

GROTON CONSERVATION COMMISSION

Minutes

Tuesday, May 12, 2015

Chairman John Smigelski called the meeting to order at 7:00 p.m. with Peter Morrison, Susan Black (Clerk), Mary Metzger, Marshall Giguere, and Bruce Easom present. Rena Swezey arrived at 7:40 p.m. after attending the Earth Removal-Stormwater Advisory Committee meeting. Conservation Administrator Takashi Tada was present.

7:00 p.m. – Public Hearing (cont'd): NOI, Sonar Herbicide Treatment, Baddacook Pond – MassDEP #169-1123

Applicant: Board of Selectmen

Representative: Jim Luening, Chairman of Great Ponds Advisory Committee (GPAC)

Russ Harris of *The Groton Herald* was granted permission to record the proceedings. Jim Luening requested the hearing be continued to 5/26/2015 in order to allow time for MassDEP to provide feedback on the recent legal opinion from Town Counsel. Mr. Luening said he forwarded the legal opinion to Marielle Stone of MassDEP Central Region.

B. Easom reiterated that Town Counsel's opinion, received 5/7/2015, was the only unresolved item from the previous hearing. Water Commissioner Jim Gmeiner asked Mr. Luening for a copy of his email communication to MassDEP.

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

VOTED: to continue the hearing for Baddacook Pond NOI, DEP #169-1123, to 5/26/15.
The motion was approved unanimously (6-0).

Pierre Comtois of Nashoba Publications requested, and received, a copy of the legal opinion from Town Counsel.

Moving on to General Business, T. Tada provided an update on the house reconstruction at 99 Boathouse Road, MassDEP File #169-1117. The construction work is on hold until the site can be stabilized to the satisfaction of the Building Inspector. A portion of the old foundation wall collapsed and the site is a safety hazard in its present state. The contractor has brought in a structural engineer to design a shoring plan to stabilize the site before any further work may occur. The erosion controls are intact and there has been no indication of any impact to the pond; however, the project needs to be redesigned and could require a new NOI filing.

7:10 p.m. – Discussion: Minor Plan Change, Construction Access, NESSP Temple, Boston Road, MassDEP #169-1104

Ian Rubin, engineer with Markey & Rubin, presented a proposed plan change for a temporary construction entrance to the NESSP Temple site. The change is to provide temporary access to

the site for the sole purpose of tree clearing. They propose to use the existing paved parking area as the access point for tree clearing equipment. This area will become Retention Pond #1 after full construction begins. The temporary change is necessitated by delays in evicting the tenant of the existing house that will be demolished in order to construct the permanent access road.

B. Easom asked Mr. Rubin to clarify the limits of disturbance on the plan. Mr. Rubin explained that the existing paved area is within the approved limit of work for full construction. The pavement will eventually be removed, along with the house, to construct the retention pond and permanent access road. However, it seems to make sense to utilize the paved area temporarily to accommodate the large tree clearing equipment.

Upon a motion by P. Morrison, seconded by S. Black, it was

VOTED: to approve the proposed temporary construction entrance plan, dated 5/12/2015, as a minor change to the NESSP Temple, DEP #169-1104. The motion was approved unanimously (6-0).

Moving on to General Business – Land Management, M. Metzger mentioned there is a new volunteer steward, Jodi Valenta, for the conservation parcel at the corner of Hidden Valley and New Pond Roads. Ms. Valenta reported that the milkweed is growing back after the unauthorized mowing of the field last year. T. Tada said he spoke with the developer, Dennis Lacombe, about management of the field. Mr. Lacombe said he would be happy to work with the town to maintain the field appropriately.

M. Metzger also reported that she walked Baddacook Field/Shattuck Homestead with abutter Sanford Johnson. Black Swallow-wort buds have already begun to appear, and will be flowering in a matter of weeks. Also, there is a patch of Japanese Knotweed growing along Martins Pond Road, west of the cart path. T. Tada said he had contacted Bay State Forestry about preparing a proposal to treat Swallow-wort and Knotweed this year.

