

GROTON CONSERVATION COMMISSION
A Joint Meeting with the Board of Selectmen and Groton Electric Light Commission

Minutes

April 2, 2012

Conservation Commission: Chairman Nadia Madden, David Pitkin, Marshall Giguere, Peter Morrison, and Bruce Easom. The meeting was called to order by Chairman Anna Eliot of the Board of Selectmen at 7:06 p.m. in the 1st floor conference room in Town Hall. Member Craig Auman arrived at 7:55 p.m. Member Bill Neacy was absent. Conservation Administrator Barbara Ganem was present.

Board of Selectmen : Chairman Anna Eliot, Fran Dillon, Peter Cunningham, and Stuart Schulman with remote participation by Josh Degen by telephone. Town Manager Mark Haddad and Executive Assistant Patrice Garvin were also present.

Groton Electric Light Department: Kevin Kelly, Manager, Board members Chris Christie, Rod Hersh, Kevin Linder, Attorney Bob Collins, and surveyor Stan Dillis were present.

Others: Town Counsel David Doneski was present and, in the audience were Land Use Director Michelle Collette, realtor John Amaral, reporters Connie Sartini and Pierre Comtois, and residents Scott Harkins and Jack Petropoulos.

A. Eliot explained the Conservation Commission has been conducting public hearings on the GELD Notice of Intent, and the project was recently denied under the Groton Wetlands Protection Bylaw although the Commission approved the project under the state Wetlands Protection Act. She indicated the purpose of this meeting is to have an open meeting on how we might approach this and to determine what GELD plans to do. Town Counsel David Doneski was also present to assist with the discussion.

Selectman Peter Cunningham said he was out of town when the decision was issued. Light Commission Chairman Kevin Lindemer indicated he was present to look at options as there has been discussion of an appeal. He indicated the Board of Selectmen and GELD are aligned. There is a timing issue, and GELD is anxious to get the matter closed and the project moving. GELD can work on doing something separately but is willing to discuss the options.

Bob Collins suggested GELD and the Conservation Commission schedule a meeting to discuss ways to act. Town Manager M. Haddad asked if there is a chance for the Commission to reconsider the vote and give it one more effort for consensus. Town Counsel Doneski said “no”, but indicated there could be a re-application. This would be noticed in the same form as the original Order of Conditions. This is the most procedurally correct approach. D. Doneski said the choices are to re-apply or they could appeal the Bylaw decision under Ch. 4 §249 which is an appeal on the record. This involves a compilation of the filed materials and the record of the proceedings. There would be a judgment on the proceedings and review of whether the board’s decision was improper on legal grounds. No new evidence is presented. M. Haddad observed it

could be difficult with one town board suing another. D. Doneski acknowledged this could involve special counsel. He estimated such an appeal could take 5 or 6 months to go through Superior Court. He added he was not comfortable giving a firm deadline. Mr. Doneski said that GELD could decide to submit a re-application and appeal concurrently.

P. Cunningham said everything has been put on the table to modify or amend the GELD plan. The Conservation Commission made it pretty clear they have a line in the sand from which they will not diverge. K. Lindemer said there appear to be several governing factors including the Memorandum of Understanding with the Board of Selectmen that addresses long term plans for Station Ave. and maximizes the amount of property that can be declared surplus, specifically for another facility.

Bob Collins mentioned there has also been extensive discussion on mitigation. P. Cunningham thought additional land was put on the table. Josh Degen said he personally did not believe one board should enter into litigation with another as this does not benefit the public at large. There is a section in the Wetlands Bylaw where a 4 to 1 replication is required. He mentioned Brownloaf could mean more land on the table which could represent new information and an opportunity to re-open the hearing. P. Cunningham stated there would need to be a new application. He questioned what additional things can be offered. He observed that the Conservation Commission appears to be more focused on specifics of the Wetlands Protection Bylaw when they should consider the broader public good. He added "Perhaps the Bylaw should be repealed." K. Lindemer said his concern is the ratepayers and talking about economics. There is no provision for economics in the Bylaw, but it does mention what is technically feasible. It will depend on what you can afford to determine what option is feasible. There is an agreement to maximize surplus land, and the Town Bylaw does not make any provision for costs.

