

## GROTON CONSERVATION COMMISSION

### Open Session Minutes

October 5, 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 Marshall Giguere, Nadia Madden, Peter Morrison, and Bill Neacy were present. Members Craig Auman and David Pitkin were absent. Conservation Administrator Barbara Ganem was present.

B. Easom explained a special meeting was called to discuss two items: 1) the proposed acquisition of New England Forestry Foundation (NEFF) land on Baddacook Pond and 2) the trail easement proposed as a settlement of the litigation over the abandoned B & M railroad bed in W. Groton. He stated it was his preference to discuss both matters in open session. Selectman Peter Cunningham was present and expressed a preference for discussing the trail easement in Executive Session. Attorney Ray Lyons was notified by telephone that the land acquisition discussion would take place in open session, and he declined to attend. Reporter Pierre Comtois of the *Groton Landmark* was present and was given a copy of the draft Purchase & Sales Agreement (P & S) for the land acquisition.

Chairman Easom noted that board members agreed in a previous meeting to begin to do outreach to see what the concerns of the Board of Selectmen and Finance Committee were with regard to the acquisition. Both boards voted unanimously not to recommend the article at the upcoming October 18<sup>th</sup> Town Meeting. Member Pitkin touched based with FinCom Chair Jay Praeger who has concerns about the access over Baddacook Pond Rd. from Rt. 40 to the property. The P & S agreement is silent on this access while the appraisal is based on the assumption NEFF will access the subject building lot via Baddacook Pond Rd.

(Selectman Anna Eliot arrived at 7:10 p.m.)

Mr. Easom pointed out the Commission ran into similar difficulties in one of the Mattbob LAND grant application appraisals in that the appraisal did not match the land that was proposed for purchase. The fact that they didn't match was the reason for the Division of Conservation Services' rejection of the LAND grant. He felt this access needs to be part of the transaction.

Member Giguere questioned whether the deed specifies whether part of the property or easements cannot be severed. Chairman Easom pointed out the 1939 Ayer quadrangle of the USGS topographic map shows the existence of roads and the NEFF cottage at Baddacook Pond. Technically there is no current road, but a private driveway. All other landowners on the private driveway have signed on to the private driveway which provides access without guiding traffic around the Baddacook public water well, but NEFF refused to do so and has maintained their right to pass. DEP requested that motorized traffic around the well not be allowed, and the private driveway was a way to deal with this mandate. B. Easom maintained that this right should be included in the acquisition and then the Board of Selectmen could decide to extinguish the passage.

Selectmen Cunningham questioned whether the easement really exists. B. Neacy suggested including language in the P & S that would allow the right of way or easement to be retired.

For all intents and purposes, Baddacook Pond Rd. is a private road with landowners along its length having the right to pass. How the appraisal relates to what we are purchasing is critical. The Town should acquire all rights and easements. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to include language in the Purchase & Sales Agreement in which the Town will acquire all rights and easements to access the buildable portion of the property.

Pierre Comtois requested clarification on what road was under discussion, and those present explained there is trail access from Old Dunstable Rd. to a portion of the property proposed for acquisition, but it is impossible to get to the house lot with a vehicle due to wetlands. The Town needs the rights to get to the property actually appraised. It would then be left to the Board of Selectmen to determine what they wish to do going forward as DEP had a problem with motorized vehicles using the access by the Baddacook well.

B. Easom asked if the division of costs outlined in the draft P & S met the Commission's requirements. Both the expenses for the survey and the demolition are covered in the P & S. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to submit the revised Purchases & Sales Agreement to Town Counsel as amended and then on to NEFF or Ray Lyons as their representative.

Mr. Easom read from Francois Forbe's email, dated October 3, 2010, regarding the proposed purchase of the NEFF Baddacook Pond property. The e-mail points out NEFF would like to recognize full value for the property and is proposing the construction of a single family house to replace a pre-existing house on a non-conforming lot should the property not be sold to a conservation buyer. It is possible they can re-establish their existing access around the well for the access to this house.