Regarding Academy Hill Conservation Area, M. Metzger reported that the Massachusetts Department of Fish & Game has hired a new staff person, Jennifer Jones, to monitor Conservation Restrictions (CRs) held by the Department. Ms. Jones will work with Patricia Huckery in the Ayer District Office. Maintenance of the turtle nesting areas at Academy Hill is high on the priority list.

On the topic of the proposed Gibbet Hill Bridge, B. Easom said the landowner, Steve Webber, supports the bridge proposal and will provide his endorsement on a letter of notification to the co-holders of the CR, MassDCR and the Commission. The notification letter is a requirement of the CR provisions. B. Easom will work with T. Tada to draft the notification letter for Mr. Webber to sign, after which B. Easom will send the letters via Certified Mail.

On the subject of Sargisson Beach, T. Tada provided a brief update on progress toward opening the beach for swimming season on Friday, May 22nd.

Moving on to CPC updates, B. Easom reported that the Commission's request for \$200,000 in CPA funds was approved by voters at Annual Town Meeting. He commended P. Morrison for the excellent and effective presentation he delivered before Town Meeting voters. A motion by Selectmen Peter Cunningham to reduce the amount to \$140,000 was defeated. The monies will be transferred to the Conservation Fund after July 1st (FY16).

For the Pipeline Working Group Committee, P. Morrison reported that the next meeting of the Pipeline Committee had been canceled.

M. Metzger provided a report on the New England Wildflower Society's State of New England Native Plants study. The upshot of the study is that the New England region is losing forest to development. Another concern raised by the study is the impact of deer browse on hardwood saplings. Interestingly, the Department of Fish & Game uses Maple-leaf Viburnum as an indicator species to monitor the impacts of deer browse. The study outlines three goals:

1. Preserve rare plants.
2. Control invasive plants.
3. Keep common plants common (to help stem the decline of native pollinators).

Referring to goal #3 above, M. Metzger provided a draft write-up of her thoughts on identifying and enhancing pollinator habitats on Commission properties. Some properties, such as Flat Pond and Knowles Siding, already provide a diversity of native wildflowers and should be maintained accordingly. Others, such as O'Neill Way, could be enhanced to provide native pollinator habitat.

On the topic of Conservation Property Inventory updates, M. Metzger provided a report on O'Neill Way Conservation Area. This is the last property in the northwest sector to be updated. M. Metzger identified O'Neill Way as a prime candidate for enhancement as pollinator habitat. Former abutter Jean Nordin-Evans grazed her two cows on the field last year but has recently moved to Pepperell. B. Easom asked to confirm that Ms. Evans is not interested in another license to use the field for pasture. He also suggested contacting residents in the neighborhood for input on the use of the field.

S. Black recommended that the Commission prioritize identification and control of invasive species as part of any land management plan. B. Easom raised the counterpoint known as the Pangaea philosophy, which recognizes invasive species as part of nature and argues for letting nature take its course.

On the issue of Williams Barn, T. Tada provided copies of the rental policy issued recently by the Williams Barn Committee (WBC). The stated purpose of the policy is to support educational programs of local interest. P. Morrison pointed out that the barn rental policy does not mention the Conservation Commission as landowner or as an approved user group. B. Easom said he has attended the most recent meetings of the WBC and feels they are getting used to his presence. M. Giguere wondered if it made sense to resurrect the draft Memorandum of Understanding (MOU) between the Commission and the WBC. Commissioners agreed that finalizing the MOU was a sensible thing to do. M. Giguere also asked T. Tada to seek guidance from Town Counsel

about whether Article 97 allowed for the charging of fees and/or the collection of donations on conservation land. The Farmers Market charges a fee to vendors.

On the subject of Surrenden Farm West, Chairman Smigelski asked if there was any news regarding the agricultural license and seasonal haying restrictions. T. Tada said he had not heard anything new from Pat Huckery, Dept. of Fish & Game, regarding a reassessment of the haying restrictions during grassland bird nesting season. He reminded the Commission that the Resource Management Plan expires in February 2016.

