

GROTON CONSERVATION COMMISSION

Minutes

January 22, 2013

Chairman Craig Auman called the meeting to order at 7:00 p.m. in the 2nd floor conference room in Town Hall. Members Bruce Easom, Marshall Giguere, Peter Morrison, John Smigelski, and Rena Swezey were present. Nadia Madden was absent. Conservation Administrator Barbara Ganem was present.

Upon a motion by B. Easom, seconded by J. Smigelski, it was

VOTED: to approve the minutes of January 8, 2013 as drafted.

The vote was unanimous.

Upon a motion by M. Giguere, seconded by B. Easom, it was

VOTED: to approve the minutes of January 14, 2013 as drafted.

The vote was unanimous.

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

VOTED: to approve the 2012 Annual Report as drafted.

The vote was unanimous.

B. Easom reported the Community Preservation Committee met on January 14th to consider an out-of-cycle application for the removal and replacement of Fitch's Bridge. The actual application was submitted on January 18th. They are looking at \$280,000 in unallocated funds to replace the bridge while \$180,000 would be necessary for the demolition. This would leave \$200,000 in the unallocated bin, the balance of which is steadily going down. M. Giguere added there is a risk that all would go to the Town, but the CPC seemed to be protective of keeping money for the Conservation Fund.

Mr. Easom explained that there have been other out-of-cycle requests, such as Surrenden Farm and Tarbell School. The CPC's criterion is that it be a time critical project. The Fitch's Bridge Committee has concerns that the bids will expire, and the project would be more expensive in the future. He did not find their argument compelling and voted against hearing the request.

In reviewing the Commission's draft CPC proposal for the \$150,000 for the Conservation Fund, members thought it shows a sense of accomplishment. P. Morrison said the Commission is looking at an average of \$25,000 per cycle, and the Conservation Fund has been receiving a steadily decreasing amount over the last 3 years. B. Easom acknowledged we have gotten shot

down by the voters at Town Meeting. At this past spring Town Meeting the Board of Selectmen voted to support our CPC request, but an amendment was offered by Peter Cunningham on Town Meeting floor to halve the amount. Members reviewed a listing of parcels that have either been offered to the Commission or have risen to the top as parcels of conservation interest. Upon a motion by M. Giguere, seconded by P. Morrison, it was

VOTED: to approve the draft Community Preservation application for \$150,000.

7:15 p.m. – Appointment/Agricultural Commission

Commission members Meredith Scarlet and George Moore were present. Ms. Scarlet explained the proposed change in the definition of agriculture in the Zoning Bylaw reflects what is in state law. For instance, the number of pigs cannot be limited. Greenhouses and dog kennels have been moved to the commercial section. The need for a special permit to farm is proposed to be removed from all agricultural activities. The Board of Health retains control over pigs as they can make the call whether they are being maintained in a manner which constitutes a nuisance.

G. Moore acknowledged B. Easom is partially responsible for this change as he contacted Brad Mitchell of the Farm Bureau when he had a complaint from a neighbor about his stables. He pointed out that Groton's laws were not consistent with state laws. The need to document that you are a farm can be quite onerous. Mr. Moore invited the Commission to a public information night to explain the purpose of the proposed amendments and to answer questions.

Member Smigelski explained he downsized his barn in order to avoid having to have site plan review, and he too has appeared before the Zoning Board of Appeals to prove he is a farmer. C. Auman clarified that the process involves abutter notification and a public hearing during which abutters can voice their concerns. G. Moore said there will be a right-to-farm notice going out shortly with GELD bills. B. Ganem mentioned that the definition of agriculture under the Wetlands Protection Act is different from what is proposed for the zoning bylaw. Ms. Scarlet said they have sifted through a number of definitions, but bringing it into line with that of the state is important. Upon a motion by P. Morrison, seconded by R. Swezey, it was

VOTED: to support the Agricultural Commission's endeavor to amend Ch. 218 Zoning.

Mr. Moore asked Commissioners to attend the Town Meeting and support the article.

