

GROTON CONSERVATION COMMISSION

Minutes

November 10, 2011

Chairman Nadia Madden called the meeting to order at 7:05 p.m. in the 1st floor conference room in Town Hall. Members Craig Auman, Bruce Easom, Marshall Giguere, Peter Morrison, and David Pitkin were present. Bill Neacy arrived at 7:10 p.m. Conservation Administrator Barbara Ganem was present.

Also present were Selectman Stuart Schulman, developer Bob France, engineer Bruce Ringwall, attorney Rob Antcil, David Valletta, and Land Use Director Michelle Collette.

B. Ganem mentioned the consultants from Comprehensive Environmental Inc. have submitted a revised schedule of expenses reflecting a weekly site visit to oversee the planned modification of the culvert at the Academy Hill north entrance. She asked the Commission to consider whether this was a satisfactory review schedule. M. Collette reported the Planning Board issued a Modified Definitive Plan for Academy Hill in September. Their primary concern is the structural integrity of the proposed culvert modification. Nitsch Engineering consulting engineer Tim McGivern and the structural engineer, Peter Ogren of Hayes Engineering, have agreed that flowable fill is the best way to secure the footing. The goal is to get the site stabilized and finished before winter sets in. Based on the revised plan, Ms. Collette felt we have the attention of the developer in that lots in Phase 2 are being held. This gives us good leverage in assuring that the work is completed by the specified date, December 1. Upon a motion by D. Pitkin, seconded by C. Auman, it was

VOTED: to authorize B. Ganem to affirm the submitted CEI review and expense schedule (dated 11/9/11) noting the Commission may re-address this after December 1 and the Commission does have the right to request additional funding.

(Member B. Neacy arrived at 7:10 p.m.)

Chairman Nadia Madden introduced the topic of the Order of Conditions for 134 Main St., DEP#169-1062. She pointed out the Commission has the option to consider several different tracks. Member Giguere explained he has considered the contingencies including the proposed contribution to the Conservation Fund, the additional bedroom to create one 3-bedroom structure for the Affordable Housing Trust, the \$5000 set-aside for an escrow account to manage invasive plants and continuing management within the condominium housing association documents, 1.46 acres preserved under a Conservation Restriction, the trail easement, and doing a good job in the design of Low Impact Development features such as the constructed wetland. He pointed out the project beats a 40B project which could be denser and closer to the wetlands. Work is concentrated in the downtown rather than contributing to sprawl near more sensitive outlying resource areas. In addition, the restoration of a historic building, the site of the former Kilbridge Antiques, is a positive for the Town.

Member Morrison agreed with Mr. Giguere's statements although he acknowledged he had been on the fence at the beginning of the hearing process. He felt the project has some good things to offer the Town. The wetland is nice, but it is not one of our premier wetlands in terms of disturbances.

(Housing Trust member Allen King arrived at 7:20 p.m.)

Member Neacy offered his compliments to Bob France for proposing this project to his home town. He noted a number of other Town boards are involved in the permitting, but it is the Conservation Commission's responsibility to oversee the protection of wetland resource areas. He maintained this wetland is important because of its interconnection with other wetlands which could be impacted in the Town Center. When considering mitigation efforts, replication areas, other land, or cash make it very difficult to gauge the value of what we are losing and what we are gaining. It sets a precedent. By trading off and not protecting the resource, developers can get the idea they just need to come in and pull out their checkbook and make a deal. An isolated, fragmented wetland is a degraded wetland. He felt that trading off valuable wetlands in order to allow higher density next to wetlands is not protecting the resource area. The 40B specter at least avoids setting a precedent.

N. Madden noted the developer has addressed a lot of our issues by very carefully preserving the wetland, building affordable housing in the interest of the Town, and proposing a Conservation Restriction on the remaining land. It is the Commission's determination whether to allow them to violate the terms of our Bylaw, especially the potential for cumulative impacts to wetlands down the road.

