and the expense of developing within the Station Ave. area is considerably less than it would be for the development of the Lowell Rd. site near the substation. Member Auman said he would like to see some improvement to the wetlands either through mitigation or minimization. Mitigation could be a reduction in the amount of pervious surfacing. The Commission typically looks for 3 to 1 replication for disturbed wetlands, and minimizing the footprint and impacts as much as possible. The use of LID techniques, such as rain gardens, would be viewed favorably. Chairman Easom added that improvements to the management of stormwater are important too. Mr. Kelly said he is trying to get a sense from the Commission whether the project is theoretically possible before GELD spends money to design the facility. He understood it is a balancing act between interests. The Downes own two parcels in the vicinity, but GELD has been unable to reach an agreement on the purchase of those lots.

Members commented this project has similarities with the development of the police station in which they tried to maximize the use of property near wetlands and have continued to creep. Land Use Director/Town Planner pointed out much time, energy, and money has been invested to move the re-development of Station Ave. forward. She noted the design guidelines require LID techniques in the management of stormwater. The replication area could be a rain garden. One goal is to eventually improve the water quality of James Brook. The design review committee is composed of members of the Planning Board and Board of Selectmen. There will be a public-private partnership benefit to the Town and to the environment. The alternative is the status quo. Minimizing the required number of parking spaces would reduce impervious surfaces, and this project presents an anchor to jump start the whole process.

Selectman Anna Eliot explained the Board of Selectmen invited GELD to come in the previous night to discuss plans to build away from Rt. 40. They saw it as an opportunity to encourage a private developer willing to consider the development of the whole Station Ave. area. This project could be a trigger to get the engine going while reducing costs to GELD. Electric Light Commissioner Chris Christie pointed out GELD is likely to go through many plan iterations but will look closely at Leadership in Energy and Environmental Design (LEED) certification levels, water flow devices, and conservation measures in general.

Audience member Ray Lyons mentioned he had served on the Planning Board quite a long time ago, and the re-development of Station Ave. has been a topic of concern for years. He suggested the Commission may want to consider waiving the 3 to 1 replication requirement. In this case, LID and carrying out an invasive eradication program may help move the project forward in cooperation with GELD, the Planning Board, and the Board of Selectmen.

K. Kelly said it is GELD's intention to make the project as nice as they can, while still keeping it affordable and considering some level of LEED certification. B. Easom suggested the GELD Rt. 40 site could also be considered as a mitigation opportunity. He noted the Commission is currently requesting GELD's permission to cross a portion of this property to access the newly acquired Fuccillo conservation area. Chairman Easom characterized the Commission's position as no strong opposition, but certainly a level of caution and an opportunity to talk cooperatively. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a positive #3 and #5 Determination.

8:15 p.m. –21 Moose Trail NOI DEP#169-1041

Engineer Dan Wolfe of Ross Associates submitted proof of notification to abutters and then explained this project is being proposed after several older issues were cleared up. The project includes a two-car garage and an increase in the size of the house, but not in the number of bedrooms. This is a pre-existing, non-conforming lot. The garage has been stepped back because of frontage setback requirements. Mr. Wolfe has cleared this issue with the Building Commissioner. A MESA filing is required for the project.

M. Giguere questioned whether the project falls under the Conservation Restriction on a portion of the property. Attorney Ray Lyons acknowledged everything to the left of the fence is subject to a Restriction which allows a passage way for turtles between the kettle pond and the pond. He

maintained that Town Counsel had made changes in the Restriction after it was reviewed by Irene Del Bono of the state Division of Conservation Services. He submitted copies of an email exchange with Ms. Del Bono dated August 16, 2007. There is nothing in that version that addresses zoning. He noted that he always includes tracking information when he makes changes in documents and apparently this was not done.

R. Lyons suggested there are two ways to address this issue: one would be to amend the Order of Conditions, DEP#169-982, and the second is to amend the Conservation Restriction which is on record. He pointed out his client's primary reason for buying this property was to own clear out to the land he was using.

R. Lambert questioned how the roof runoff will be handled, and Mr. Wolfe responded "there will be an infiltration trench at the roof drip line". Mr. Lyons noted the wheelbarrow, canoe, and a bag of mulch have now been removed from the conservation-restricted land.