7:30 p.m. – Appointment/Rick Dunn 36 Orion Way

The owner does not yet have an as-built plan, so Attorney Dunn has requested a delay. He will notify us when he can appear with the plan.

7:30 p.m. – Appointment/Tom Wilson - 21 Moose Trail follow up on DEP#169-1041

Mr. Auman said the new retaining wall is not shown on the Notice of Intent plan, and he asked Mr. Wilson to help the Commission understand how this happened. Mr. Wilson indicated he was not prepared to close the Order of Conditions, and there is quite a history involved with the Conservation Commission. He maintained he was not trying to avoid anything, but he also was not prepared to confront this problem financially or mentally as he has been losing sleep over

just appearing before the Commission. He stated the retaining wall was necessary for the construction of the garage.

C. Auman asked if any other work is planned for the lot as there is a method for amending an Order. Mr. Wilson informed the Commission he found it difficult to come back as he has already spent more than \$40,000 just to get permits. He found out his well and underground electricity were on two lots he did not own. He had always assumed he owned the land. When it came time to put in a legal septic system, those lots were in tax title. He understood that he would be able to purchase that property for back taxes. When he found out this goes through all town departments and the Conservation Commission was interested in the parcels, he hired a lawyer and agreed to a 10 ft. wide conservation restriction to provide a turtle path. The boat ramp belongs to someone else. It cost \$30,000 to hire a lawyer and engineer to assure he had a 15 ft. setback to the property line. The process started over again to get the permit for the garage. He put his landscaping in and felt that he had done everything he had been asked to do. The retaining wall is not within the conservation-restricted area. He pointed out the turtle path is on a hill and is really not very appropriate for turtles as he thought they were more likely to be crossing on the Tremblay land which is flatter. He has tried to do things the right way, doing everything he was asked to do. Mr. Wilson said the process was expensive and time-consuming and also acknowledged his property is not marketable with an open Order of Conditions.

Member Swezey mentioned she had known long-time lake resident Tom Wilson for a long time and had recommended he come in to talk with the Commission in person. She suggested he just draw in the retaining wall on the current plan rather than file for an amendment. Member Giguere agreed that the conservation-restricted area is essentially a 'vertical turtle highway', but the Commission is in the position of having to enforce the Conservation Restriction as best we can. He admitted to being stunned when the state approved it. The problem arises when people at the lake feel they are being held to a higher standard while the Commission bends over backward to treat everyone the same. People would rather do things and come back to the Commission for permission, and R. Swezey argued that that attitude is getting worse. T. Wilson said that camp owners are put through the ringer while their taxes are going up. Based on his experience, he felt the Commission was trying to prevent people from improving their homes. He maintained he has had no negative impact on the lake whatsoever.

M. Giguere noted these continuing changes go way back. A project is done after the applicant is specifically told that any changes require coming back before the Commission. He maintained the Commission does not treat anyone at the lake any differently from residents living in other parts of Groton.

R. Swezey said she worked with former Tax Collector Christine Collins to auction off tax title parcels, and the Conservation Commission picked up some parcels and is doing nothing with them. M. Giguere pointed out the intent was to have more access to the lake, but also we contacted other parties that may have had an interest. P. Morrison said he was in favor of adding a line showing the retaining wall to the Notice of Intent plans, and he too believes that the attitude toward the Conservation Commission is going downhill.

C. Auman pointed out it is their lake the Commission is attempting to protect. P. Morrison said it is time to get their trust back again. J. Smigelski commented all this happened before he was appointed to the Commission, but he would like to make the process as simple as possible. B. Easom thanked T. Wilson for providing feedback. He did not feel there was a compelling reason to have the amendment done immediately, and he was willing to delay it a year to allow Mr. Wilson time to regain his financial footing.