D. Pitkin mentioned two items that have caused him concern: 1) a clause in the Bylaw gives us an out if we find a significant environmental and public benefit derived from a project, and 2). the financial feasibility of this project appears to rest on allowing a house in the buffer zone. Mr. Pitkin said he could see a significant benefit to the public, but he feels the environmental benefit is marginal at best. B. Easom commented the general approach under both the Act and the Bylaw is to show plans consistent with state and Bylaw regulations. That first step never happened; the applicant just stated it was not economically viable to eliminate the house in the buffer zone. Mr. Easom said this basic fact was never addressed in his mind. He said he was uncomfortable accepting cash in order to facilitate our granting an incursion into a resource area. It gives the appearance that wetlands are for sale if you have enough money. In summary he did not feel there was a sufficient net improvement to grant a variance.

C. Auman said member Giguere did a very good job weighing the benefits while member Neacy presented the negatives. The developer worked hard to protect the wetland going forward. Further Mr. Auman stated the preservation of the Kilbridge house provides a significant public benefit in his opinion. He stated he was happy about the positives involved with this project.

M. Giguere said there has been precedent set in accepting money for mitigation, and MACC has advised the use of this tool in the past.

(Reporter Pierre Comtois arrived at 7:30 p.m.)

Chairman Madden said she was very disappointed that the first effort from the applicant was an assertion that the Bylaw did not apply to this project. She had hoped the Commission would not see this approach which she found an insulting way to start the process. Ms. Madden added she felt the applicant had taken a much more sensitive approach since that time.

B. Neacy, seconded by B. Easom, made a motion to deny the project under the Wetlands Protection Bylaw due to the significant intrusion into the resource area and uncertain mitigation which involves accepting money and preferentially allowing the location of development near wetlands. The motion failed with B. Neacy and B. Easom voting in favor, and N. Madden, D. Pitkin, C. Auman, M. Giguere, and P. Morrison voting in the negative.

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

VOTED: to issue an Order of Conditions, as drafted, for DEP#169-1062 under the Wetlands Protection Act.

The motion passed by a majority vote, with B. Easom voting in the negative.

D. Pitkin asked whether it would be necessary for the applicant to file a Request for Determination of Applicability every 3 years to continue the control of invasive plants. B. Ganem replied there is a mechanism in the Order of Conditions for conditions to continue beyond the normal 3 year lifespan for on-going maintenance purposes.

M. Giguere moved the acceptance of the draft Order of Conditions under the Bylaw which was seconded by P. Morrison. In discussion on the Order under the Bylaw, B. Neacy expressed concern about not including an 'in perpetuity' clause requiring the continued management of invasives and stormwater features. P. Morrison offered an amendment to the original motion, seconded by M. Giguere, and it was

VOTED: to amend the original motion by including both the "Long Term Pollution Prevention and Stormwater System Operation and Maintenance Plan" and the "Long Term Invasive Plant Control Operation and Maintenance Plan" in the Order of Conditions issued under the Groton Wetlands Protection Bylaw.

The motion passed by majority vote, with B. Easom voting in the negative.

Returning to the original motion, it was

VOTED: to issue an Order of Conditions, as amended, for DEP#169-1062 under the Groton Wetlands Protection Bylaw.

The motion passed by majority vote, with B. Easom voting in the negative.

B. Ganem explained the Order would not be available until Monday because of the Veteran's Day holiday on Friday. Mr. France indicated they would try to pick it up on Monday.

An anonymous complaint has been received about illegal dumping behind the burned out and now demolished Groton Inn. B. Ganem had photographs showing a refrigerator, bicycle, mattress, and other debris dumped within 100 ft. of wetlands at the site. Members discussed whether a letter asking the owner to remove the trash is in order or should we invite him in. Other members expressed concern about allowing removal without some kind of plan in place. Our standard procedure is not to allow machinery or debris in the wetland. Digging up the trash could result in silting up the wetland. B. Easom stressed the need to follow our usual procedure and require an after-the-fact filing to follow-up. Upon a motion by B. Neacy, seconded by P. Morrison, it was

VOTED: to send a letter noting it has come to the Commission's attention that trash and debris has been dumped within 100 ft. of wetlands, and members request its removal within two weeks or additional measures such as a filing or fines may be necessary.

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

There being no further business, the meeting was adjourned at 8:07 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as drafted 11/22/11.

EXHIBITS

Document	Source	Date
Notice of Intent DEP#169-1062	Mount Laurel Development, Inc.	Filed 7/18/11
Photographs (behind the Groton Inn/128 Main St.	B. Ganem	11/9/11