

GROTON CONSERVATION COMMISSION

Minutes

Tuesday, March 24, 2015

Chairman John Smigelski called the meeting to order at 7:00 p.m. with Peter Morrison (Vice Chairman), Susan Black (Clerk), Rena Swezey, Marshall Giguere, and Bruce Easom present. Mary Metzger was absent. Conservation Administrator Takashi Tada was present.

Taking up General Business, the Commission reviewed a draft Order of Conditions (OOC) for the septic repair project at 69 Boathouse Road, DEP #169-1122. The public hearing was closed on 3/10/2015.

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

VOTED: to issue an OOC under the Wetlands Protection Act for 69 Boathouse Road, septic repair, DEP #169-1122, as amended. The vote was unanimous.

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

VOTED: to issue an OOC under the Groton Wetlands Bylaw for 69 Boathouse Road, septic repair, DEP #169-1122, as amended. The vote was unanimous.

Under General Business, the Commission reviewed the draft meeting minutes from 1/13/2015 and the revised draft minutes from 2/24/2015.

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

VOTED: to approve the revised draft meeting minutes from 2/24/2015. The vote was unanimous.

Upon a motion by M. Giguere, seconded by R. Swezey, it was

VOTED: to approve the draft meeting minutes from 1/13/2015, as written. The vote was unanimous.

Moving on to General Business – CPC Update, B. Easom reported that the Community Preservation Committee (CPC) unanimously recommended all of the FY16 applications for funding at Annual Town Meeting to be held on Monday, April 27th. T. Tada will be meeting with the Finance Committee on Tuesday, March 31st to discuss the Conservation Fund application.

On the topic of Pipeline Committee Update, P. Morrison announced that he is no longer chairman of the Tennessee Gas Pipeline Working Group Committee after the committee reorganized at its last meeting. Kevin Kelly, General Manager of Groton Electric Light Department (GELD) is the new chairman. They will meet bimonthly for now.

7:15 p.m. – Public Hearing (cont'd): NOI, Baddacook Pond Herbicide Treatment (Board of Selectmen) – DEP #169-1123

Applicant: Board of Selectmen (Selectmen)

Representatives: Great Pond Advisory Committee (GPAC); Aquatic Control Technology (ACT)

The Commission reopened the public hearing and began by reviewing the punch-list of outstanding issues/questions from the previous hearing on 3/10/2015. T. Tada read through the list of seven items. Updates on each item are noted as follows:

1. GPAC to seek permission from MassDEP to apply Sonar in the Zone I.
 - Update: Per Jim Luening of GPAC, correspondence from MassDEP indicates that permission to use Sonar in the Zone I, if granted, would come about through the herbicide application license review process. However, if the Board of Water Commissioners (BOWC) and the Water Department are opposed to it, then MassDEP is likely to deny permission to apply Sonar in the Zone I. Also, MassDEP issued a revised comment letter on the NOI submittal, restating its recommendation that Sonar not be applied within the Zone I per its Drinking Water Protection policy.
2. BOWC to provide documentation of the act of the legislature granting ownership of the water in Baddacook Pond, a Massachusetts Great Pond.
 - Update: BOWC provided a copy of the 1897 Act of the Legislature that incorporated the Groton Water Company and granted water rights, plus excerpts from the earliest annual reports (ca. 1900) summarizing legal actions associated with “taking” of the water in Baddacook Pond. Also provided documentatoin of the 1982 Annual Town Meeting approval of the Town’s purchase of the Groton Water Company and the establishment of the Water Department.
 - A copy of the transfer deed from Groton Water Company to the Town of Groton was provided previously.
3. NHESP to provide written determination letter by the end of the week.
 - Update: NHESP issued a “no take” determination letter on 3/11/2015 (NHESP File #09-26352). The determination “is valid for two (2) widespread applications of Sonar within a five (5) year period.”
4. Seek recommendation from MassDEP for mitigating and/or isolating the Zone I portion of the pond, if Sonar is applied in the rest of the pond (GPAC or T. Tada).
 - Update: Per T. Tada, MassDEP stated it would not require or recommend any measures to physically isolate the Zone I portion of the pond; nor would it require or recommend any other mitigation measures to protect the Zone I area if Sonar is applied within the Zone II area of the pond.