T. Wilson said an as-built plan was done for the garage foundation. B. Ganem read the requirements in the Order of Conditions for getting a Certificate of Compliance under the Act and Bylaw which outlined the requirement to get an as-built plan plus identify any changes. Members reiterated this could be done at Mr. Wilson's convenience. C. Auman questioned whether drawing on the plan meets everything we need to have. He added that he appreciated Mr. Wilson being candid with the Commission and was sorry things had been so difficult for him. B. Easom questioned whether this is to be the final as-built plan. P. Morrison felt this should serve as both a modified Notice of Intent plan and the certified as-built plan. C. Auman said this could work as long as everything is on the plan when the Commission goes out to do the Certificate of Compliance inspection. B. Easom noted there could be a problem with treating people differently according to how much money they have expended. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to rescind the vote to require Mr. Wilson to file for an amendment to the Order of Conditions for DEP#169-1041 at 21 Moose Trail by January 22, 2013.

The motion passed with R. Swezey, P. Morrison, J. Smigelski, B. Easom, and C. Auman voting in favor; M. Giguere left the room before the vote was taken.

Upon a motion by P. Morrison, seconded by R. Swezey, it was

VOTED: to accept the modified plan with the retaining wall drawn in on the Notice of Intent plan as the as-built plan for DEP#169-1041 for 21 Moose Trail.

The motion passed with R. Swezey, P. Morrison, J. Smigelski, and C. Auman voting in favor, B. Easom voting in the negative, and M. Giguere not present.

7:45 p.m. – Appointment/Joachim Preiss – Trails Committee

Mr. Preiss reported the Trails Committee has developed QR code squares printed on 4" by 4" vinyl squares to be affixed to trail posts. Using a smart phone, trail users have the option of going to an interactive trail map or to Pdf maps using the QR code. This helps connect users with information the Trails Committee has garnered over the years. It is their intention to place them at the beginning of every trail, and they are seeking permission from the various groups that own conservation land, including the Conservation Commission. B. Easom asked if he could summarize any complaints they have received, and Mr. Preiss acknowledged a member of the Groton Conservation Trust had concerns they were unsightly. They do not intend to replace the trail markers, but to make it easier for users to find their way around using the QR codes. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to allow the Trails Committee to place the QR code at the entrance to Town-owned conservation areas.

The vote was unanimous.

J. Preiss mentioned several activities the Trails Committee would like to undertake on the Williams Barn Sorhaug Woods property. This parcel has a forestry management plan, but it is not likely to be logged until next year. P. Morrison cautioned about the changing landscape after the recent logging on Wharton Plantation. There are likely to be time of year restrictions on when the logging can take place. Mr. Preiss said the proposed trail modifications involve trying to avoid wetlands, especially an encroaching beaver pond. Upon a motion by P. Morrison, seconded by J. Smigelski, it was

VOTED: to allow the trail modifications proposed on the 1/15/13 map, excluding the boardwalk, to go forward on the Williams Barn Sorhaug Woods Conservation Area.

The vote was unanimous.

Mr. Preiss said the boardwalk proposed at the #4 location on the map would be about 15 – 20 ft. long, crossing a seasonal wet drain from Chestnut Hill. It would be constructed out of 4” x 4” pressure-treated wood with 2” x 6” cross planks on the top. The bridge would be considered temporary in nature. Upon a motion by B. Easom, seconded by P. Morrison, it was

VOTED: to allow the installation of a boardwalk at the #4 position on the 1/15/13 map.

The vote was unanimous.

The third item is the addition of new trails 1 and 2 to go to the top of Chestnut Hill and create a nice loop instead of travel over a fire road. The Water Department probably owns the land where the water tank is located so they would have to give permission, as would Steve Webber for traversing any land he owns. R. Swezey said the Groton Land Trust owns this land. M. Giguere questioned when the work would occur, and J. Preiss indicated this would probably not be done until next year. B. Ganem mentioned the logging could impact trail layouts, and Mr. Preiss said the Trails Committee could just re-do it as necessary. Upon a motion by P. Morrison, seconded by B. Easom, it was

VOTED: to give permission to install new trails at positions 1 and 2 on the 1/15/13 map.

P. Morrison said he trusted the Trails Committee to do these activities the right way and didn't feel the Commission needed to oversee every trail change in the field.