A. Eliot suggested this was a question for Town Counsel. D. Doneski said he could not really make comments of a substantive nature to members of bodies where litigation is contemplated or a re-application may be made because he could end up representing either party procedurally. Bob Collins said he thought a discussion with GELD, the Selectmen, and the Conservation Commission was worthwhile to see if there is any common ground. A. Eliot announced the Conservation Commission has a posted meeting as well tonight. P. Cunningham felt it should be discussed tonight to determine what is needed for a new application. N. Madden asked if the issue is then that the public good is GELD or is the public good the concept represented in the Memorandum of Understanding (MOU)? The intrusion into the wetland buffer must be considered against the mitigation information on the record. She suggested the denial deals with the cumulative impact of nibbling away at the buffer zone.

Selectman Stuart Schulman reminded those present that the definition of insanity is to keep doing something with the expectation there will be a different outcome, and he felt without making changes, this will not get us anywhere. He thought speed was of the essence. Litigation was out in his opinion because it is a long term solution, and it's not good to have an internecine thing going on between town boards. He stressed the application has to be different.

A. Eliot said the recourse is to re-apply or appeal and ask the court to throw it out. P. Cunningham suggested developing a general strategy. J. Degen announced (at 7:30 p.m.) he was

going to have to leave and then said one option is to have the Conservation Commission Chairman, B. Ganem, M. Haddad, B. Collins, and GELD work on how GELD will re-apply. B. Collins said he and K. Kelly have been talking about this, and there are different things GELD could present. P. Cunningham asked what will happen with the new application, and B. Collins confirmed it is worthwhile to explore. Connie Sartini asked the definition of public good. Chairman N. Madden indicated that this question was not demonstrated during the hearings in relation to the Wetlands Bylaw and regulations. GELD indicated their interest was in the public good. D. Doneski stated there is no legal definition of public good, and no one size fits all. A. Eliot maintained value would be realized for the public if there is a future site for a fire station. It would be in the public good of landowners in the district. M. Haddad pointed out there is a time period of 60 days from March 29 in which to appeal. S. Schulman noted the appeal process under the Zoning Board of Appeals fell under a separate statute. P. Cunningham said GELD is recognized as a public utility providing public service to the community. The planning process involved in the Station Avenue Overlay District charrettes reflects the vision people had. The Town has a pretty good reputation for protecting wetlands and setting aside open space.

N. Madden said this project is very likely to disrupt the hydrology to the lowest point in Town. D. Pitkin was against the denial but conflicted by wording of the Bylaw as there are no performance standards for the mitigation part of the Bylaw. He indicated he was struggling from his perspective. A. Eliot questioned whether altering the buffer was the same as the Wetland Protection Act which requires 4 to 1 mitigation. (*There is a 3 to 1 replication requirement in the Bylaw which does not apply to mitigation.*) D. Pitkin said the Commission may request additional information which will require hearing continuations. M. Giguere said there is no easy subjective criterion for public good. The Commission looks for little or no disturbance within 100 ft. of wetland and to get as much disturbance out of the buffer as possible. In this case, Commissioners were interested in having no disturbance within the 50 ft. buffer zone. For the GELD facility they are altering almost the entire 50 ft. buffer zone. There is a great deal of disturbance. What was envisioned as a residential commercial mix under the Station Avenue Overlay District is now proposed to remain an industrial area. It's true GELD's goal is to protect the ratepayers' interests and provide good service. The 50 ft. buffer is the sticking point. B. Collins asked those present to consider that the building was formerly 12 ft. from the wetland and has now been moved 22 ft. from the wetland. It would be genuinely tight to get the building out of the 50 ft. buffer zone.

