

GROTON CONSERVATION COMMISSION

Minutes

April 26, 2011

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, Bill Neacy, and David Pitkin were present. Nadia Madden arrived at 7:05 p.m. Conservation Administrator Barbara Ganem was also present.

Resident Robert Stone of 49 Old Ayer Road presented an update on conditions at his property where an excavator was recently extracted from a wetland resource area. He reported haybales were installed behind the excavator, as well as a line of silt fence along the left side of the driveway heading toward the wetland. He felt the wetland was essentially isolated from the disturbed ground. Due to its current wet state it is not possible to get tractors down there. He has met with Dan Wolfe of Ross Associates to determine the best next steps. He also plans to add haybales to the silt fencing, and he believes things are stable at this time. C. Auman questioned what had been asked of Mr. Wolfe, and Mr. Stone stated he was waiting for direction from the Commission. The plan is to restore the area to previous conditions, and Ross Associates has expertise to handle this situation.

(N. Madden arrived at 7:05 p.m.)

The timing for the work is critical, and the plan should be prepared by a registered engineer. P. Morrison said he understood the original intention was to plant grapes, and the final plan should include restoration and any future planting that is anticipated and should be prepared sooner rather than later. He added the area looks like a battle zone right now. C. Auman said he would expect the plan by a certain date or the Commission would consider issuing an Enforcement Order. Mr. Stone said he originally tried to do some grading with his Kubota tractor, but when that became mired in the mud he borrowed a friend's excavator. Although they got the tractor out, the excavator then became stuck. His intention was to contour the slope slightly to be sure the grape vines were out of the water. This occurred in the late fall when the land was just beginning to freeze.

B. Neacy observed the soils look very rich, and Mr. Stone said there's a lot of peat, but it thins out near the paddock fence. Mr. Neacy inquired as to what was done with manure, and Mr. Stone explained it is stored at the back and then spread on the fields 2 or 3 times a year. Manure management is an issue as it is nutrient rich. M. Giguere said he would like to see flagging of the wetlands and suggested that growing grapes may not be feasible. Mr. Stone said the construction of the barn was reviewed by the Commission 14 or 15 years ago. Members decided a 45-day window for submittal of a Notice of Intent was adequate. The filing should address wetland flagging, grading, restoration, manure management, and the clearing of debris within the wetland and buffer. The only work that can take place in the interim should be non-ground disturbing, and Mr. Stone agreed to this condition.

7:15 p.m. - Groton Conservation Trust/Sabine Woods Request for Determination of Applicability

Bob Pine and David Black were present from the Groton Conservation Trust. Mr. Pine pointed out Groton Place has become a “mecca” for dog walkers with the trail following the bank of the Nashua River very closely. Dogs are going up and down the bank, causing erosion, damage, and gullies. The Trust plans to institute a restoration program in several places to bring the bank back to a more stable condition. Coir netting will be used in places with severe erosion problems. Other areas will be seeded with a mixed wetland plant mix and planted with shrubs. Beavers are also a problem as there is evidence of de-barking of saplings at the shore. It may be necessary to protect larger trees with wire baskets.

Re-locating parts of the trail, either temporarily or permanently, will be necessary in order to protect the restoration area. This will require two new wetland crossings where they may install logs on stones or re-locate the existing bridge to a new spot. Mr. Pine indicated they wished to partner with Groton School, the Nashua River Watershed Association, the Groton Trails Committee, and New England Forestry Foundation (NEFF) to make this an educational effort.

Member Giguere noted the outside bank of the Nashua River in this location receives the brunt of flow from the River, especially during flooding events. The potential for undercutting is great. B. Pine said they will monitor conditions, but the goal is to get roots well-established at the shore. He saw the chief problem as disturbances from heavy usage by people and dogs. NEFF has installed fencing at Groton Place to discourage use while the bank is under restoration, and B. Pine felt it may be necessary to install barriers. C. Auman questioned whether equestrians would be prohibited from using the trail if the trail is to be only 2-people wide. He expressed disappointment at having to re-direct trails through wet areas.