5. GPAC to pursue a Special Permit from the Planning Board under the Water Resources Protection District provisions of the Town of Groton Zoning Bylaws. See memo from the Planning Board dated 3/6/2015.
 - Update: The Planning Board will discuss this issue at its regular meeting on 4/2/2015. Therefore, the Planning Board has requested continuation of this public hearing.
6. T. Tada to pursue additional information on the Great Pond ownership question.
 - Update: No new information received.
7. Water Department to provide summary of supply well production (Baddacook Well versus Whitney Wells).
 - Update: Tom Orcutt of the Water Department provided this data via email.

B. Easom asked that an additional item (#8) be added to the ongoing punch list, requesting a concise and up-to-date list of the BOWC's questions/concerns. S. Black also asked the BOWC to clarify its concerns regarding the assurance of safety of the drinking water supply, given that Sonar is approved for use in drinking water reservoirs. Mr. Orcutt and members of the BOWC indicated they would not provide an updated list. B. Easom and P. Morrison suggested the Commission honor the Planning Board's request to continue this hearing.

On the issue of MassDEP's revised comment letter and the herbicide application license review process, Mr. Luening summarized his recent email communications with Marielle Stone, Deputy Regional Director of MassDEP's Central Regional Office. Ms. Stone issued the revised comments to clarify the fact that MassDEP only provides recommendations to the Conservation Commission at this stage of the NOI process. MassDEP does not issue approvals/denials of NOI submittals unless a decision of the Conservation Commission is brought before them on appeal. Ms. Stone also indicated that MassDEP would not issue any specific comments/decisions until they receive the application for a license to apply pesticides in the pond. B. Easom asked if MassDEP would require the support of the Water Department/BOWC before approving the application of Sonar within the Zone I. Mr. Luening said yes. He understood that MassDEP would not approve Sonar in the Zone I unless the Water Department and BOWC were amenable to it.

Chairman Smigelski said it was unclear whether the enabling legislation of 1897 gave complete control of the pond to the Groton Water Company, or just the right to access the water. BOWC has stated previously that they control the water via ownership of the water rights, but do not own the land under the water. Mr. Luening noted that MassDEP did not seem overly concerned about the ownership question, and they would most likely approve the use of Sonar within the Zone II. S. Black said that separating the two zones was impractical and that some quantity of Sonar would likely make it into the Zone I if applied in other parts of the pond. Mr. Luening responded that the consultants from ACT have said they believe the use of Sonar in Baddacook Pond can be effective even if it is only allowed in the Zone II.

Mr. Orcutt asked if the Commission was satisfied with the documentation of water rights ownership provided by the BOWC. P. Morrison asked what is meant by the term "take" relative to water rights. Mr. Gmeiner replied that this meant the taking of water rights by eminent domain. Mr. Luening said this seemed to be inconsistent with the state's ownership of all Great

Ponds in the Commonwealth. Mr. Gmeiner brought up Lake Cochituate as a similar example of a Great Pond where Sonar herbicide has been used; he said the lake is owned by the MassDCR (formerly the MDC). He also said not all ponds are Great Ponds. It was asked if MassDEP had signed off on the NOI as the property owner. T. Tada responded that MassDEP did not sign the NOI. Art Prest, President of the Groton Lakes Association (GLA), asked if Town Counsel David Doneski was aware of the fact that Baddacook Pond is a Great Pond, when he rendered his legal opinion in January 2014 affirming the BOWC's water rights.

Chairman Smigelski asked Mr. Orcutt if the Water Department had any contingency plans in place, in the event of a chemical spill. Mr. Orcutt responded that they have emergency response plans in place. The plans are kept in binders, under lock and key, in Groton and Washington, DC. Generally, the response to a spill would involve notification to Police, Fire, MassDEP, and Clean Harbors (spill response/cleanup contractor) if necessary.

B. Easom indicated that he was inclined to vote in favor of issuing an Order of Conditions (OOC) for the application of Sonar herbicide in the Zone II portion of Baddacook Pond. R. Swezey asked the Selectmen's representative, Mr. Luening of GPAC, if the applicants were amenable to an OOC that excluded the Zone I. Mr. Luening said he preferred to leave it up to the MassDEP herbicide license review process to impose any limitations. B. Easom said MassDEP's revised comment letter clearly recommends not allowing the use of Sonar in the Zone I.