Selectmen Cunningham questioned the likelihood of building a house in this location. The amount of shore frontage enhances the possibility. B. Easom pointed out the advantages of the Town purchasing this property include the fact the LAND grant would offer 60% reimbursement, the use of the Conservation Fund (which has about 50% state funds) would mean no additional new taxes, the right of passage by the Baddacook well would be extinguished, Zone II for the Baddacook well would be protected, one-third of the eastern shore of Baddacook Pond would be permanently protected, and rare species habitat would be protected. In addition, the state Fisheries & Wildlife Department may be interested in acquiring adjacent land in the future to enhance the protective value.

Members thought finding out the status of the easement on the deed was critical. Litigating adverse possession is expensive and time-consuming. P. Cunningham said the Selectmen's main

concern is that most of the property is wetlands. Members stressed that 1/3 of the shoreline of Baddacook Pond is to be protected, as well as an island in the lake.

Upon a motion by P. Morrison, seconded by B. Neacy, and a roll call vote of Bill Neacy, Peter Morrison, Marshall Giguere, Nadia Madden, and Bruce Easom, it was

VOTED: to enter Executive Session for the purpose of discussing land acquisition and litigation, not to return to Open Session at adjournment.

The meeting was adjourned at 7: 45 p.m.

Respectfully submitted,

Barbara V. Ganem  
Conservation Administrator

**Approved as drafted 10/12/10.**

EXHIBIT 1

**From:** Françoise Forbes [mailto:fdforbes@charter.net]  
**Sent:** Sunday, October 03, 2010 10:04 AM  
**To:** Françoise Forbes  
**Subject:** Preserving Baddacook Pond

Dear Baddacook Pond Abutters and Friends of the pond,

The outcome of **article 16** in the fall town meeting warrant (October 18) will have a direct big impact on Baddacook Pond, and unfortunately it could be a negative one.

All abutters received a registered letter dated September 14 2010, from Whitney Beals, NEFF Director of Land Protection explaining in detail the agreement they have with the conservation commission and stating that NEFF and the Con Com will sign a formal purchase and sale agreement before the town meeting.

I can provide copies of the letter which contains many more details than the summary in the town meeting warrant.

If the town of Groton fails to acquire the land in question, NEFF, who has obtained the permit for a septic system (Board of Health meeting in summer of 2008) will want to get a "fair value" for the land and thus will turn to the highest bidder; in anticipation of such an outcome, they have filed a NOI for a new single family home. In other words, in the near future, there could be a four bedroom all-year-round home in place of the dilapidated shack which is there now.

It is thus important to remind you (and as many friends /acquaintances you can gather) to go and vote on October 18 to assure that the conservation commission buys these 52 acres of land and prevent any further development on Baddacook.

I will be glad to provide more information about this issue.

**Mark the date ! October 18, Groton Fall town meeting**

Looking forward to hearing from you ,

Françoise Forbes  
978 448 0321

EXHIBIT

2

Attorney Ray Lyons & Associates  
206 Ayer Road, Suite 4  
Harvard, MA 01451

AGREEMENT

This \_\_\_\_\_ day of \_\_\_\_\_, 2010

Deleted: 29<sup>th</sup>  
Deleted: September

1.) PARTIES AND MAILING ADDRESSES

New England Forestry Foundation, Inc.  
PO Box 1346  
32 Foster Street  
Littleton, MA 01460

hereinafter called the SELLER, agrees to a consensual taking as provided herein, and the  
Town of Groton Conservation Commission  
173 Main Street  
Groton, MA 01450

hereinafter called the BUYER or PURCHASER, agrees to take as "Open Space" subject to the protections of Article 97 of the Constitution of the Commonwealth of Massachusetts, upon the terms hereinafter set forth, the following described premises:

2.) DESCRIPTION (fill in and include title references) LAND ONLY

A certain parcel of land off Old Dunstable Road, Groton, containing approximately 52.± acres as shown on the plan attached hereto as Exhibit A and incorporated herein (the "Plan"), said Parcel A being a portion of the premises containing approximately 183 acres described in a deed recorded at the Middlesex South District Registry of Deeds at Book 11625, Page 556 (see deeds 6, 7, and 15) and easements for access from and parking for two vehicles along Old Dunstable Road (hereinafter, collectively "Parcel A," the "Property," "Premises," or "premises"). SELLER shall retain a 20 foot wide easement through the Premises for utilities and access related thereto.