Member Morrison said he voted against the denial. He served on the SAOD committee, and he felt it would be in the public good to see the land re-developed. Additional information can be presented in a re-application which GELD has to initiate. S. Schulman said something has to change. P. Morrison suggested other mitigation measures and looking at other intrusions that we have allowed. K. Lindemer requested a 5 minute recess to confer with his board members and suggested the ConsCom also meet to discuss where we can reach common ground.

At 7:50 the Commission convened in the small conference room at Town Hall with Berta Erickson, Connie Sartini, and Anna Eliot also present. P. Morrison maintained that building on Station Ave. is mitigation and suggested taking another look at public good. M. Giguere asserted the 50 ft. buffer is a public good. D. Pitkin suggested the environmental impacts should be subject to a peer review i.e., is it necessary to have a 10 to 1 replacement for altering 12,000 SF

of buffer? N. Madden thought this touched on public policy, and we can't truly arbitrate the matter with two members absent. B. Easom said he would be happy to see another Notice of Intent opportunity to optimize the situation. He recommended meeting in an open process rather than with representatives of the various groups. There is a public interest in this property. He indicated a willingness to concede having parts of the building, parking lots, driveway, and grading within the 100 ft. buffer, but was not willing to concede on the 50-ft. buffer zone. He said that he was uncomfortable accepting land in another part of town as compensation. There appears to be a double standard for developers with other land and for homeowners, particularly for land already owned by the Town such as Brownloaf which he felt was unlikely to be developed by the Town.

P. Morrison asked if there is other land the Commission would accept? He expressed concern with setting a precedent and was still wrestling with the idea of previously disturbed areas. How much does the Bylaw apply to this land? Mr. Morrison gave the example of Groton Center Farms where the Commission had to look at the farm as a whole, but some of the land may be left fallow for a period of time. B. Easom felt the idea of precedent gives the Commission an obligation to hold true to core values and membership on the Commission. N. Madden agreed this sets a precedent for our core values. D. Pitkin said that administratively he does see it as precedent setting. He did not see the 50 ft. line on this property as setting a precedent for all future Orders.

(Member Craig Auman arrived at 7:55 p.m.)

Mr. Auman saw value in the discussion on public good. N. Madden agreed it was not well defined. P. Morrison said the Commission has already cost GELD money. B. Easom pointed out GELD has made its own decisions to spend money. The fact that the paperwork was sloppy resulted in their not getting the answer they wanted. C. Auman read Ch. 215 §5C of the Bylaw: "The Conservation Commission may grant an order of conditions for projects within wetland resource areas if it determines that the granting of such an order of conditions will result in a significant public or environmental benefit and that, because of the characteristics of the land, the proposed alterations, and/or proposed mitigation measures, the interests of this chapter will be maintained." He emphasized that the interests are to be maintained, not thrown out. D. Pitkin advocated for consultation with a third party. C. Sartini questioned whether this involves 600 SF and asked whether the Bylaw has ever been thrown out for other property. P. Morrison said the Commission needs to take into consideration the entire property. C. Sartini asked what the impact would be for the SAOD with technically feasible alternatives. Members cited GELD's apparent need to maximize the facility when they could build on the footprint of existing buildings. C. Auman said it appears they have created their own hardship by agreeing to the MOU. Selectman Anna Eliot stressed that they are not looking for a profit, but to minimize their costs. Selectmen do have a keen interest in the site for a fire station or to help GELD recoup the costs involved with the purchase of the Downes property.

C. Sartini asked if the Conservation Commission would purchase the land from GELD. P. Morrison said part of it is previously disturbed. He suggested reviewing the 2001 minutes which he believed would indicate yard work was exempt. M. Haddad mentioned GELD can re-apply or

challenge the decision in Superior Court. Unless there are changes, it's pointless for GELD to come back. C. Auman doubted the potential for overturning a Bylaw opinion.

Reconvening in the 1st floor conference room, GELD Commissioner K. Lindemer said there are two things he wished to bring to everyone's attention 1) GELD has a quorum of members for a posted meeting and could meet with the Conservation Commission this evening and 2) GELD is trying to design a building to maximize the amount of land left to make room for a fire station. He stated there is 11,000 SF next to GELD that is entirely out of the 100 ft. buffer zone although there may be parking in the buffer zone. There is the potential to consider more land for mitigation. K. Lindemer stated GELD cannot change its footprint. M. Haddad said the Fire Station Building Committee is still actively looking at various sites, including Prescott School, the Homestead Trust land beside the Public Safety Building, and Station Ave.