Chairman Smigelski and M. Giguere agreed that the Commission needs to balance the various protected interests under the Wetlands Protection Act and Groton Wetlands Bylaw, which include protection of drinking water and groundwater, as well as wildlife habitat. M. Giguere, R. Swezey, and S. Black said they would like to hear from residents who live on the pond and/or consume Town water.

Francoise Forbes, of 597 Lowell Road, said property owners are taxed higher for waterfront property. She said the invasive weeds were so dense that she wouldn't be able to swim out to their float in Baddacook Pond if not for the weed harvester that they use to maintain pond access. Mr. Luening said GPAC has received many letters of support since taking on the issue of herbicide treatment prior to last year's CPC proposal round. Bill Strickland, GPAC member and resident of 542 Martins Pond Road, said he was in full support of the NOI. He also said other entities such as NHESP and the Massachusetts Congress of Lake and Pond Associations (MACOLAP) were in support. Claire Macy, of 716 Martins Pond Road, said she had no problem with the use of Sonar in Baddacook Pond. She and Ms. Forbes then took issue with the Water Department's apparent double standard of treating drinking water with chlorine according to the standards established for its use in drinking water, while opposing the standards in place for Sonar in drinking water. Ms. Forbes also mentioned that Town water is high in mineral content and often has a brown color. She said she filters Town water at home.

Mr. Prest restated his question about whether the legal opinion from Town Counsel took into account the status of Baddacook Pond as a Great Pond. The Commission directed T. Tada to seek permission from the Town Manager to get clarification on the legal opinion from Town Counsel.

P. Morrison asked if the Groton Water Company ever acted on its right to “take” the waters of Baddacook Pond. Mr. Gmeiner and Mr. Orcutt said the Groton Water Company began exercising its water rights in the years following its establishment in 1897, as evidenced by case law from the early 1900’s. P. Morrison followed with a question as to whether taking the water rights via eminent domain was different than physically taking the water via a well or pipe. This question will also be forwarded to Town Counsel.

The Commission updated its punch list based on the preceding discussion. B. Easom suggested that items 1, 3, 4, and 7 from the list had been addressed/resolved sufficiently; while items 2, 5, 6, and 8 required further resolution. Also, GPAC will provide copies of letters from residents in support of the proposal to treat Baddacook Pond with Sonar herbicide to control invasive plants.

The Commission’s updated punch list of outstanding items on the Baddacook Pond NOI is:

1. Commission will request clarification from Town Counsel about the status of Baddacook Pond as a Massachusetts Great Pond. Did Town Counsel consider this point when providing his legal opinion of 1/7/14 re: the Water Department’s water rights?
2. The Planning Board will discuss the relevance of a Special Permit under Town Zoning Bylaws to apply herbicide within the Zone II. Planning Board will discuss this issue at its regular meeting on April 2nd.
3. Commission to request an updated, concise list of questions from the BOWC.
4. GPAC to provide copies of letters from Groton residents who support the proposed Sonar treatment in Baddacook Pond.

Water Commissioner David Crocker asked if the Commission had looked at other alternatives to deal with the invasive plants. Chairman Smigelski said this had already been discussed in earlier hearings on this NOI. Mr. Crocker specifically mentioned a product called the Solar Bee that circulates the water in a pond. Mr. Prest responded that he had contacted the Solar Bee manufacturer and was told that the product would not work in a pond such as Baddacook due to the density of aquatic vegetation. The manufacturer recommended releasing sterile grass carp to eat the plants [*Note: this is prohibited in Massachusetts*].

Ms. Macy asked if there is a statute of limitations on the clinical use of Sonar herbicide, given that it appears to have been used safely for 30 years. Mr. Gmeiner replied that DDT was thought to be safe and was used for many years. Mr. Prest responded by recounting the history of the US Environmental Protection Agency’s decision to ban DDT.

There being no further relevant discussion, the Commission asked GPAC if it agreed to a continuation of the public hearing.

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

VOTED: to continue the public hearing for Baddacook Pond NOI, DEP #169-1123, to 4/14/2015. The vote was unanimous.

8:30 p.m. – Public Meeting: RDA, The General Field, Farmers Row (Groton Conservation Trust)
Applicant: Groton Conservation Trust (Robert Pine, Trustee)

The applicant was not present. This Request for Determination of Applicability (RDA) is for improvements to the parking area of The General Field, the eastern portion of Surrenden Farm owned by the Groton Conservation Trust (GCT). The Conservation Commission holds the Conservation Restriction (CR) on this property.

