

GROTON CONSERVATION COMMISSION

Minutes

August 5, 2013

In the absence of the Chairman and Vice Chairman, Clerk Rena Swezey indicated she was not comfortable running the meeting and delegated member Bruce Easom to do so. The meeting was called to order at 6:18 p.m. in the 1st floor meeting room at Town Hall. Members Marshall Giguere, Craig Auman, Rena Swezey, and Bruce Easom were present. Members Peter Morrison, John Smigelski, and Nadia Madden were absent. Conservation Administrator Barbara Ganem was present.

Mr. Easom acknowledged the purpose of the meeting is to prepare the Commission's response to the report prepared by Town Manager Mark Haddad on the GELD permitting process. Talking points were prepared at the last Commission meeting. Attendees in the audience Erich Garger (14 Redskin Trail) and Ray Lyons (125 Hayden Rd.) requested copies of the document. Land Use Director and Town Planner Michelle Collette was also present.

Member M. Giguere requested information on how the report was prepared. B. Ganem explained that Mark Haddad convened the meetings with time lines, minutes, and participation by GELD manager Kevin Kelly, Town Planner Michelle Collette, and Conservation Administrator Barbara Ganem. Ms. Collette said this came about after a controversial Board of Selectmen meeting in which GELD indicated they intended to reduce their payment-in-lieu-of-taxes (PILOT) payments to the Town as a result of the extended permitting process with Town boards and commissions. A subsequent meeting of Selectmen Peter Cunningham and Jack Petropoulos with the Light Commissioners agreed on a course of action to pursue a 'post mortem' on the permitting process. B. Ganem reported that everyone had input into the discussion, but the final report was authored by Mr. Haddad with review by the members of the group. Generally, the report reflects the consensus of the group, but obviously not every comment or change was incorporated into the final report.

C. Auman said the Wetland Protection Act establishes the process by which the Commission performs its responsibilities. M. Giguere agreed that members cannot act capriciously under either the Act or the Bylaw. To assist applicants with the process, the Wetlands Kit provides a thorough outline. B. Easom commented that GELD seemed to have designed their facility and then sought permits. He expressed concern that the site was not considered in the course of the design process, and this made the permitting process more onerous. The constraints posed by the Memorandum of Agreement and the facility design led to inflexibility in the permitting as well.

Member Swezey expressed reluctance to comment on the process as she had not attended earlier meetings (prior to her appointment to the Commission) before the second Notice of Intent was filed. M. Collette pointed out the clock really did not start ticking until after Town Meeting voted to approve the fire station location at the Lawrence Homestead property. There have also been conversations about whether using the Ch. 43D expedited permitting process would have allowed simultaneous board meetings and greater flexibility. GELD opted to do serial permitting.

This is a very difficult site with a difficult project, and the expedited permitting could have made a difference, but it was their choice.

B. Easom commented that GELD created self-imposed constraints. M. Giguere pointed out GELD requested preliminary meetings, but they are really meaningless under the regulatory process under which the Commission operates. C. Auman noted Commissioners kept telling them to get work out of the 50 ft. buffer, but perhaps we should have just said “no”. M. Giguere mentioned the Commission gave up on the 100 ft. jurisdiction and encouraged protection of the 50 ft. buffer, but the Memorandum of Understanding signed with the Board of Selectmen locked in the parcel to the maximum uses.

R. Lyons asked who is the intended audience for the Commission’s response, and members explained this is to be presented to the Board of Selectmen at a meeting on August 12th. Members of the Light Commission and Planning Board are also expected to participate.

Commissioners agreed with the Town Manager’s assessment of the expedited permitting process. M. Collette noted that Comprehensive Environmental, Inc. had reviewed the filing and pointed out the redevelopment credit was already utilized on the property and any development of the ‘surplus land’ will be required to adhere to the new development stormwater standards.

(M. Collette left at 6:55 p.m.)

In paragraph #5, M. Giguere stressed that we need to distinguish between meetings and hearings. The applicant controls the hearing process and can ask for a continuation if things are not going their way. The meeting was briefly recessed to allow Ms. Swezey to close her office.

B. Easom expressed reservations about the paragraph on the Order of Resource Area Delineation. In his opinion there should be a notation on the plan or the Order if the flagging was recorded in any manner other than a field survey. He noted a field survey is the Commission’s usual standard. In this case, the wetland flag locations were done with a GPS unit whose accuracy can be off s much as 30 ft. C. Auman questioned whether this would have made a difference in where we ended up. How the data is transferred from the field to a plan affects its accuracy.

