

GROTON CONSERVATION COMMISSION

Minutes

July 27, 2010

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, and Peter Morrison were present. Member David Pitkin was absent. Conservation Administrator Barbara Ganem was present.

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

VOTED: to approve the minutes of July 13, 2010 as drafted.

In discussion on the Order of Conditions for 21 Moose Trail, M. Giguere felt there was an outstanding issue with regard to the Conservation Restriction. P. Morrison maintained this was a zoning issue, not a conservation problem, and M. Giguere said it is conservation because we hold the Conservation Restriction. He expressed concern with approving it before the zoning issue is resolved. C. Auman suggested sending a letter to the Building Inspector so that he is aware of the issue. Upon a motion by M. Giguere, seconded by P. Morrison, it was

VOTED: to approve the issuance of DEP#169-1041 as drafted for 21 Moose Trail under the Wetlands Protection Act.

The motion passed by a majority vote with M. Giguere voting in opposition.

A question came up about whether a certified plot plan was necessary for the construction of the garage, and Stan Dillis, a surveyor, was in the audience and explained the Building Inspector will be looking for this anyway. Upon a motion by M. Giguere, seconded by P. Morrison, it was

VOTED: to approve the issuance of the Special Conditions for DEP#169-1041 for 21 Moose Trail, as amended, under the Wetlands Protection Bylaw.

The motion passed by a majority vote with M. Giguere voting in opposition.

7:15 p.m. – 534 Martins Pond Rd. Sjoberg Request for Determination of Applicability (septic repair)
Surveyor Stan Dillis explained the applicant had a failed septic system in need of replacement. The existing septic tank is partially located under the swimming pool deck, and it will be necessary to change some of the piping to hook into a new septic tank. The old one will be abandoned and filled with flowable fill. The leach field will be constructed where the old one is located and is out of the 100-ft. buffer zone. Member Auman thanked him for keeping the majority of the work outside the buffer zone and minimizing impacts. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination of Applicability for a septic upgrade at 534 Martins Pond Rd.

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

VOTED: to issue an Order of Conditions, as drafted, for weed harvesting at Lake Massapoag, DEP#169-1045, under the Wetlands Protection Act.

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

VOTED: to issue the Special Conditions, as drafted, for DEP#169-1045 under the Wetlands Protection Bylaw.

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

VOTED: to issue an Order of Conditions, as drafted, for the replacement of a wastewater pipe at Groton School, DEP#169-1043.

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

VOTED: to issue the Special Conditions, as drafted, for DEP#169-1043 under the Wetlands Protection Bylaw.

Chairman Easom said the standards set by the Army Corps of Engineers are state of the art for installation of the outfall pipe in the river bank. The concern is to keep the installation as natural as possible. Putting in trap rock to stabilize the bank could result in changes to the surrounding shore line over time, and we do not want to add to the instability of the bank.

7:30 p.m. – 179 Mill St. Currie Request for Determination of Applicability (deck)

The builder, Ralph Gilbert, explained the deck will be 10 ft. x 40 ft. deck with 2 ft. x 6 ft. bay in the center for the homeowner, Michael Currie. Stairs will be installed on the west side of the deck, and 11 sonatubes are required for the footings. Member Giguere thanked him for marking the deck location in the field and mentioned the outstanding Order of Conditions (#169-843) for the addition to the house. He questioned whether haybales would be installed around the construction site and the landing at the corner. Mr. Gilbert said the deck will be 3 ft. above the grade.

In 2006, the Commission requested a Notice of Intent to address work done outside of the permit issued for the addition. Mr. Currie said a basement was added instead of a slab on grade. B. Ganem noted that piers were originally proposed, and the basement resulted in extra grading on the stream side of the property. An after-the-fact Notice of Intent was requested as the work done was not in compliance with the Order of Conditions. A mechanism to handle roof runoff was not apparent during the Commission's visit to the site. B. Ganem asked if the Commission would be willing to consider a Request for Determination of Applicability to complete the process. The original Order of Conditions was recorded and, essentially, we need an as-built plan showing what was actually constructed. B. Easom commented there needs to be a method to control roof and surface runoff toward the resource area. A trench filled with 6" – 12" of gravel installed at the roof drip line would suffice.

Crushed gravel under the deck at the back of the house could act as an infiltration trench to trap and hold sediments. Members agreed the applicant could move forward on parallel tracks with the deck and the resolution of the earlier Order of Conditions. Upon a motion by C. Auman, seconded by M. Giguere, it was

VOTED: to issue a positive #3 and #5 Determination requiring the filing of a new Notice of Intent for the basement and treatment of roof runoff associated with the construction of the addition.

Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination for the construction of the deck providing a Notice of Intent is filed for unauthorized work under DEP#169-843 before the actual work commences, a trench is added on the west side of the house to handle roof runoff, and that excess materials excavated from the holes for the sonatubes are removed from the site.

M. Giguere strongly cautioned Mr. Currie that any changes to the plan should trigger a call to the Conservation Commission or B. Ganem before implementation.

7:45 p.m. – 69 Schoolhouse Rd. Myette Notice of Intent, DEP#169-1040 (stream crossing)
No applicant or applicant representative was present. Commissioners asked Stan Dillis if he was aware of a letter to address the Commission's questions about the adequacy of the stream crossing, and he indicated he was not. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to continue the hearing to August 10, 2010 for DEP#169-1040.

Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to approve the completed Water Resources Protection Surveys prepared by C. Auman and B. Ganem for submittal to the Nashua River Watershed Association.

8:00 p.m. – 26 Orion Way Wilson Notice of Intent, DEP#169-1044 (in-ground swimming pool)
Engineer Matt Waterman of Land Tech submitted revised plans in which the restoration line, plantings, and permanent markings remain the same. The area of the pond has changed slightly. The applicant has pavers for a patio, but proposes concrete for the decking around the pool. The Natural Heritage & Endangered Species Program has determined there is no prohibited take associated with the proposed work.

Mr. Waterman explained there is no winter-time de-watering of a salt water pool. If necessary to reduce the water level, it could be discharged into a nearby dry well. He confirmed with his client that there are no plans for a cabana. R. Lambert questioned whether there is an operations and maintenance plan for the pool, and Mr. Waterman replied "No." The size of the pool is estimated to be about 38 ft. x 21 ft. with an 8 ft. depth leveling off to 3 to 4 ft. at the shallow end.

B. Easom estimated the volume of water would hold a ton of salt. Access will be via the existing driveway, and excavated materials will be removed from the site immediately. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to close the hearing for DEP#169-1044 for 26 Orion Way.

Members discussed the fruit bushes observed along the trail access off Chicopee Row for the Sawtell Conservation Area. The bushes could serve to screen the trail from private property as well as

provide food for wildlife, but there is a need to establish exactly where the lot line is. B. Easom said he would convey this information to the Trails Committee.

Commissioners walked land on Cow Pond Brook Rd. just south of the town Transfer Station this past Saturday with Don Black and Jon Strauss of the Parks Commission to consider whether this site is suitable for playing fields. A portion of the south boundary lies within 100 ft. of a wetland resource area. The proposed layout of fields and parking would involve grading. The sandy soils are likely to be prime breeding habitat for turtles and will require a filing under the Massachusetts Endangered Species Act (MESA). The area clearly sees a lot of ATV traffic. Runoff will not be a problem. Members recommended the Parks Commission meet with MESA as soon as possible to understand what the regulatory pitfalls might be before there is any transfer of land. The Commission was disappointed not to have any representatives from the Parks Commission present for the discussion as they may not have all the information they need to make a good decision. A letter will be sent to them urging them to work diligently with MESA in the early planning stages.

8:15 p.m. – Appointment Rod Lowe – 10 Redskin Tr. Request for Determination of Applicability modification

Mr. Lowe reported his arborist had looked at the remaining trees on his lot and had found they were all failing. He submitted a drawing which showed the additional trees they wish to remove. Apparently the combination of raising the planting bed and installing pavement put the trees at risk for disease. R. Lowe said they would be happy to replace the trees with bushes such as arborvitae. B. Easom asked if there was a written report from the arborist. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED to authorize the removal of the additional trees and re-planting with native, non-invasive species.

During the Saturday site visits, members noted an area at the intersection of Blossom Lane and Martins Pond Rd. where soils are being excavated from a stream. Upon a motion by M. Giguere, seconded by C. Auman, it was

VOTED: to send a letter to the owner, Julia Pietras, requesting the Commission be notified when agricultural drainage swales are to be cleaned.

8:30 – Appointment Stan Dillis representing Jon Liebold 246 Lowell Rd. Request for Certificate of Compliance

Mr. Dillis acknowledged there are some slight variations in the constructed driveway, but he understood the Commission was not happy with the berm. S. Dillis said he had observed the top of the driveway during a rainstorm this past Friday and pointed out water is staying within the roadside gutter and not going down the driveway. He would be happy to write a letter to this effect for the Commission.