Deleted: Island Pond Road

Deleted: on

3.) BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

The existing house and out buildings shall be demolished and removed by the SELLER at the BUYER's expense prior to the Closing and in accordance with a Request for Determination of Adequacy filed by the SELLER with the BUYER on September 14, 2010. SELLER agrees to pay the greater of \$5,000 or half the cost to demolish and remove the house; BUYER agrees to pay the remainder. SELLER shall hire the contractor who demolishes the house and outbuildings. All hazardous materials and appliances shall be removed in an environmentally appropriate manner.

4.) TITLE DEED

Said premises to be taken by the Buyer shall be free of record from all encumbrances, except the access and utility easements for the benefit of property identified on the Groton Assessor's maps as Parcel 4 on Map 242 currently owned by Neil Murray and Georgianna Collins ("Parcel 242-4") and the utility and access easement retained by Seller.

5.) PLANS

Buyer shall prepare and record an appropriate plan showing the premises at the Middlesex South Registry of Deeds at or before the Closing. Seller shall pay 20 percent of these expenses and Buyer shall pay the remainder. Said plan shall be subject to Seller's review and acceptance prior to recording. The plan shall show the access easement for Parcel 242-4 shown on the plan attached hereto as Exhibit C and the utility and access easement retained by Seller.

6.) PURCHASE PRICE THREE HUNDRED SEVENTY THOUSAND DOLLARS

The agreed purchase price for the consensual taking of said premises is \$370,000.00 dollars, of which  
\$ NONE have been paid as a deposit this day and  
\$ 370,000.00 shall be paid at the time of Closing.

\$ 370,000.00 TOTAL.

SELLER agrees that the purchase price provides full compensation and settlement for all damages sustained by the SELLER on account of this consensual eminent domain taking by the BUYER.

Deleted: price provided

**7.) TIME FOR PERFORMANCE**

The Closing shall be held at noon on the 3rd day of December 2010, at the office of the SELLER's attorney, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

**8.) POSSESSION AND CONDITION OF PREMISES**

Seller shall ensure that the Buyer receives full possession of said premises, free of all tenants and occupants, except as herein provided, at the Closing, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof, excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in paragraph 4 hereof. The BUYER shall be entitled personally to inspect said premises prior to the Closing in order to determine whether the condition thereof complies with the terms of this paragraph, and that SELLER has performed its obligations under Paragraph 30(b).

**9.) EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the BUYER shall be unable to take title as herein provided or if at the time of the Closing the premises do not conform with the provisions hereof, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended to December 30, 2010. SELLER shall not be required to spend more than \$1,000 to remove such defects or deliver possession as provided herein.

**10.) FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.**

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

**11.) BUYER'S ELECTION TO ACCEPT TITLE**

The BUYER shall have the election at either the original or any extended time for performance, to take such title as the SELLER may hold to the said premises in their then condition and to pay therefore the purchase price without deduction.

**12.) CLOSING OF THE PROPERTY**

The taking by the BUYER shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms thereof, to be performed after the Closing.

**13.) USE OF MONEY TO CLEAR TITLE**

To enable the BUYER to take title as herein provided, the SELLER may, at the time of Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided

that all instruments so procured are recorded simultaneously with the delivery of said deed, or in accordance with customary conveyancing practice.

**14.) INSURANCE**

Until the Closing, the SELLER shall maintain insurance on said premises as follows:

Type of Insurance	Amount of Coverage
NONE	\$ NONE

**15.) ADJUSTMENTS**

The Premises is currently exempt from local real estate taxes and shall remain so after the Closing. Any taxes paid by the SELLER prior to the Closing shall not be refunded.

**16.) BROKER'S FEE**

Both the SELLER and the BUYER each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. Each agrees, to the extent permitted by law, to indemnify the other against and to hold the other harmless from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other in connection with this transaction arising out of the contacts of each with any real estate brokers.

**17.) DEPOSIT**

No deposit is payable by BUYER hereunder.

