

GROTON CONSERVATION COMMISSION

Minutes

September 28, 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, Peter Morrison, William Neacy, and David Pitkin were present. Member Nadia Madden was absent. Conservation Administrator Barbara Ganem was present.

Upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to approve the minutes of September 14, 2010 as drafted.

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

VOTED: to issue an Order of Conditions, as drafted, for DEP#169-1046 for 179 Mill St. under the Wetlands Protection Act.

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

VOTED: to issue an Order of Conditions, as drafted, for DEP#169-1046 for 179 Mill St. under the Wetlands Protection Bylaw.

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

VOTED: to issue an Order of Conditions, as drafted, for DEP#169-1047 for 3 Champney St. under the Wetlands Protection Act.

D. Pitkin abstained from the vote.

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

VOTED: to issue an Order of Conditions, as amended, for DEP#169-1047 for 3 Champney St. under the Wetlands Protection Bylaw.

D. Pitkin abstained from the vote.

Member Giguere reported there will be a meeting of stewards on Thursday, October 7th at 7:30 p.m. in an effort to attract new members and keep old members on track. He said he had recently completed the stewardship guidelines.

In response to the request to modify the Determination for 716 Lowell Rd., P. Morrison made a motion, seconded by C. Auman, and it was

VOTED: to accept the installation of electrical utilities as a modification to the Determination of Applicability issued to Gregory Baran/716 Lowell Rd. on July 16, 2010.

Sally Smith of 13 Common St. has notified the Commission she would like to clean out her irrigation pond which she uses to water the flowers grown in her fields. The property is in Ch. 61A. Her intention is to spread the organic materials on her field in the uplands. Upon a motion by P. Morrison, seconded by D. Pitkin, it was

VOTED: to acknowledge Ms. Smith's intentions for 13 Common St. for cleaning out her irrigation pond and caution against parking equipment within 100 feet of the resource area if the project takes longer than one day.

7:15 p.m. – Brooks - 74 West Main St. Notice of Intent DEP#169-1049

Engineer Dan Wolfe of Ross Associates explained the Brooks are planning an addition for the back of their home. An existing deck will be replaced with a smaller deck. A sewer force main will have to be re-routed to avoid the addition around the back. Minor grading is necessary along the back of the addition. Mr. Wolfe said the abutters have been notified, and he has submitted a Form of Intent for the proposed work. Because of the significant drop at the back of the lot, equipment will enter from the existing driveway. He anticipates materials may be stockpiled at the west corner of the house with any excess moved off site. The second floor balcony will be removed and the door replaced with a window.

In response to questions from reporter Pierre Comtois, Mr. Wolfe explained it is a 17,300 SF lot, and the addition (30 ft. x 18 ft.) is located 65 ft. from the wetlands. Member Auman pointed out the lot is previously disturbed, and this house was constructed prior to the time the Wetlands Protection Bylaws went into effect. Upon a motion by P. Morrison, seconded by B. Neacy, it was

VOTED: to close the hearing for DEP#169-1049 for 74 W. Main St.

Regarding the request for the Commission to sign a release on the Critter Skimmer, members felt the release was so detailed, it would be necessary to consult with Town Counsel. B. Easom questioned whether the inventor would be willing to make a donation to cover legal fees. M. Giguere pointed out that minutes in which we discuss the Critter Skimmer are public records. Members agreed it is not in the Commission's best interest to endorse one vendor over another. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to not respond to the inventor of the Critter Skimmer.

7:30 p.m. – Flaherty - 49 Cherry Tree Lane Notice of Intent DEP#169-1048

Dan Wolfe explained this is one of the new lots which went through the permitting process at Academy Hill. The buyers purchased the house before the septic system went in and are dissatisfied with the high mound in the front yard and the steep driveway. With testing they found there was a good percolation rate in the back yard, and it is possible to re-locate the septic system to the backyard. This will mean the front yard can be lowered and the driveway re-graded to have a gentler slope. Only slight grading is proposed in the 100-ft. buffer zone to the wetlands.