N. Madden said she was open to discuss issues that could be changed, but noted it is very difficult to act if there are no changes, particularly in the 50 ft. buffer zone. K. Lindemer protested GELD needs some guidance somewhere, such as a dollars and cents evaluation. There is not a lot of latitude for a fire station next door. P. Cunningham questioned what would the Commission consider sufficient - a 30 to 1 mitigation, 2.7 acres, or what? We may have an update later in the week on whether squeezing in another building or some other compromise can be reached. The Chairman of the Fire Station Building Committee, Jack Petropoulos, was interested in the definition of public good. He stressed the need for objective measurement of offsets and mitigation. Town Counsel has provided some guidance on defining public good. Wetland interests have to inform the decision as there is no black and white definition. It is weighted differently for every project.

K. Lindemer said he is part of an elected board while the Commission is an appointed board, and each is acting consistently with its own definitions of public good. He thought the Board of Selectmen could be the arbiter of community public good. He mentioned GELD could re-apply on the point of mitigation such as Brownloaf. A. Eliot said this is a question for the Conservation Commission. C. Auman read from the Bylaw, which he and P. Cunningham worked on 12 years ago, Ch. 215 §5C: "The Conservation Commission may grant an order of conditions for projects within wetland resource areas if it determines that the granting of such an order of conditions will result in a significant public or environmental benefit and that, because of the characteristics of the land, the proposed alterations, and/or proposed mitigation measures, the interests of this chapter will be maintained." Mr. Auman pointed out the Commission must consider mitigation, environmental impacts, and standards for altered areas which cannot increase adverse impacts to the wetland resource area. There is a need to carefully balance public projects against those of private homeowners. K. Lindemer expressed dissatisfaction with the idea the Bylaw delegates the determination of public good to the Conservation Commission.

N. Madden explained she was speaking as a private citizen who works in the field of water quality and quantity issues. She expressed deep concerns with the siting of critical Town services near what is not just wetland but the FEMA 100-year floodplain. She noted we have had two 25-year storm events within a period of two months that resulted in widespread flooding in Groton. There are predictions of more extreme storms associated with climate change. Ms. Madden

strongly cautioned against placing key infrastructure in an area that may flood during significant storm events despite a design keyed to the 100-yr. storm.

P. Cunningham said the design will address stormwater management issues. He noted Groton's capped landfill may well be underwater during flooding events on the Nashua River. Town Manager Haddad said this is part of the consideration of the Fire Station Building Committee in assessing the various sites. F. Dillon said he was not convinced that a fire station could go on the Station Ave. site. A. Eliot said Station Ave. is one of the top tier sites and why we are spending money to assess the viability of the three sites. Many options are under consideration including Town-owned land and the needs of the Fire Department. Sacred Heart did not receive Town meeting support, but there is still a need for a permanent site for a fire station. S. Schulman observed that using the surplus land would allow GELD to modify its plan and reach an agreement fairly quickly with the Conservation Commission. This option would give the GELD project more flexibility, and Mr. Haddad agreed. Bob Collins concurred that this would provide flexibility in siting the building if we do not have to set aside space for another building.

We could discuss specific acreage at Brownloaf. M. Haddad pointed out that GELD does not have to re-apply until the Fire Station Building Committee has made their recommendation for a feasible site. P. Cunningham accused the Commission of conducting a shakedown for other property. B. Collins commented that 2.7 acres has been offered and this amount has not been satisfactory. He noted there is a significant wetland behind Brownloaf. K. Lindemer maintained GELD has offered land for mitigation well in excess of what is to be altered. M. Haddad suggested waiting for the report from the Fire Station Building Committee before making any decision. Fire Station Building Committee Chairman J. Petropoulos indicated he anticipates the Committee will be ready to advise the Selectmen at the April 9th meeting.