Mr. Pine said Groton School previously maintained the trail, by filling low areas with wood chips, when it was used for their cross country runners. Members asked whether the Trust has any enforcement authority for the use of this trail. P. Morrison recommended re-direction of users and opening of the second access as a first step. It is likely the existing bridge would be moved to the first crossing. Nadia questioned whether it would be possible to stabilize all the damaged areas. D. Pitkin thought this a good project but pointed out there are trees which are naturally falling into the River. The educational outreach aspect is very important. B. Easom asked if there was a need to contact the Army Corps of Engineers as they will be working on the bank of a navigable river. B. Neacy understood some of the erosion is occurring naturally, but some is the result of people and dog traffic. He had significant concerns about the use and amount of open space in the community and warned closing trails could receive negative publicity. Members understood the purpose of the filing was restoration and it may be possible to leave the bridge in place if there is better signage. Reporter Pierre Comtois asked the length of the planned restoration, and B. Pine estimated it was approximately 1,500 linear feet. B. Ganem mentioned most of the site is within the 100-year floodplain and rare species habitat. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a negative #3 Determination subject to final review for the bridge designs and final restoration plan along the River and that the applicant contact the Army Corps of Engineers and the Natural Heritage & Endangered Species Program before commencing

the work.

7:30 p.m. - Kovacs/132 Whitman Rd. Request for Determination of Applicability

Resident Chris Kovacs explained he wished to construct a 5 ft. by 9 ft. bump-out to an existing structure. It will involve the installation of two concrete piers for support. The work is approximately 50 ft. from the wetlands. Mr. Kovacs plans to use a shovel and post-hole digger. Upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to issue a negative #3 Determination with no conditions.

7:45 p.m. - Cloyd/2 Loomis Lane Notice of Intent

Resident Ken Cloyd explained he had previously added some gravel and wishes to continue cleaning up and doing landscaping. In response to a question from N. Madden, Mr. Cloyd said he wishes to think over the proposed addition a little further before going forward. He may decide to go bigger or wider with the addition. K. Cloyd explained his property line is approximately at the de-limbed pine tree and also follows the brook. He is planning to remove the tree as part of this NOI. Mr. Cloyd acknowledged abutters had not been notified, but he had sent the filing to Natural Heritage. Members recommended the hearing be continued, and upon a motion by P. Morrison, seconded by M. Giguere, it was

VOTED: to continue the hearing for 2 Loomis Lane to May 10, 2011.

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

VOTED: to approve the minutes of April 12, 2011 as drafted.

C. Auman and N. Madden abstained from the vote.

B. Neacy asked for clarification of the role of the Army Corps of Engineers (ACOE) in our wetland filings. B. Ganem said they get involved in filings that include filling of wetlands. The standards changed in 2005 and have changed again recently. Their purview includes both navigable rivers as well as their associated wetlands. If a project is less than 5000 SF of filling the ACOE General Programmatic Permit requires they meet the Massachusetts stream crossing guidelines and that the work be done during a dry time of year.

8:00 p.m. - Reilley/54 Hill Road Notice of Intent DEP#169-1056 continuation

With no applicant present, Commissioners agreed they were satisfied with the response from Natural Heritage that there would be no adverse impact from the re-location of the house. The matter of the trash on site and whether conservation markers will be required will be discussed when the Order of Conditions is issued. Upon a motion by P. Morrison, seconded by N. Madden, it was

VOTED: to close the hearing for DEP#169-1056.

Members discussed the Saturday site walk with Robert Varisco of John Crow Farm which is leasing the Hillbrook Orchard property on Old Ayer Road. P. Morrison said he is totally in favor

of the removal of the invasives between James Brook and the road. He estimated that would include 80% of the vegetation, and no gem species were observed. Thinning out or pruning clumps of trees or shrubs, such as the fruit trees, could improve their health. B. Neacy said he wanted to make sure they were allowed to improve their sight line as necessary. A letter will be sent to Mr. Varisco confirming the Commission's position on this matter.

Member Giguere questioned whether the Commission should re-consider its previous decision to accept the Academy Hill culvert modification plan. He noted the Commission visited the site this past Saturday and observed water backing up and puddling at the inlet side of the road rather than going through the culvert. The improvised plastic culvert is raised in order to capture the stream's flow, and this would be the amount of fill necessary to bring the inlet up. In other words the applicant is fixing a violation with additional filling. The Planning Board has now issued a letter, dated April 25, 2011, requiring that elevations be re-shot and drainage calculations re-done. Mr. Giguere summed up his remarks stating "we erred in effectively giving them the go-ahead on the modification".

N. Madden agreed with this assessment and mentioned the Earth Removal and Stormwater Advisory Committee also has a number of concerns with the project. A peer review may be the best approach as having Mary Trudeau act as monitor when she is paid by and responsible to the applicant puts her in an untenable position. P. Morrison also agreed, but questioned how this should be handled procedurally. The motion passed unanimously so any voter on the winning side can offer a motion to re-consider. B. Easom thought the new information should necessitate a new filing, and we could look for a peer review at that point. He reported he had visited the site and reviewed photographs taken before there was any disturbance. He reiterated the need to do accurate elevations at undisturbed spots both upstream and downstream to connect the dots and determine the original grades. Chairman Easom stressed this should be done by someone with expertise in determining whether the elevations are correct.