**18.) LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.**

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

**19.) WARRANTIES AND REPRESENTATIONS**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by the SELLER: None

**20.) ENVIRONMENTAL MATTERS**

SELLER represents and warrants to BUYER that, to the best of SELLER's knowledge, information and belief, (i) there has been no material release of any hazardous materials or oil on, from or near the premises (as used in this agreement, the terms "release," "hazardous materials" and "oil" shall have the meaning given to them in G.L. c.21E), (ii) there are no underground storage tanks or other subsurface facilities holding petroleum or oil products currently in use or previously abandoned on the premises and (iii) chlordane has not been used by SELLER or SELLER's agents or representatives as a pesticide on the premises.

**21.) STANDARDS**

Any title matter or conveyancing practice which is the subject of a title standard or practice standard of the Real Estate Bar Association for Massachusetts at the time of Closing shall be governed by said title standard or practice standard to the extent possible.

**22.) WARRANTY**

NONE

**23.) CLOSING DOCUMENTS**

SELLER agrees to accept the agreed upon purchase price as full compensation and settlement for all damages sustained on account of the consensual eminent domain included herein and agrees to execute a statement under oath to any title insurance company issuing a policy to BUYER to the effect that: (1) there are no tenants, lessees or parties in possession of the premises, (2) SELLER has no knowledge of any work having been done to the premises which would entitle anyone now or hereafter to claim a mechanic's or materialmen's lien on the premises; and SELLER agrees to indemnify and hold harmless the title insurance company for any loss, costs, or damages sustained as a result of issuing a policy without exceptions covered by such representations; (3) that SELLER is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA); and SELLER hereby makes such representations to the BUYER as of the Closing and this paragraph shall survive the Closing.

**24.) BUYER'S CONTINGENCIES**

BUYER's obligations under this agreement are, at BUYER's option, expressly contingent upon the following conditions:

- (a) BUYER shall have complied with the provisions of G.L. c.30B (the Uniform Procurement Act), to the extent applicable.
- (b) SELLER shall have complied with the disclosure provisions of G.L. c.7, §40J. SELLER agrees to execute a Disclosure of Beneficial Interests in Real Property Transaction form as required by G.L. c.7, §40J.
- (c) BUYER has inspected the premises and is reasonably satisfied with the condition thereof. This condition shall be considered satisfied if (i.) the premises are in the same condition as of the date of this agreement and (ii.) Seller removes the existing house and structures as provided in paragraph 3.
- (d) Approval by Town Meeting of this taking.
- (e) Approval of BUYER's LAND grant application by the Massachusetts Executive Office of Energy and Environmental Affairs for partial reimbursement of the purchase price.

These contingencies shall be satisfied by the Closing date, provided, however, that if any of the foregoing conditions are not satisfied by the Closing date contemplated hereunder, BUYER shall have the option of extending the Closing date until such conditions are satisfied or December 30, 2010, whichever occurs first.

**25.) NOTICES**

Any notice or other communication given by either party to the other relating to this agreement shall be in writing and shall be sent by facsimile, registered or certified mail, return receipt requested, or by any overnight courier, including but not limited to Federal Express, United Parcel Service and U.S. Postal Express Mail, addressed to the attorney of such other party at the respective addresses set forth below, and such notice or other communication shall be deemed given when so faxed, mailed or delivered to the courier.

The attorney for any party may give notice on behalf of such party, and agreements for extensions of time may be entered into between such attorneys, which agreements shall be binding upon the parties, provided that such agreements are in writing and faxed, mailed or delivered in the manner herein above provided.

Attorney for the Seller:  
Ray Lyons, Esq.  
206 Ayer Road, Suite 4

Attorney for the Buyer:  
Katharine Lord Klein, Esq.  
Kopelman and Paige, P.C.



Harvard, MA 01451  
Telephone: (978) 456-8400

101 Arch Street  
Boston, MA 02110  
Telephone: (617) 556-0007

A party may at any time advise the other party of a change in the address of its attorney or designate a different attorney or person(s) to whom notices shall be mailed or delivered by sending written notice to the other party of such change in the manner herein above provided.

**26.) MERGER**

This agreement contains the entire agreement between the SELLER and the BUYER with respect to its subject matter, and supersedes any and all offers and or counteroffers between the parties.

**27.) CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and ensures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the interest of the parties to it.

Executed as of the date and year written above.

New England Forestry Foundation, Inc.

Groton Conservation Commission

\_\_\_\_\_  
Whitney Beals, duly authorized

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