S. Schulman said GELD can still talk about mitigation measures, including why the 2.7 acres is not enough. Member Giguere stated the previous references to 3 or 4 to 1 mitigation actually applies to wetland replication areas in the case where there has been filling of wetlands. He also pointed out that the property proposed for mitigation is subject to a power easement for major electrical lines. It is frequently treated with herbicides, subject to motorized vehicles, or dug up at any time it suits the power company. In his opinion, this property was not a good exchange for conservation purposes. He gave the example of 134 Main St. in which work is kept out of the 50 ft. buffer zone and there was mitigation proposed as well as a long term plan for addressing invasives. A peer review was done in that case. He felt flexibility with the siting of the fire station was important.

Selectman Anna Eliot thanked the boards for being open to a discussion, and the Selectmen adjourned their meeting at 8:30 p.m.

At 8:40 p.m., members of the GELD and Conservation boards resumed in a joint meeting. N. Madden said this is an opportunity to lay out possible areas of agreement and disagreement. K. Lindemer stated he sees two areas of disagreement: 1) the definition of public good and 2) the finding that the GELD project does not improve the wetland situation or the environment. M. Giguere commented that this would be what the peer review covers. It could involve such things as plantings in the 50-ft. buffer zone. Instead, the majority of the buffer zone is being removed or

converted to rain gardens. He felt the Commission has been consistent in wanting wiggle room until we know what is proposed there. Economic costs are not a Commission issue as it is outside the board's purview. There are definitely two different perspectives.

K. Kelly asked what, in terms of money, would gain the support of C. Auman and N. Madden. Attorney Collins asked about additional mitigation measures, specific planting densities, or other means. D. Pitkin said the project was presented under the Bylaw. K. Lindemer stated only 1,100 SF is within the 50-ft. buffer zone and the talks continue on the siting of the fire station. He asked "What can we do to reach approval?" M. Giguere said the disturbance within the 50-ft. buffer line is closer to 12,000 SF, in the course of which wildlife habitat is being removed and replaced with lawn or rain gardens. K. Lindemer argued that much of it is considered pre-disturbed land under the Bylaw.

C. Auman advised that the standard for previously altered land is that there is no increase in adverse impacts and that there are no technically feasible alternatives. The GELD structure could be re-positioned if the fire station is not proposed there. K. Lindemer emphasized GELD is constrained by the need to maximize the amount of surplus land in order to comply with the Memorandum of Understanding with the Board of Selectmen. He maintained the previously disturbed nature of the land and the fact there are no technically feasible alternatives leaves the only other consideration additional land mitigation. Mr. Lindemer said GELD's costs have amounted to \$700,000, and they're still counting. He felt economics should be addressed within reason when considering technically feasible alternatives. C. Auman said additional property could be considered for mitigation, and there is the option of building on the same footprint.

N. Madden asked if there are any other opportunities on site or contiguous to the edge of Broadmeadow. It was noted that the Rail Trail parking lot is next to the wetland. If the Fire Station Building Committee says "no" to Station Ave. for a fire station, how much additional land might be freed up? How much more land is acceptable to the town? Light Commissioner Rod Hersh exclaimed the Commission was not dealing in good faith. N. Madden said she was uncomfortable with the question, and there may be no common ground. Attorney Bob Collins commented the additional Fuccillo property on Rt. 40 provides a security buffer around the transformers. K. Kelly added "there will be covered storage for poles there as well".

C. Christie questioned how more land would be made available. He mentioned there is more land within the Fuccillo property that could provide dry access. D. Pitkin pointed out the power line that is proposed for mitigation goes straight back. Attorney Collins said GELD may have flexibility to give land over on the other side. N. Madden added that the mitigation part of public good could be the creation of connecting trails. She felt a statement from GELD examining the interests would be helpful. K. Lindemer said we seem to be at cross perspectives for the public good. The ratepayers and taxpayers could see the \$700,000 stranded.