Conservation markers are already in place, and the site would be finished and stabilized with loam and seed.

Mr. Wolfe provided the abutter notification cards and reported he had filed a Form of Intent with the Land Use Department. Because the Board of Health does not like to see water and sewer lines cross, the new sewer line will go under the driveway by 4 ft. (below the frost line) so it is no longer gravity fed and will require a pump.

M. Giguere noted the haybale line needs to be refreshed as soils have built up against the bales. Mr. Wolfe indicated his client would probably not wish to see a requirement for additional plantings to stabilize the buffer zone. It is his intention to restore the area as lawn which was previously allowed by the Commission. He plans to do the work as soon as the permitting is completed. D. Wolfe said the footing drain will be moved but will be outside the buffer zone. In response to questions from Mr. Comtois, Mr. Wolfe stated the lot is 1.18 acres, and it is likely the developer did not do the additional testing to get the septic system out of the buffer zone. Upon a motion by P. Morrison, seconded by D. Pitkin, it was

VOTED: to close the hearing for DEP#169-1048 for 49 Cherry Tree Lane.

Referring to the tickler list for land management items, members recommended wrapping up the Resource Management Plan for Surrenden Farm as soon as possible with the addition of the updated landscape context map from the Division of Fisheries & Wildlife.

7:45 p.m. – Sydlar - 79 Raddin Rd. Notice of Intent DEP#169-1052

Surveyor Stan Dillis stated this 1.5 acre parcel sits atop an esker in the middle of wetlands associated with Unkety Brook. Bordering Vegetated Wetlands are located on either side of the septic system which has failed. Due to a fire the house is currently vacant, and the residents are living in an on-site trailer. The leach pipe and the water pipe will be re-located as part of the project so the haybales are shown to wrap around the back of the site. M. Giguere said he would like to see the materials from construction disposed of properly. Mr. Dillis said his client needs a variance from the Board of Health for property line setbacks. Abutter Laura Stockfish (58 Raddin Rd.) asked the impact of this work on the flow of Unkety Brook, and S. Dillis assured her there would be none. Upon a motion by P. Morrison, seconded by D. Pitkin, it was

VOTED: to close the public hearing for DEP#169-1052 for 79 Raddin Rd.

Dana McKiel of 6 Integrity Way states that he intends to remove the structures encroaching on the Integrity Way conservation area in October. B. Ganem reported a neighbor raised safety concerns if the Commission chooses to place boulders at the turnaround to the Redskin Trail conservation Area. C. Auman questioned whether the boulders could be moved in a little to allow parking and maintain the turnaround. He suggested there could be some liability if emergency equipment has difficulty negotiating the road and strongly recommended the Commission allow the Fire Chief an opportunity to weigh in.

B. Easom reported the new Land Use Assistant, Dawn Dunbar, will be preparing the envelopes for a mailing to the Northwoods neighbors about not dumping on conservation land. He

underscored the need for the Commission to get in with a GPS unit to mark the possible trail for accessing the Nashua River Rail Trail from Arlington St. Honeywell still has not granted permission to enter their property. B. Ganem explained there were no submittals to farm the Shattuck land on Baddacook Pond. We are required to keep this land in an open condition to provide a viewshed to Baddacook Pond. Roy MacGregor brush hogged the field last fall. Bill Neacy asked if it is quality hay, and members replied it is not. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to authorize B. Ganem to have the Shattuck area mowed.

8:00 p.m. – Helou - 134 Shelters Rd. Request for Determination of Applicability

Owner Sheri Helou explained they wished to remove 9 trees, some of which were hanging over a shed and some overhanging the water that are likely to fall and take out the dirt at the shore line. They plan to leave the stumps and let the undergrowth have a chance. Mr. Auman said he was glad the stumps were to remain in place, but pointed out the trees provide shade and habitat. Ms. Helou said there are blueberries growing in the area, and they will encourage those. Members said they typically look to have this type of work done when the lake is down or under frozen conditions. Ms. Helou said they intend to have a bucket truck do the work. Upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to issue a negative #3 Determination requiring the owner to encourage growth of native shrubs in the area where trees are cut, invasive plants may be pruned out, tree stumps shall remain in place, and work shall be done when the lake is frozen.