P. Morrison commented he was expecting a more complete berm because the owner claimed water coming down the old driveway from Rt. 40 was the reason for the new driveway design. M. Giguere noted the Commission is well within its rights to see this on the as-built plans since it was a proposed design feature. Mr. Dillis maintained there was some level of functionality because the driveway is higher than the gutter where water would stay. R. Lambert questioned what it would take to finish off

the berm, and S. Dillis replied “the pavement would have to be cut, and then the area re-paved and the two areas meshed together.” He estimated the work would take a half day.

B. Easom pointed out the as-built plan does not match what is on the ground. Mr. Dillis said he could add spot grades to the plan to show the difference in topography. This is really the only issue the Commission has with issuing the Certificate and that could be re-considered once the revised as-built plan is submitted.

Members thanked M. Giguere for his work in pulling together the “Forestry Management Guidelines”. Mr. Giguere noted that it may contain some conflicting management goals, but will identify what the Commission’s intentions were in beginning forestry management projects. The document could be revised after a year, particularly if we begin the process of managing a forest on conservation land and have more experience. Upon a motion by P. Morrison, seconded by R. Lambert, it was

VOTED: to approve the draft Forestry Management Guidelines with the inclusion of a statement it will be subject to review after one year.

B. Easom urged the Commission to move forward with forestry management and the process of preparing a Request for Proposals for a town forester.

The Surrenden Farm Resource Management Plan is nearing completion; B. Ganem is making changes that were discussed at the last meeting of the ad hoc committee. We are still awaiting the landscape context map from Pat Huckery. M. Giguere suggested putting the final version up on the web site for the public to make corrections and then request approval from the Selectmen and Fisheries & Wildlife.

8:45 p.m. – Appointment Ray Lyons

Mr. Lyons expressed some concerns about the wording in the draft Order of Conditions for 21 Moose Trail, particularly the requirement that machinery not be stored on site. He asked if a tarp and diaper could be placed under the machinery. R. Lyons also questioned the findings section, saying the Conservation Agreement could change the intention of the last sentence.

R. Lyons previously offered an amendment to the Conservation Restriction for 21 Moose Trail that has already been recorded. Originally the state had approved a draft with an allowance for zoning. The confirmatory conservation restriction consists of two pages and then signature pages for the various approving bodies, the Selectmen, the Commission, the grantor, and the Secretary of EOEEA. Irene Del Bono made some substantial changes in the draft prepared by R. Lyons. P. Morrison, seconded by R. Lambert, made a motion to accept the confirmatory conservation restriction as drafted.

In discussion, C. Auman said the recital of reasons were all news to him. At no time did he recall that the purpose of the Conservation Restriction was to allow further building on property that was already so developed that that is why the Commission voted not to allow it. Mr. Auman said he does not believe the Commission ever discussed this. R. Lyons said he recollects that the Commission and he had reached some consensus in early August on the terms of the Conservation Restriction. Members Auman and Giguere pointed out they never anticipated another filing for this property. Mr. Lyons indicated he thought the Commission had been copied on the August 15th email, and it was

just a matter of going through the approval process and getting the document recorded at the Registry of Deeds.

Chairman Easom pointed out that the five members who signed the Conservation Restriction were present tonight. P. Morrison said he could not recall that it was his intention that the new parcel or the land under the Conservation Restriction could not be used for zoning. M. Giguere said he approved and signed the Restriction as it was presented to him. C. Auman agreed with M. Giguere and said this wording was far broader than he expected. R. Lambert said he could not recall, but he would not have thought there would be another structure. In fact, B. Easom said, the board bent over backwards to accommodate the landowner but also to protect conservation values. There was talk of getting the well and everything else off the property in early discussions. The landowner, through his attorney, then threatened to go to Land Court on an adverse possession claim. The Commission's understanding of the 15 ft. zoning offset may mean that's where we will end up again. B. Easom said the Commission's general intention was to protect as much land as possible and forgive the encroachment that had occurred in the past. If it was the original intention of the grantor to continue building, that information was never offered. B. Easom commented this is not a small matter of a work change, but goes to the heart of matter of the intention of the meeting of the minds.