P. Morrison expressed concern that the Commission is sending GELD off on another goose chase with small possibility of success. C. Auman indicated he would entertain the idea of additional land under the re-application. B. Collins questioned whether this could be something behind Brownloaf or something else that could be used by the Town. A. Eliot said there is something to be said for the consistent public service GELD provides to the Town. It is an

essential entity. Ms. Eliot commented three requests for proposals have been sent out, and the Town has spent years waiting for this. She questioned how it can be compared to water resources. Peter Cunningham urged the Commission not to define wetlands so narrowly and to take into consideration the years spent on the planning process.

N. Madden pointed out this project has not gone through a review of its stormwater design. Mr. Lindemer said the design is there. He reiterated his request to the Commission to be specific about what GELD can do. If the Fuccillo land is considered, is there a way to protect the resource area or to make connections. A. Eliot said there is the possibility of a percentage of the Brownloaf property, but she made it clear she cannot speak for the full Board of Selectmen. K. Lindemer maintained that GELD needs to move separately, and there are issues that need to be resolved for the siting of the fire station. He questioned whether a land swap could work.

P. Morrison mentioned that there is not much that would be disturbed that is not already currently paved or used for pole storage. D. Pitkin felt there needs to be an environmental impact statement that shows a net positive in an objective manner. The Commission would like to see a reduction in the amount of disturbance in the 50-ft. buffer zone and long term plans for restoring habitat and the management of invasives. There is room for significant improvement. K. Lindemer felt that Places addressed the invasive plant management issue with their plan. Commissioners noted there is no information on habitat restoration, such as denser plantings, or for long term invasives management.

Chris Christie asked the Commission to provide comments on how GELD can improve on its plan. M. Giguere said that's why we have a peer review. A. Eliot asked if this habitat improvement would address cleaning out the perimeter around the wetland and making it more attractive. She noted it is currently a disgusting mess. Stan Dillis said a habitat evaluation could be done. In addition a long term plan for handling invasives can be developed. N. Madden felt the application was presented in a sloppy manner, and it was necessary to do a written summary statement. P. Morrison agreed this could improve the re-application. K. Lindemer protested GELD has to provide this information or it just builds on the existing footprint. He said GELD has committed to giving land and revising its plans; he questioned what more GELD can do.

K. Kelly confirmed the Commission is looking for a better long term written plan for dealing with invasives and providing wildlife habitat. M. Giguere stated he was not a botanist so he would look to have this prepared by qualified individuals. N. Madden reiterated the need for a better summary. B. Collins noted the Commission would then respond to that further application. K. Lindemer clarified that the Commission is looking for a summary, management of invasives in the buffer zone, talk to botanist, and how much land for an offset.

B. Easom said he would still vote 'no' if the disturbance can't be moved out of the 50-ft. buffer zone. C. Auman indicated he would consider the re-application if additional land was included. N. Madden stated she would look for clarity in the summary. M. Giguere commented he wants to see a good plan for mitigation with something that substantially replaces the buffer zone. There needs to be a long term plan. K. Lindemer asked if GELD's verbal intent to manage for the long term is enough. Reporter C. Sartini asked how the Commission will measure these steps, and M.

Giguere responded this would be part of the peer review. The outside peer review consultant is selected by the Commission but would be paid for by GELD.

(Chairman N. Madden left at 9:30 p.m.)

S. Dillis did the original ANRAD plan and has been recently involved in the second ANRAD. Mr. Dillis questioned whether he could serve as a peer reviewer for GELD. Commissioners Easom and Pitkin indicated they were not comfortable with Mr. Dillis doing the peer review because of his previous involvement. M. Giguere said he was amenable to seeing a modification in the GELD plan if there is no fire station proposed on Station Ave. P. Morrison worried that the timeline is getting much longer with this re-application and stated that it is not fair to GELD to hold them up for months. There being no further business, the meeting was adjourned at 9:35 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as amended 4/24/12.

EXHIBIT

Document	Source	Date
DEP#169/1073	GELD/23 Station Ave.	12/1/11