Bill Neacy abstained from the vote.

B. Ganem reported Bennett Black indicates a hay baler would require an opening of at least 10 ft. B. Easom asked the Commission to consider the next step with regard to the access to Ames Meadow. Members suggested approaching the Town Forest Committee with a 10 ft. wide proposal in which the trail is moved away from neighbors' properties and only small saplings are cut. The Committee will be consulted to see when we could schedule a meeting with them.

M. Giguere and B. Easom of the Conservation Restriction Monitoring Sub-Committee reported the drainage structures have been removed at 51 Allens Trail. A hanging birdfeeder remains in place, and a basketball hoop is located at 55 Allens Trail. This progress will be communicated to the New England Forestry Foundation (NEFF).

8:15 p.m. - Appointment Gordon Newell/Conservation Restriction (CR) on Blood parcel

W. Groton Water District Superintendent Gordon Newell and Water Commissioner Emmett (Jack) Risdon were present. Mr. Newell explained the reason for the CR was not because the District owed it to anyone. They put the Town Forest well in and did not destroy the environment. The process was sold to the public that water supply protection and conservation were to be melded, using the Surrenden Farm CR as a model, but with changes the District could work with. Mr. Newell pointed out the District paid \$800,000 for the purchase of a water supply. He estimated that the requirement for a water management plan and forestry management plan and the accompanying engineering and studies would cost the District another \$100,000. The

anticipated land swap with the Boy Scouts would not occur until the new well is proposed. Water Commissioner Jack Risdon said Mr. Newell does not have a problem with some kind of control, but some of the draft changes to the CR would create difficulties for the District.

C. Auman clarified that the intended use of the property is as a future well, and it will require a 400 foot protective radius. Mr. Newell said the Ames Pond Rd. has been closed off, and the 1.5 acres land swap will give the District control over Zone I of the new well. He stated Ames Pond Rd. goes to the left of the treatment plant but would provide access to two more wells whose development would involve pitless adapters although they may want to build a small structure for the storage of equipment on site in the future. Mr. Auman mentioned the land management plan does not have to be detailed, especially if there are no steps anticipated. Mr. Newell explained the well is not likely to be operational until 2020, but they would like the opportunity to sell water and pay off the debt. There is a water sharing agreement with the Town of Groton for the Town Forest well, but it does not extend to these new wells. At this time, W. Groton draws water from the Townsend Rd. well field on Mondays and Thursdays; the remaining water needs are met with the new Town Forest well. Water quality, with regard to the manganese levels, has improved in the Townsend Rd. with the new schedule of withdrawals. No water would be shared with the Town of Groton unless all water needs of the District are met. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to appoint Marshall Giguere to negotiate with W. Groton Water District Superintendent Gordon Newell to revise the Conservation Restriction to meet the needs of both the District and the Conservation Commission.

M. Giguere abstained from the vote.

8:30 p.m. – Henry/14 Heritage Lane Notice of Intent DEP#169-1050

Jeff Hannaford of Norse Design Services explained the house lot was created around 1993. The wetlands were re-flagged, and a flood elevation of 197 ft. was noted on the plan. The left front yard is the site of the septic system. The in-ground pool will have 4-ft. wide decking surrounded by a 2-ft. wide infiltration trench. The limit of construction is at the edge of the existing lawn area.

Mr. Hannaford commented different alternatives were examined, including placing it next to Rt. 40 which was unacceptable to his clients. He felt the mitigation for additional impermeable surfacing would be accomplished by handling runoff with an infiltrator trench. Pool maintenance will be in accordance with a letter dated September 27, 2010. The type of filter to be used does not require backwashing and the salt electrolytic converter means there will be no need for the storage of chlorine chemicals near the wetland. Approximately 3,500 – 4,000 gallons of water will be removed by a pump truck for winterization.