C. Auman said the negotiation did not take place, and Mr. Lyons is saying something similar. Focusing on the fence and saying to the left is for the turtles, and the remainder of the lot is to be used for additional structures was not clear cut. It was not clear that the conservation-restricted land was to be used for dimensional controls. C. Auman stated our intention was clear, and it should not materially change the purposes of the Conservation Restriction.

B. Easom pointed out the intention goes directly to the question of a failure to have a meeting of the minds. R. Lyons questioned whether we should go back to an amendment rather than a confirmatory document. C. Auman said if we go back to when we signed, the negotiations were apparently incomplete. B. Easom pointed out there is a motion on the table to look at the amendment, or the Commission could decide to take this up at a later time. M. Giguere said the ball was dropped. There has been a failure to have a meeting of the minds. R. Lyons indicated he would be willing to change from confirmation to an amendment if that would provide a better recitation of facts. M. Giguere said it does not matter what we call it as the Commission is being asked to change what we agreed to. R. Lyons said there was an oversight on the part of Town Counsel, and Mr. Wilson agreed to correct the oversight. Both attorneys made mistakes, and he asked the Commission to make right on a mistake he had made.

P. Morrison noted it would be expensive to bring this to Superior Court, and R. Lambert concurred. He questioned whether a limitation on the total size of the building could be considered. There could be an in-law apartment located above the garage. M. Giguere noted this would require a septic system capable of handling additional bedrooms. Public sewer is being discussed for the Lost Lake area, but that could be 15 years down the road. Mr. Lyons asked the Commission to consider what other things could change on the house lot abutting the Conservation Restriction. The house is to the south of the conservation-restricted land so it is not likely to cast shadows. The septic system is located on the opposite side of the property. R. Lyons suggested talking about things that would affect the conservation value.

M. Giguere thought that excavating and additional square feet of impervious surfacing would have an impact. He pointed out water quality begins to degrade and biodiversity diminishes when more than

10% of an area is covered with impervious surfacing. Additional land surface is being made impermeable with the addition, and only a portion will have pervious paving. The plans do not address wildlife habitat improvements.

R. Lyons said the state approved the Conservation Restriction as a corridor for animal travel. All changes to the right of the fence that involve changing human use do not affect functionality of the Conservation Restriction. It prevents encroachment, preserves its value, and the state had no trouble with its size as the smallest restriction in the state. M. Giguere maintained the additional structure further degrades the conservation value, and although he is not a biologist, he can't make the fence a benefit to wildlife. Mr. Lyons said his client observed turtles using the boat launch, primarily painted turtles, and the boat ramp is the road. C. Auman said he is struggling with understanding our intent, but in order to make it right with Mr. Lyons, we have to give up the Commission's intentions. C. Auman said we need some reason to grant the change. B. Easom said we have to consider the net benefit of the Conservation Restriction. This is to correct an error. R. Lambert noted it could be limited to one story, and an in-law apartment could be constructed on the other side. C. Auman argued for an improvement in the conservation value in order to correct an error or oversight. Height within distance of the garage does not necessarily save conservation value. Re-designing the amount of impervious surfacing is an improvement. The size of the Conservation Restriction is 826 square feet. An overall benefit can be codified. Commissioners questioned whether it is possible to move the garage further from the fence or are there some other negotiations to consider. The purchased land was 40 ft. wide, and it may be that the limitation to one story could improve the functionality of the Conservation Restriction, but making it a more turtle friendly habitat should be considered.

R. Lyons summarized the Commission's recommendations as 1) limitation on heights of buildings and improvement of turtle habitat. The amended Conservation Restriction must show a net benefit to the conservation values of the Conservation Restriction. A Request for Determination of Applicability would be required for improvements to the turtle passage way. The amendment would not go on record until the improvements are completed. Commissioners agreed they were generally in favor of this approach. P. Morrison withdrew his original motion, and further discussion was scheduled for August 10, 2010.

Attorney Lyons explained he had sent an email with a bulleted list of items to be considered for the Purchase & Sale Agreement on the Baddacook Pond NEFF land. One of the items is a second parcel of land which includes an esker and the potential well site. He noted this area had been appraised for its water value, but it may be more reasonable to consider it according to its value as a hammerhead house lot. He asked if the Commission would consider making this a separate purchase for next year. It will be necessary to have a surveyed plan for the first sale. B. Easom suggested the Commission consider taking a vote on whether a LAND grant is necessary in order to make this purchase. Filings would be necessary for the demolition of the house (Request for Determination of Applicability) and a Notice of Intent for the septic system upgrade, well, and house.