B. Neacy said the applicant plans to dig out the sides of the stream and drop the culvert bottom a foot. He argued there was no new information, and he would vote against re-consideration. P. Morrison said the new information is that the elevations are suspected to be wrong. They, in effect, admitted they were wrong because of the aerial photography. There appears to have been no survey with on-the-ground controls. The elevations should be re-shot to determine what exists there now. It could vary by as much as 2 ft., and we currently have inaccurate data. The applicant must satisfy both the stream crossing guidelines and the original Order of Conditions, not just match the NOI plans. M. Giguere pointed out the applicant will need to do significant filling to do this repair. The Planning Board has requested a modification to the subdivision plan. P. Morrison felt we can legitimately recall the plan if there is a change. D. Pitkin thought the vote at the last meeting only addressed the applicant's compliance with the existing Enforcement Order, not an acceptance of a preliminary plan that does not meet the Order of Conditions. B. Neacy stated the Commission made a decision and has no justification for going back. D. Pitkin felt he needed to make sure. Upon a motion by M. Giguere, seconded by C. Auman, it was

VOTED: to re-consider and rescind the original vote on the crossing at Cherry Tree Lane
1) due to questions about the elevations and the drainage calculations, 2) the Planning Board has required a new survey plan, 3) that, in order to achieve blending of the channel

to the bottom of the culvert, significant wetland filling is required which requires the filing of a new Notice of Intent, 4) it has not been demonstrated by peer review that the proposed plan provides any benefit to wildlife, both vertebrates and invertebrates, and 5) meets the stream crossing guidelines for a minimum of 1.5x bankful width.

The motion passed with C. Auman, D. Pitkin, M. Giguere, and B. Easom voting in favor, N. Madden and P. Morrison abstaining, and B. Neacy voting in the negative.

8:15 p.m. - River Court Request for Certificate of Compliance DEP#169-668

Vanasse Hangen & Brustlin (VHB) Sr. Project Manager Hugh Hahn was present. He explained engineer Frank DiPietro, who appeared previously before the Commission, was no longer with VHB. The Commission reviewed letters from Mr. Hahn (dated April 19, 2011) and William Maher (dated April 7 and April 26, 2011) of Nitsch Engineering on the request for a Certificate of Compliance. N. Madden questioned Mr. Hahn on the size of the penstock and tail race opening. He estimated the penstock was 36 inches in diameter and the tail race about 4 ft. by 18 or 20 ft. A rough estimate of the openings was between 11,000 and 12,000 square inches. M. Giguere asked if this constituted a hydrologic connection. Mr. Hahn said the Building Inspector required that it be left open, that the windows be left open, and the foundation left as is. Water has been observed in the underground vaults, but it disappears over several days, and H. Hahn said "I am assuming that is where the connection is made."

D. Pitkin felt the issues outlined in the Nitsch letters had been addressed. B. Easom asked for clarification on exactly where the floodplain was filled, and Mr. Hahn indicated the floodplain filling was associated with the construction of the septic field for River Court. He added the penstock was historically used to fill vats used in the operation of the mill. Members asked for his recommendation on the appropriate mechanism to assure the compensatory floodplain storage volume is maintained in the future. H. Hahn pointed out that any future work at River Court would require a filing with the Commission because of its proximity to the Squannacook River. Upon a motion by C. Auman, seconded by P. Morrison, it was

VOTED: to issue a Certificate of Compliance for DEP#169-668 for the River Court Assisted Living Facility at 8 W. Main St.

The vote was unanimous. P. Morrison questioned whether there was a difference in the number of votes required for a majority or whether it would be a majority of a quorum. It was suggested the Commission may wish to formally adopt *Robert's Rules of Order* as its guide for operations.

Returning to the subject of the Academy Hill Enforcement Orders, D. Pitkin asked whether we would be satisfied to accept a Notice of Intent with a scaled drawing. M. Giguere reiterated the need to have a peer review done. If there are new plans, they would need to file a new Notice of Intent that meets the stream guidelines and the old Order of Conditions. B. Easom said we are now awaiting the submittal of a new plan unless we are willing to accept the already submitted plan. Do we suspend fines in anticipation of a filing? D. Pitkin questioned whether a motion to postpone fines under the open Enforcement Order for 90 days was in order. P. Morrison said he felt fines on the Enforcement Order on the wetland crossing were negated by our original vote at the last meeting. They fulfilled their commitment and satisfied that Enforcement Order. Our

subsequent decision that we do not like the plan may make it best to stop right here and wait for new plans.