Abutters have been notified. Members questioned the volume of salt used per year, and Mr. Henry said they will store it in the garage or basement. The initial service by the pool company will adjust the salt level, but it does need to be replaced periodically. They plan to move the swing set, probably to the front of the fenced-in area. The pool will be enclosed within its own fence.

Member Auman pointed out that the first 50 ft. beyond the wetland is very significant, and he appreciated the fact that alternatives were examined. D. Pitkin questioned whether the deck has to be impervious, and P. Morrison commented it is typically concrete as you don't want water infiltrating and freezing next to the pool itself. Fill excavated from the pool site can be stored outside the 100-ft. buffer zone and any excess will be removed from the site. Sometimes, during a period of heavy rain, it is necessary to reduce the water level in the pool, and Commissioners asked how this would be handled. J. Hannaford assured members the water would not be pumped into the wetland and suggested the storm drain might be one way to handle it.

B. Easom asked if any trees would be removed, and J. Hannaford said "No". He asked about chloride evaporation, leaving a surplus of sodium which is a heavy metal. B. Neacy mentioned the van der Waals force probably explains the process. Mrs. Henry mentioned they were unaware of the proximity of the wetlands and would be careful not to dispose of anything in the future in that location. Upon a motion by P. Morrison, seconded by B. Neacy, it was

VOTED: to close the hearing for DEP#169-1050 for 14 Heritage Lane.

8:45 p.m. – Budlong 36 Hidden Valley Rd. Request for Determination of Applicability

Jay Bearfield explained the project included a water garden that would begin in the adjacent woodland. All natural materials will be used with the unit entirely self-contained. A circulating pump is to be located in the ponded area. No chemicals are to be used, and cleaning will rely on bacterial and enzyme processes. Only hand-digging is proposed beyond the boulders, and no trees are to be removed. Beginning in the woodland will create a more natural-looking stream and water course. Mr. Bearfield stated only upland and aquatic plants on the state-approved plant list will be utilized. Native water lilies, cattails, and pickerelweed are proposed. Member Giguere cautioned against accidentally introducing non-native species into the wetland.

C. Auman asked him to discuss how this will be an enhancement to wildlife. Mr. Bearfield said insects and birds in particular are likely to use the water garden. Where the vernal pool is now dry, the water garden will provide a consistent source of water which birds will use for both bathing and drinking. No invasive plants or critters are to be used. It is not anticipated the pool will have fish.

D. Pitkin questioned whether a trench would be necessary to provide power to the filter unit. Mr. Bearfield estimated it would be about 60 ft. long. Chairman Easom pointed out the Order of Conditions to construct the house had two conditions which are to remain in perpetuity – one is that there is to be no removal of vegetation in the no-disturb area and the other pertains to the application of fertilizers. B. Neacy commented this is a minor project but if you multiply it by all the projects the Commission reviews, you can see there will be a loss of sensitive areas over time. P. Morrison stated the Commission would like to see the project re-located outside of the no-disturb area.

Upon a motion by B. Neacy, seconded by P. Morrison, it was

VOTED: to issue a positive #3 Determination for 36 Hidden Valley Rd.

Chairman Easom outlined the alternatives the owner can evaluate: 1) move all work outside the 100-ft. buffer zone in which case the Commission would not need to review a permit, 2) leave the project in the existing location and file a Notice of Intent, and 3) move it out of the no-disturb area and file another Request for Determination of Applicability. P. Morrison suggested some type of mitigation might be in order. The approval of this project is contingent upon the conditions under which the house was originally allowed to be built. If the standards are not met, we get lawn creep into the buffer zone. Members referred Mr. Budlong to the original Order of Conditions for his property.