Selectman Peter Cunningham has asked about NEFF's right to use the old road next to the Baddacook well. Mr. Lyons indicated this would be extinguished. NEFF would look for permission from Mr. Forbes and Mr. Kiley to use their private driveway for forestry purposes. Because of the wetlands on site, it is unlikely that forestry activities will be conducted on the portion in which the town is interested. The Commission may want to assure some type of reservation of rights for the Water Department. The span as the brook enters the wetland is approximately 70 ft. wide according

to Mr. Lyons so a bridge crossing is unlikely. P. Morrison mentioned there are snowmobile trails that are maintained within Wharton Plantation.

Mr. Lyons thought the second lot would be valued in the upper \$200,000's. He said he would like to have a clear indication of the Commission's interest in the purchase of the second parcel. P. Morrison thought it should be contingent on the receipt of state funds. M. Giguere mentioned he had talked with Anne Gagnon of the Department of Fisheries & Wildlife, and they have an interest in the land because of the presence of rare species. They are interested in fee involvement, not a conservation restriction. There is potential for partnership in protecting this land. Mr. Lyons pressed for a vote of the Commission on the purchase of Parcels 1 and 2 and exploring a partnership with Fisheries & Wildlife. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to express an interest in the purchase of Parcels 1 and 2 provided the Commission is successful in getting a LAND grant; the Commission is also willing to explore the potential for partnering with the Department of Fisheries & Wildlife in this endeavor.

The vote was unanimous. B. Easom commented the LAND grant round is very competitive this year. R. Lyons indicated he would send a copy of the email he sends to Anne Gagnon to B. Ganem. Member Giguere volunteered to work on this project on behalf of the Commission.

Referring to the land management items in the tickle list, B. Easom said he has not yet posted the rules and regulations signs at the Farmers & Mechanics property. A letter has recently gone out to the landowner with the encroachment onto the Integrity Way conservation land. Members agreed to give him 30 to 60 days to respond.

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

VOTED: to award Bob Black the job of placing six boulders on the Redskin Trail Conservation Area in the amount of \$600.

B. Ganem will check with Michelle Collette to see if there has been a response on the request to walk the Conductorlab property owned by Honeywell to explore a trail access to the Nashua River Rail Trail from Arlington St.

Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to authorize B. Ganem to place a request for proposals for the management of the Shattuck fields on Martins Pond Rd.

To follow up on the meeting with the Town Forest Committee and Ames Meadow abutters, members agreed to send a copy of the MACC article clarifying the Commission's role in hearing filings on land that it owns to the neighbors who raised questions about the potential conflict in interest. If this doesn't satisfy their inquiry the Commission will consider going to Town Counsel.

Members asked if it could be determined when the encroaching items were to be removed from the NEFF land off Allens Trail. B. Ganem will scan a copy of the TABCOM Conservation Restriction to send to Attorney Collins to see if we can get begin the approval process with the Secretary of

Executive Office of Energy & Environmental Affairs. She will also invite Gordon Newell to attend a Commission meeting to discuss the W. Groton Water District Conservation Restriction.

B. Easom reported Meredith Scarlet has actually installed the separate fencing on Angus Hill about 25 ft. from the trail easement so it does avoid the wetland area. He has not had an opportunity to submit the Conservation Restriction monitoring report to her as yet.

Chairman Easom said he would prefer to see the Commission begin the process of developing turtle nesting habitat before constructing trails on the Fuccillo property. The Commission may want to request proposals or contact the state for additional information. Brian Butler was the consultant who prepared a plan for the Academy Hill turtle nesting site. Mr. Easom said he would like to see a dedication ceremony for the trail, and the Commission should be thinking about a name for the parcel. There had been discussion about naming conservation land after former member Bruce Clements who passed away two years ago. This topic will be addressed during the next Commission meeting.

B. Ganem asked if the Commission would consider having the Sargisson Beach Park Ranger perform maintenance activities at other conservation areas. She noted the road shoulder adjacent to the new kiosk at Surrenden Farm should be cleared. Members of the Trails Committee have suggested McLain's Woods field mowing, Kaileys Way mowing, and widening and clearing of the Hawtree trail off Raddin Road. It is likely this would require the use of the DR brush mower. Members thought the Surrenden Farm shoulder should be cleared.

C. Auman suggested a letter for members' signatures be prepared to thank Wayne Addy for his service on the Commission.

There being no further business, the meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as drafted 8/10/10.