On Gibbet Hill, on land owned by Steve Webber with a Conservation Restriction held by the Commission, there is a former farm road where people have dumped sharp rocks and logs to keep their feet dry to traverse an area where water drains between two hills. The area is treacherous for both walkers and horses. This is an area where B. Easom created a design for a bridge and volunteered to apply for grants from the Department of Conservation & Recreation to

fund the work. J. Preiss mentioned there have been complaints from equestrians about crossing the Gratuity Trail Bridge because the surface has become slippery over the years. It is possible that wire or tarpaper could improve conditions, but currently they are asking riders to dismount and scatter sand over the bridge. Mr. Preiss would like to install a 12” drain pipe and add larger rocks and gravel to bring the area up to the surrounding grades.

Mr. Easom, acknowledging the Trails Committee had voted it down, said a bridge would require a 60 ft. span (three 20 ft. sections), and he had proposed granite pillars for support. He agreed slipperiness could become an issue as with the Gratuity Trail Bridge. C. Auman questioned whether the culvert would require an engineered design as it appears to require fill in a wetland. B. Ganem mentioned the area is flagged as wetland on the map of the Gibbet Hill Conservation Restriction. B. Easom suggested the Commission look at this in the field. Chairman Auman complimented J. Preiss on the impressive amount of work the Trails Committee does.

B. Easom noted there is also a question about Mahoney Lane, the cart path on the west side of the Cox property. The deed for Fitch-Woods to the Groton Conservation Trust includes the right to pass and repass over Mahoney Lane. When the Harlan Fitch property passed to the Bests, this right was not referenced in their deed. B. Easom suggested this situation is something that might have to be resolved in Land Court. It is a nice connecting trail lined with mature trees. Thinking about the big picture, members asked J. Preiss to take a look at a tentative priority acquisition list and add any critical trail links the Trails Committee considers important. Members thanked Mr. Preiss for coming in and for all the good work the Trails Committee accomplishes.

The Division of Fisheries & Wildlife has recently requested an update on the 3 properties on which they hold Conservation Wildlife Easements in Groton. The total acreage is 851 acres and includes the Town Forest, Surrenden Farm, and Academy Hill. B. Ganem asked how the Commission wished to identify what we have called the Academy Hill Conservation Area. B. Easom suggested referencing the geological feature – The Throne – in the name.

Discussion ensued on the Purchase & Sale Agreement with Marjorie Cox and Susan Walker. They have decided they would prefer to include the name of their parents, “Fritz and Helen Walker” which reverses the former order. They have no preference, however, on whether it is called Woods, Conservation Area, or Conservation Land. Upon a motion by M. Giguere, seconded by P. Morrison, it was

VOTED: to name the parcel the “Fritz and Helen Walker Conservation Area”.

R. Swezey, P. Morrison, M. Giguere, J. Smigelski, and C. Auman voted in favor, and B. Easom voted in the negative.

Town Counsel Shirin Everett has suggested wording to handle the division of the purchase price in the revised Purchase & Sale Agreement for the Walker-Cox acquisition. Members questioned whether there could be tax or capital gains concerns on the sellers’ part. R. Swezey advised the Commission should not get involved in this at all as the funds should all be paid to the sellers’ attorney and divided according to the sellers’ instructions. B. Easom explained the purchase price must not exceed the appraised value, and the checks issued by the Town have to reflect

this. After considerable discussion, it was agreed to go with Ms. Everett's suggestion to get this matter resolved. The draft survey plan prepared by Mike Martorella of Ross Associates showed the 5 acres to be excluded from the Cox purchase, and members agreed that this met the configuration outlined in a plan prepared by B. Easom.

Chairman Auman quickly ran through the land management tasks: The Board of Selectmen balked at signing off on the TABCOM Conservation Restriction due to the fact it did not allow bicycling. Much of the CR land is under the power line easement while the remainder includes a pond. Mr. Collins is to prepare a sign off sheet for the revised CR. The status on the Ames Meadow Memorandum of Agreement remains unchanged. There has been no word from the Groton Conservation Trust on the revised Baddacook Field Conservation Restriction. The preparation of the Angus & Gibbet Hill Stewardship Plan, to be approved by the Town, owners, and DEM, is underway, but several additional GPS points need to be recorded. Attorney Collins has agreed to add a marginal reference to the Fuccillo deed, directing viewers to the revised plan.