B. Easom asked if the GCT had notified the Commission, as holders of the CR, of the proposed improvements. He also asked if the proposed work was designed with respect to the CR boundary. T. Tada will look into this prior to the next meeting.

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

VOTED: to continue the public meeting for the RDA, Improvements to The General Field (GCT), to 4/14/2015. The vote was unanimous.

Moving on to other General Business, the Commission considered a draft OOC for Old Ayer Road (MacGregor), DEP #169-1121. The public hearing was closed on 2/10/2015. B. Easom recused himself from this discussion.

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

VOTED: to issue an OOC under the Wetlands Protection Act for Old Ayer Road (MacGregor), single family home, DEP #169-1121. The vote was unanimous (5-0).

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

VOTED: to issue an OOC under the Groton Wetlands Bylaw for Old Ayer Road (MacGregor), single family home, DEP #169-1121. The vote was unanimous (5-0).

Under General Business – Land Management, T. Tada announced that he would be attending this year's Keystone Training in April at the Harvard Forest. M. Giguere, a Keystone alum, gave a brief synopsis of the forest land management training program offered by UMass.

Moving on to the topic of draft revised regulations under the Groton Wetlands Protection Bylaw, M. Giguere explained the minor revisions he made per the Commission's previous discussion on this topic. Updates were made to the fee structure and the performance standard for marking the limit of disturbance.

Moving on to Open Session, Chairman Smigelski raised the issue of inaccurate and misleading coverage in the local newspapers and online blog posts. He asked if Commission members were interested in offering a response. B. Easom and P. Morrison recommended letting go of the issue, rather than responding and creating an ongoing controversy. Other members concurred.

B. Easom asked if members of the Commission would agree to begin the process of applying to the Board of Health for an agricultural well permit at Baddacook Field. Members were in agreement. T. Tada will follow up with the Board of Health.

There being no further business, upon a motion by P. Morrison, seconded, it was

VOTED: to adjourn the meeting at 8:55 p.m. The vote was unanimous.

Notes taken by

Takashi Tada
Conservation Administrator

Exhibits on file at Conservation Commission Office:

1. NOI, Baddacook Pond Herbicide Treatment (Selectmen), DEP #169-1123
 - a. WPA Form 3, Notice of Intent
 - b. Assessors Map
 - c. USGS Locus Map
 - d. Project Description
 - e. Notification to Abutters
 - f. Certified Abutters List
 - g. Copy of MESA Filing Fee Check
 - h. "Baddacook Pond Baseline Survey 2011", prepared by ACT, dated 7/2011.
2. Supporting Documents, Baddacook Pond NOI:
 - a. GPAC PowerPoint Presentation (J. Luening)
 - b. MassDCR Rapid Response Plan For Fanwort, prepared by ENSR
 - c. Baddacook Well Zone I – map figure provided by GPAC
 - d. Material Safety Data Sheet for SePRO Sonar herbicide (fluridone)
 - e. Sonar fact sheets, compiled by GLA
 - f. Article re: drowning in Framingham, MA
 - g. USDA-NRCS Soils Maps for Baddacook & Spectacle Ponds
 - h. Baddacook Well MPA Testing Results, provided by MassDEP
 - i. Letter from SePRO's Regulatory Affairs Manager, Laurent C. Mézin, dated 2/23/2015.
3. Comments & Responses To Comments on the Baddacook Pond NOI:
 - a. BOWC Memorandum to BOS *et al*, dated 1/28/2014.