For the second Enforcement Order for stabilization, the fines could start taking effect tonight as there has been no response to that Order which was extended to April 26, 2011. P. Morrison recommended marking time until the Planning Board gets the new plan. N. Madden pointed out they could be doing water quality testing which would then become part of the record. Members discussed whether the applicant has met Conditions #47, 57, and 60 in the Enforcement Order, particularly the one dealing with water quality. B. Neacy expressed concern that the emergency response would be postponed while plans were developed. C. Auman made a motion to issue fines for the Enforcement Order for stabilization with the first offence at \$50, second at \$100, and third and subsequent at \$300. P. Morrison maintained the Commission cannot start fining until they are notified. Fines should begin on the day of the receipt of the letter. Members read the cover letter for the Enforcement Orders, dated March 23, 2011, in which the fines are outlined as above. M. Giguere moved to amend the first motion to reduce the fines to \$50 a day. This was seconded by D. Pitkin. N. Madden said she felt we should stick to our original statement in the letter. The vote to amend failed with M. Giguere and P. Morrison voting in favor, and C. Auman, B. Easom, D. Pitkin, B. Neacy, and N. Madden voting in the negative. Returning to the original motion, which was seconded by N. Madden, it was

VOTED: to send a letter notifying the applicant the fines would commence on the day of receipt as outlined in the letter of March 23, 2011.

The motion passed with C. Auman, B. Easom, D. Pitkin, B. Neacy, and N. Madden voting in favor, and M. Giguere and P. Morrison voting in the negative.

In discussing the Order for 716 Lowell Rd., B. Easom recommended a condition to address his concern about the potential for concrete to enter the resource area when the foundation is poured into the galvanized tray. Upon a motion by P. Morrison, seconded by C. Auman, it was

VOTED: to issue the draft Order of Conditions for DEP#169-1055 for 716 Lowell Rd. under the Wetlands Protection Act, as amended.

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

VOTED: to issue the Order of Conditions for DEP#169-1055 for 716 Lowell Rd. under the Wetlands Protection Bylaw.

(Member B. Neacy left at 9:25 p.m.)

The Spring Town Meeting has been continued to Monday, May 2, 2011. B. Easom explained he would be out of town for the next month, and M. Giguere agreed to speak on behalf of the Commission at the Town Meeting.

Members next reviewed the items under land management tasks. No further action has taken place on the Memorandum of Agreement with the Town Forest Committee regarding the Ames

Meadow access. The TABCOM (Groton Woods Camp) Conservation Restriction is currently under review by Nicole Sicard/Irene del Bono at the Division of Conservation Services. M. Giguere reported nothing else has happened with regard to the proposed Conservation Restriction on the W. Groton Water District Conservation Restriction for the Blood parcel. Members suggested contacting Town Counsel to determine whether a private company can invoke Article 97. D. Pitkin and B. Easom continue to work on the Angus & Gibbet Hill Stewardship Plan to be approved by the Town, owners, and DEM.

N. Madden and M. Giguere agreed to do the field work on the “Base Line Documentation Report” for the recently acquired NEFF/Baddacook Pond land acquisition. B. Easom acknowledged he plans to review a draft document to the surveyor R. Wilson to request a correction in the recorded Fuccillo plan. The finalization of the Allens Trail CR Monitoring Report depends on checking the possible encroachment from 55 Allens Trail.

Members expressed concern that the B&M easement discussion has fallen off the Selectmen’s radar. The worry is that again we think we appear to have a deal and then nothing happens. The Commission at one point agreed to pursue parallel paths through the Land Court and negotiations with the landowner. Commissioners requested a letter be sent to the Selectmen requesting a status update on this matter.

Resident Chad Spiczka has expressed an interest in farming (corn, potatoes, pumpkins, squash) on conservation lands. He asked about Ames Meadow but the Commission’s decision to keep it in hay was explained. He plans to look at the fields on the Eliades/Old Ayer-Smith Rd. and Shattuck land at Baddacook. He uses drip irrigation and could pump from Baddacook Pond and James Brook to water vegetable crops. B. Easom requested B. Ganem look into the cost of irrigation well so the Commission could decide whether this would be a good capital investment that would attract potential farmers in the future.

There being no further business, the meeting was adjourned at 9:35 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as drafted 5/10/11.