9:00 p.m. – NEFF Baddacook Pond Rd. Notice of Intent DEP#169-1051

Engineer Dan Wolfe of Ross Associates and attorney Ray Lyons were present to represent the New England Forestry Foundation (NEFF). The proposed project is the replacement of a house and well and installation of a septic system. Mr. Wolfe alluded to the on-going history for the house, including a detailed discussion with the Board of Health that involved litigation. The existing well under the house will be replaced, the outhouse will be replaced by a septic system, and the new house will essentially follow the dimensions of the existing house. D. Wolfe said the project also involved some minor grading around the house. Under Title 5 requirements a 50 ft. offset to wetlands is required. The Groton Board of Health has a stricter standard of 100 ft. Haybales will define the limit of disturbance. The disturbed area can be loamed and seeded, but it is likely enough pine trees will remain to have a pine needle mulch.

Member Giguere commented that new construction within 100 ft. of wetlands could potentially be excluded under the Wetlands Protection Bylaw. D. Wolfe said this is not new construction, but the replacement of an existing house. It may qualify under the Building Code as new construction, but not under the Wetlands Protection Bylaw. M. Giguere suggested the fact it is, and has been for some time, uninhabited, presents a problem. Attorney Lyons argued it has been in use for the past 10 years as the applicant has been attempting to make repairs to the house by its litigation with the Board of Health. The Bylaw specifically exempts construction that existed prior to the implementation of the Bylaw. Mr. Wolfe said the litigation with the Board of Health began in 2001, and that constitutes a use. R. Lyons added that it is a pre-existing house.

Member Auman asked the distance between the work and the wetlands, and Mr. Wolfe replied it is 24 ft. from the house to the Pond (34 ft. for the existing house) and 47 ft. from the wetland on the east side (41 ft. for the existing house). When asked why the house couldn't be located further away from the wetland, Mr. Lyons maintained it was a 5 acre lot, and no other location was feasible. Members suggested considering the 183 acres owned by NEFF. R. Lyons thought between 30 – 40 houses could easily be developed on this parcel. NEFF came up with the idea of fixing up houses on its property and selling them as a way to raise money to protect other lands. This house is shown on USGS maps as early as the 1930's. Members asked if it has been in continuous use without a lapse.

The definition in the Bylaw regulations reads: "Existence prior to September 19, 2001" is defined as being in continuous use in the current state (for example, as a landscaped area, driveway, or structure) from any point prior to September 19, 2001, until the present, without a lapse in that same use for a period of time greater than 10 consecutive years." Members

questioned whether the Bylaw or the Regulations trump in this situation. B. Neacy suggested contacting Town Counsel with the question. R. Lyons said they are not necessarily in conflict if we consider the house has been in use since 2001 because of the time it has taken to get permits. The Board of Health mandates “You can’t rent if you can’t flush.”

B. Easom questioned the soundness of the cart path for bringing in heavy equipment. D. Wolfe said he has never seen the path overtopped by water in the 15 years he has been looking at the property, but acknowledged the time of year in which the work is to occur is important. R. Lyons suggested including a condition that it be done under dry or frozen conditions. P. Morrison said he is familiar with cases in which the use is frozen due to litigation. D. Wolfe anticipates there will be no materials moved off site as the cuts and fills are almost equal. When asking about the number of trees to be removed, M. Giguere pointed out there is a large white pine near the house not shown on the plan. It was agreed that trees greater than 8 in. DBH that are to be removed should be shown on the plan. The level of the garage floor is 91.6 ft., about 2 ft. above the elevation of the cart path. Haybales will be placed at the wetland near the gate to the property. Pending comments from Natural Heritage and with the applicant’s agreement, upon a motion by C. Auman, seconded by D. Pitkin, it was

VOTED: to continue the hearing to October 12, 2010.

9:15 p.m. – NEFF Baddacook Pond Rd. Request for Determination of Applicability - demolition

Dan Wolfe explained the carport and outhouse are in very poor condition. The house is placed on concrete blocks so there is no house foundation. Once the building debris is removed, Mr. Wolfe felt the restoration could proceed quickly with natural succession. Member Auman thought the time of year is important for this project. The well would be filled, but it is unlikely the outhouse would need filling. The contractor who does the demolition will be responsible for the removal and disposal of hazardous wastes such as lead paint or asbestos. The contractor must provide information to the Building Department about where such materials are to be taken. M. Giguere mentioned there are appliances, i.e., a refrigerator, and roofing materials which also require special consideration. Upon a motion by M. Giguere, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination in which the work shall be done at a time of year mutually acceptable to the Groton Conservation Commission & New England Forestry Foundation, and hazardous materials/appliances shall be removed from the site and disposed of appropriately.