- b. Response to BOWC titled, "Restoration & Revitalization of Baddacook Pond". Prepared by A. Prest on behalf of the GLA, dated 2/10/2014.
 - c. BOWC Memorandum to BOS *et al*, dated 9/23/2014.
 - d. Response to BOWC titled, "Baddacook Pond Environmental Restoration – Answers to Water Commission Questions". Prepared by GPAC.
 - e. Email correspondence from Hotze Wijnja, PhD., Environmental Chemist for MassDAR, dated 2/23/2014.
4. Additional information/comments presented during Baddacook Pond NOI public hearing, 2/24/2015:
- a. Groundwater and Public Policy Leaflet #2, "How Contaminants Reach Groundwater". Prepared by Arthur G. Hornsby, University of Florida, for the Groundwater Policy Education Project. Copy presented by Jim Gmeiner, BOWC.
 - b. Article from the January 2015 issue of *Civil Engineering* magazine relating to cyanotoxins in drinking water. Copy presented by Val Prest.
5. Additional information/comments received between the 2/24/2015 public hearing and the 3/10/2015 public hearing on Baddacook Pond NOI:
- a. "Neponset Reservoir, Aquatic Vegetation Management Program, 2009 - Year End Report", prepared by ACT. Final draft dated 12/30/2009. Copy provided by Jim Luening on 2/24/2015.
 - b. Legal opinion from Town Counsel David Doneski of Kopelman & Paige, P.C. Original email dated January 07, 2014. Forwarded by Tom Orcutt on 2/25/2015.
 - c. Photograph of Baddacook Pond outlet grate, taken by J. Luening and provided via email, 2/25/2015.
 - d. Email from J. Luening to Board of Selectmen *et al*, re: hiring of outside consultant, dated 3/2/2015.
 - i. Email reply from Mary Metzger to J. Luening, dated 3/2/2015.
 - ii. Email reply from Jim Luening to M. Metzger, dated 3/3/2015.
 - e. Email correspondence from J. Luening to MassDEP Drinking Water Program, dated 3/5/2015.
 - f. Email reply from Robert Bostwick, MassDEP Drinking Water Program, to J. Luening, dated 3/9/2015.
 - g. List of drinking water reservoirs treated with Sonar, prepared by SePRO. Copy provided by J. Luening, 3/10/2015.
6. Additional information/comments received between the 3/10/2015 public hearing and the 3/24/2015 public hearing on Baddacook Pond NOI:
- a. Map figures re: Baddacook Pond inlets/outlet locations and extent of Zone 1. Provided via email by Bill Strickland, 3/11/2015.
 - b. NHESP Determination Letter, File #09-26352, dated 3/11/2015.
 - c. Documentation of water rights from BOWC submitted by T. Orcutt on 3/12/2015, including:
 - i. "History of Groton Water" by Groton Water Dept., 9/10/1987.
 - ii. "Acts of the Town re: Water Department", summary of 1982 Annual Town Meeting.
 - iii. Copy of House Bill #323, Ch. 338, "An Act to Incorporate the Groton Water Company" (Legislative Act of 1897).

- iv. Excerpts from Groton Water Company Annual Reports referring to specific legal cases re: “taking” of water rights of Baddacook Pond.
 - v. Copy of Quitclaim Deed from Groton Water Co. to Town of Groton.
 - d. Email from T. Orcutt re: Baddacook Well water consumption summary, dated 3/13/2015.
 - e. Email from J. Luening to Planning Board re: Open Meeting Law, dated 3/15/2015.
 - f. Email from Marielle Stone, MassDEP Central Region Deputy Director, in reply to J. Luening, dated 3/17/2015.
 - g. Email from J. Luening re: Planning Board regulation of pesticides, dated 3/18/2015.
 - h. Email from T. Orcutt to A. Prest, GLA, re: Solar Bee water circulator by Medora Corporation, dated 3/18/2015.
 - i. Email from T. Orcutt re: Code of the Town of Groton (Bylaws), Ch. 90 – Water, dated 3/19/2015.
 - j. Email comments from M. Metzger, dated 3/20/2015.
 - k. Email from J. Luening to M. Stone re: MassDEP’s comments on the NOI, dated 3/22/2015.
 - l. Fax from Susan Horowitz, DVM, re: comments from risk assessment expert Susan Sundstrom, PhD.
 - m. Revised Comment Letter from MassDEP, email dated 3/24/2015.
 - n. Planning Board Memo requesting continuation of NOI public hearing, dated 3/24/2015.
 - o. Comment letter from George Barringer, PhD, dated 3/24/2015.
- 7. OOC, 69 Boathouse Road (Chapman), DEP #169-1122
 - 8. OOC, Old Ayer Road (MacGregor), DEP #169-1121
 - 9. Meeting Minutes, 1/13/2015 & 2/24/2015
 - 10. RDA, The General Field (Groton Conservation Trust)
 - 11. Draft Revised Regulations under Groton Wetlands Protection Bylaw.

Approved 4/14/2015