Chairman Easom read the wording from the Conservation Restriction having to do with zoning "No division or subdivision of the Premises, and no use of any portion of the Premises in calculating or satisfying zoning or other development rights, purposes, or requirements for this or any other parcel except as described and included in an Order of Conditions issued by the Town of Groton Conservation Commission entitled "Order of Conditions DEP #169-982, dated September 11, 2007 and recorded herewith." He pointed out the Order of Conditions allowed the shed, well, air conditioning unit, and driveway under an after-the-fact filing in what he thought the Commission had agreed to and would not have to be moved to meet the 15 ft. offset. Mr. Easom said it was his understanding that this was the extent of the exemption and also commented he was surprised that the state found the 2000 SF Restriction to be in the public interest in the first place. He felt that what was written was the intention of the Commission.

P. Morrison said he could not say with certainty what his understanding was at the time. It covers the area left of the fence. Mr. Lyons felt that the entire area to the right of the fence could be used as the homeowner plans for parking, lawn, shed, etc. He also pointed out that it would be better to have cars in a garage to contain any drips from vehicles. R. Lyons questioned why this could not be treated as an amendment to DEP#169-983. P. Morrison said he didn't remember that we said anything could be done. Mr. Lyons commented his client paid \$3000 for the land and also agreed to pay the taxes and legal costs.

D. Pitkin read from the August 28, 2007 minutes in which the Commission discussed the draft Conservation Restriction. Mr. Lyons said his client wished to make changes to his house and the intention of the Commission is very troubling. M. Giguere asked whether an amendment to the previous Order could be permitted as that covered work already done without a permit. He pointed out the Conservation Restriction is on record. Even if it was an error or oversight, he did not see a net gain in conservation value. The Commission went through the process of signing off and having the state sign off. Mr. Giguere indicated he was surprised by the filing as he did not envision a lot more to be done on the property in the future. C. Auman added he, too, was surprised by this filing.

Mr. Pitkin asked what would be the next step in cleaning up the mistake. Mr. Lyons said he could draft an amendment for Commission review. From the record and usage of the lot, it would be tough to amend the Order. Mr. Lyons suggested amending the Restriction, and M. Giguere said he was uncomfortable with such a precedent-setting step with one small property getting intensive use. This is a clause the Commission frequently includes in conservation restrictions. Member Giguere said this is essentially asking for a variance to the interests the Commission is supposed to protect. The clause is to prevent overuse of the land and an impact to the original value of conservation-restricted land. He indicated he understood everything was settled, and he did not expect to see another filing.

B. Easom acknowledged there seem to be a competing set of facts. There is the finding that the lot had stuff built on it before an Order was issued. The owner could have bought the lot and then given half to the Town. The language in the Restriction does not appear to be an oversight from our point of view, but may have been an oversight on Mr. Lyon's part. Flagging changes is a convenience, not a requirement. A motion made by P. Morrison, seconded by D. Pitkin, to make a change to the Conservation Restriction to reflect the draft dated August 7, 2007, failed with P. Morrison and W. Addy voting in favor, and C. Auman, M. Giguere, B. Easom, R. Lambert, and D. Pitkin voting in the negative.

A motion by P. Morrison, seconded by W. Addy, to entertain a new Notice of Intent or modify the previous Order of Conditions for DEP#169-982 to incorporate the plans dated May, 2010 with the mechanics left up to the applicant failed with R. Lambert, W. Addy, and P. Morrison voting 'aye', and M. Giguere, D. Pitkin, C. Auman, and B. Easom voting 'nay'. Upon a motion by R. Lambert, seconded by D. Pitkin, it was

VOTED: to continue the hearing for DEP#169-104 to June 22, 2010.

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

VOTED: to enter Executive Session at 10 p.m. for the purpose of discussing litigation, to return to Open Session at adjournment.

Returning to Open Session at 10:25 p.m., P. Morrison made a motion, seconded by R. Lambert, and it was

VOTED: to authorize B. Ganem to get the Ames Meadow field cut as soon as possible for an amount not to exceed \$1000.

Members indicated they wished to get permission from the abutters and the Town Forest Committee before this was undertaken. M. Giguere suggested, from an environmental point of view, mowing in late July or early August.

Upon a motion by R. Lambert, seconded by D. Pitkin, it was

VOTED: to nominate M. Giguere to represent the Conservation Commission on the



Great Pond Advisory Committee.

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

VOTED: to elect B. Easom to serve as Chairman.

The motion carried with six in favor, and B. Easom voting in opposition.

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

VOTED: to elect D. Pitkin to serve as Vice Chairman.

The vote was unanimous.

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

VOTED: to elect R. Lambert to serve as Clerk.

The vote was unanimous.

There being no further business, the meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Barbara V. Ganem  
Conservation Administrator

**Approved as drafted 7/13/10.**