Commissioners agreed to add, in paragraph #7, a statement that “once we received the filings, they were handled in an expeditious fashion.” It seems important for applicants to review the record minutes for outstanding items. C. Auman thought Commissioners could be crisper and more direct with responses to applicants. Unfortunately, the applicant is sometimes not getting the answers they wish to hear. M. Giguere agreed that there is sometimes waffling on a Commission position or answer, and the process begins to drift. The Commission does not want to be in the position of designing a project, but at the same time we’re hesitant to overburden or intimidate a homeowner. With seven members on the Commission there are bound to be differing ideas and opinions.

Commissioners discussed the issue of asking for land as part of mitigation. The disturbances are permanent in nature. B. Easom pointed out the installation of an infiltration structure is not a

faithful reconstruction of the services provided by the buffer even though it does recharge roof runoff. Addressing stormwater management in this manner does not take into consideration the generation of hot water from a rooftop and its effect on the resource area. M. Giguere concurred that these changes impact the resource and also do not improve wildlife habitat. The Commission really has to look at the full spectrum of the eight interests or presumptions covered under the Act. Is how much people pay for electricity a public benefit? Once GELD made this claim, they deemed it inappropriate for the Commission to counter their argument.

Members recommended adding a 12th paragraph in which the Commission summarizes recommendations for improvement in the permitting process such as: 1) The Commission should require a written disclaimer on plans confirming a wetland boundary when the wetland flagging is located by GPS and not a field survey. The original (2007) wetland delineation filing for Station Avenue was for planning purposes, not building construction; 2) The Commission should strive to provide concise and direct statements to applicants; 3) When conducting a continued public hearing, it would be worthwhile to re-cap the proceedings from the previous hearing at the beginning of the continued hearing. When a hearing is continued, the Commission should summarize the information it expects to have by the next hearing; 4) As previously noted, the Commission is looking forward to clarification in the wording of the Wetlands Protection Bylaw during the committee review process; 5) For a project of this complexity, it is worthwhile to utilize a peer reviewer earlier in the process. The 2nd Notice of Intent process moved much more expeditiously; and 6) The Commission concurs with Mr. Haddad's analysis of the benefits of utilizing the expedited permitting process.

The draft statement will incorporate the modifications noted above for distribution to the Board of Selectmen prior to the August 12th meeting. Upon a motion by M. Giguere, seconded by C. Auman, it was

VOTED: to approve the "Statement to the Board of Selectmen" as amended.

The vote was unanimous.

B. Easom agreed to read the statement if Chairman P. Morrison is unavailable for the August 12th meeting. M. Giguere will not be present as he is traveling until August 23rd. This will be posted as a Commission meeting in case there is a quorum present.

M. Giguere reported he is unavailable to attend the next meeting of the Wetlands Bylaw Review Committee on August 21. C. Auman said he plans to be there. As a result of the Bylaw Review Committee's presentation to the Board of Selectmen on July 29th, it appears the review process may have to begin again. It is unclear whether the Commission could sponsor the changes independently of the Selectmen or the Review Committee. R. Swezey said it makes her job a lot harder if people find they can't use their land. She questioned what will happen to existing properties in the Riverfront Areas. B. Easom noted there are two separate pieces to the revision: 1) the wording in the Bylaw about the buffer zone and critical streams and 2) the expansion of jurisdiction around vernal pools. Members questioned how many named streams there are in Groton.* The USGS topographic map is currently used as the basis for the determination of a stream.

B. Ganem reported another rope swing has been installed at Sargisson Beach, granite blocks from the picnic point were re-arranged, and the shed lock was recently cut. Both incidents have been reported to the Police Department. M. Giguere mentioned that members of the Great Ponds Advisory Committee have asked about having the gate to the area locked at night. The police have not reported any vehicles being left in the parking lot overnight so some of the issues may arise due to people coming in by boat. R. Swezey said there are very few young people living around Lost Lake-Knops Pond, and she felt it is unlikely to be lake residents. She reported the public boat launch is heavily used. Members asked if these issues should be brought to the attention of the Board of Selectmen and requested information on how the police respond to calls. A security camera may be necessary. The Police Department currently has no boat with which to patrol Lost Lake/Knops Pond. It seems important to get the situation under control in terms of enforcement.

There being no further business, the meeting was adjourned at 8:30 p.m.

Notes taken by

Barbara V. Ganem
Conservation Administrator

*Nashua River, Squannacook River, Wrangling Brook, Unkety Brook, Reedy Meadow, James Brook, Martins Pond Brook, Baddacook Brook, Cow Pond Brook, and Nod Brook. Neither Flat Pond Brook nor Tuity Brook are named on the USGS topo map.

Approved as drafted 8/13/13.