9:15 p.m. - Aubuchon/213 Whiley Rd. Request for Determination of Applicability

At the request of the applicant and upon a motion by M. Giguere, seconded by P. Morrison, it was

VOTED: to continue the meeting to October 12, 2010.

In discussion on the acquisition of the NEFF Baddacook Pond parcel, members noted neither the Board of Selectmen nor the Finance Committee has voted in favor of this project. Mr. Lyons commended the Commission for its understanding of the big picture for the protection of this land. He plans to meet with the Water Commission on October 12th and will ask for their

support. He felt there is still time to get articles in the paper and to get information out to the public. Chairman Easom said the Commission needs to determine whether it is appropriate to work in tandem with NEFF. We could consider having flyers available at Town Meeting, but our obligation is to work in the interests of the Town.

P. Morrison asked about the acquisition by NEFF of other lands in Groton, and Mr. Lyons explained he is attempting to keep himself out of that discussion in order to avoid a conflict of interest. He said he cannot legally tie the acquisition of this property to any other purchase of property by NEFF. C. Auman felt the Selectmen's and Finance Committee's decision reflect the economic climate which make the acquisition a tough sell. Many residents consider NEFF land already protected and question why the Town is considering buying it. Mr. Auman asked about Mr. Wharton's intent when he donated the land to NEFF, and Mr. Lyons explained that William Wharton was a founder of NEFF and a long time board member before the land was conveyed to NEFF in the 1960's. He served as a Town assessor, but did not put anything in the deed that would preserve the land forever. Mr. Lyons stressed that this acquisition would serve to protect the Town's water supply and the eastern shore of Baddacook Pond.

The state LAND program wants to show they are preserving a lot of land so the \$370,000 for 52 acres is actually a good thing. B. Easom suggested holding a public walk on the property with a guide from NEFF. He felt that getting people out to the parcel would allow them to see its wonderful lakefront views and recreational value. Members thought there are political and economic concerns with the acquisition, and we need to think strategically about using the lower value of land at this time as well as the source of the money as selling points. It will have no effect on future tax bills, and there is an opportunity to receive 60% reimbursement. Another component is that we need to pick up parcels when they become available. B. Easom said we should stress the value of the land and clarify how much of the Conservation Fund is state money. He asked the Commission to determine whether we should proceed in a separate effort or work with NEFF. He thought one or two members could work on an effort to prepare publicity for a flyer or power point presentation for Town Meeting.

D. Pitkin volunteered to work on the data back up and to call Selectmen. B. Easom offered to discuss this with Marion Stoddart and Al Futterman of the Nashua River Watershed Association. The Purchase & Sales Agreement proposes a consensual taking, but it is not clear what the rationale for this is. NEFF does not appear to be shopping the property around at this point. C. Auman mentioned Mr. Lyons has agreed to a 20% contribution by NEFF toward the survey. This would leave 80% for the Town to pick up if the state grant does not come through. The demolition of the house, carport, and outhouse is estimated to run about \$9000. We need to reach a general understanding about how costs are to be distributed. B. Ganem asked what will happen if we get the grant, but the article does not pass Town Meeting. There may be a decision by the state before the Town Meeting, and that could positively affect the vote.

Delaying the survey until we hear about the grant would enable partial reimbursement. Members suggested the Purchase & Sales Agreement should reflect a 50% split in the cost of the demolition with a minimum of \$5000. There will also be costs associated with review, recording, and title certification by Town Counsel. The P & S is to be contingent upon both the Town

Meeting vote and the receipt of the LAND grant. Parking is to be available off Old Dunstable Rd., as well as a dry access easement into the property.

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

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as drafted 10/12/10.