C. Auman admitted to being very frustrated by Mr. Wilson's case. If no one wants to file with the Commission, how do you turn that around? P. Morrison thought they were trying to do the right thing by their standards. Half of the work we see around the lake is septic systems, and Mr. Auman felt residents were treated very fairly and respectfully. B. Easom noted another example is the Pepperell Rd. driveway in which the applicant wished to cross wetlands, and things got out of hand when we let them cut corners, and the driveway washed out. He likened the situation to prohibition in which people will not follow the law if they find it unfair or too much money. In his opinion, neither the Wetlands Protection Act, nor the Bylaw, is being enforced at the lake.

R. Swezey protested the treatment they get is draconian and harsh in some cases. M. Giguere maintained it is very fair and respectful. C. Auman reminded members that the job of Commissioners is to protect the resource areas. P. Morrison said people do things and then come before the Commission. They don't want to do something that costs money or time. B. Easom questioned whether the Commission contributes to this thinking by not strictly enforcing the Act or Bylaw after work is illegally done. If the Commission is lenient, it encourages more behavior like that. If the Commission required more restoration, would that have an impact? We have an example of a house hanging over the lake, which was specifically prohibited in an Order of Conditions, and Mr. Easom inquired "How does that affect other people's perception?"

P. Morrison said we are writing Orders of Conditions that have conditions that are too restrictive or aggressive. C. Auman wondered if people are intimidated by the sheer number of conditions. The conditions are a reflection of the Commission's actual experience in seeing projects carried out. Some applicants come in with an engineer and others just provide hand-drawn sketches, and those are the ones where problems typically arise later. M. Giguere said we are dealing with someone else's perception who may or may not know the regulations. B. Easom indicated there is a different perception between the Conservation Commission and the applicant. The Commission provides a list of conditions that the applicant is not allowed to do. It is a contract between the applicant and the Commission. People seem to be satisfied just to get the permit and don't think following the conditions is a big deal which is the whole purpose of the Order of Conditions. M. Giguere agreed as some applicants say they thought they had a permit, and it's a total surprise when they're required to actually implement the conditions.

C. Auman suggested R. Swezey let the Commission know if she feels people are not being treated fairly at the lake. Ms. Swezey said someone was specifically told, at a meeting, that silt fencing would be satisfactory for erosion control but when he got the Order it required haybales and silt fencing. B. Easom said the Commission should correct this situation if we know the applicant or the address. She refused to name the party as he indicated he did not want to come back before the Commission. J. Smigelski said perception can play a big part as when the Commission called him about grading his driveway, and he could look next door and question why his neighbor is allowed to store things in the wetland buffer. Mr. Morrison said he felt the Commission was too soft on the individual who cut trees at the corner of Lowell Rd. and Hemlock Park compared to the applicant at 583 Lowell Rd. C. Auman explained it was a different situation as there was an outstanding Order of Conditions when the resident cut mature trees in the wetland and buffer on his lot.

Commissioners briefly discussed the agenda for the upcoming Special Town Meeting on Saturday, January 26th.

There being no further business, the meeting was adjourned at 9:45 p.m.

Notes by Barbara V. Ganem
 Conservation Administrator

Approved as drafted 2/12/13.

EXHIBITS

| Document | Source | Date |
|--|------------------------------------|-------------|
| Minutes | Conservation Commission | 1/8/13 |
| Minutes | Conservation Commission | 1/14/13 |
| Annual Report 2012 | Conservation Commission | 1/22/13 |
| CPC Application 2014 | Conservation Commission | 1/22/13 |
| Draft Zoning Amendment | Agriculture Commission | 1/16/13 |
| DEP#169-1041 garage, RDA turtle path improvement, RDA well re-location, after-the-fact RDA retaining walls & septic system, DEP#169-982 septic system, DEP#169-866 septic repair, DEP#169-781 addition | Tom Wilson, 21 Moose Trail | 2001 - 2010 |
| Groton Trails Committee Williams Sorhaug Parcel | Trails Committee photographs & map | 1/15/13 |
| | | |