Lastly, B. Easom mentioned that he walked the Squannacook River Railroad bed from Bertozzi Conservation Area into Townsend. This is the first step in the process of converting the railroad bed into a rail trail. Some of the old rails will be sold to help raise revenue. The rail trail group recently finalized a 99-year lease from the railroad.

There being no further business, upon a motion by B. Easom, seconded by M. Giguere, it was

VOTED: to adjourn the meeting at 8:10 p.m. The vote was unanimous (7-0).

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. Additional information/comments received between the 3/24/2015 public hearing and the 4/14/2015 public hearing on Baddacook Pond NOI:
 - a. Email from Art Prest, dated 3/25/2015, re: history of DDT ban by USEPA.
 - b. Email from Tom Orcutt, dated 3/25/2015, re: Groton Water Dept.’s Emergency Response Plan.
 - c. Email from Luening, dated 3/25/2015, re: 1898 State Board of Health Report on Baddacook Pond as secondary water source.
 - d. Email from Luening, dated 3/26/2015, re: MassDEP’s revised comments.
 - e. Email from Orcutt, dated 3/26/2015, disputing Luening’s interpretation of 1898 State Board of Health Report.
 - f. Email from Luening, dated 3/28/2015, re: Planning Board meeting on 4/2/15.
 - g. Email from Luening, dated 4/8/2015, with attached letters of support from:
 - i. David & Lucy Alexander, 59 Baddacook Pond Rd.
 - ii. William Strickland, 534 Martins Pond Rd.
 - iii. Claire & Peter Macy, 716 Martins Pond Rd.
 - iv. Neil Murray & Georgianna Collins, Baddacook Pond Rd.
 - v. Chris & Françoise Forbes, 597 Lowell Rd.

- vi. Groton Lakes Association (GLA), Arthur Prest, President.
 - vii. Peter & Margaret Roberts, 158 Hemlock Park Dr.
 - viii. New England Forestry Foundation (NEFF), Christopher Pryor, Director of Forest Stewardship.
 - ix. Robert Kiley, 601 Lowell Rd.
 - x. Great Ponds Advisory Committee (GPAC), Jim Luening, Chairman
 - xi. Jim Luening, 711 Martins Pond Rd.
- h. Letter from Alex Woodle, dated 4/10/2015, in response to Barringer's comment letter of 3/24/2015.
- i. Email from Luening, dated 4/12/2015, in response to Barringer's comment letter of 3/24/2015, including nitrate testing results and additional field studies of NMF transformation product (non-detect results).
- j. Email from Luening, dated 4/13/2015, addressing several of BOWC's questions.
- k. Letter from Savas Danos, dated 4/14/2015, in response to Barringer's comment letter of 3/24/2015.
8. Additional information/comments received between the 4/14/2015 public hearing and the 4/28/2015 public hearing on Baddacook Pond NOI:
- a. Memo from BOWC to Conservation Commission, dated 4/14/2015, restating its opposition to the NOI.
 - b. Letter from Thomas & Norma Hartnett in opposition to the NOI, forwarded via Email by Michelle Collette on 4/22/2015.
 - c. Email from Scott Wilson, 4/22/2015, in reply to Collette's email of same date.
 - d. Comment letter from George Barringer, dated 4/28/2015, with 8 documents attached. Received during the hearing.
 - e. Memo from BOWC to Conservation Commission, dated 4/28/2015, listing 6 Special Conditions to be included in Order of Conditions, if approved. Received during the hearing.
9. Additional information/comments received between the 4/28/2015 public hearing and the 5/12/2015 public hearing on Baddacook Pond NOI:
- a. List of potential Sonar (fluridone) treatment experts, provided by BOWC via email on 4/29/2015.
 - b. Legal opinion from David Doneski, Town Counsel, sent via email on 5/7/2015. Reaffirmed BOWC's controlling interest in the waters of Baddacook Pond, a Massachusetts 'Great Pond'.
 - c. Email from J. Luening, sent 5/11/2015, requesting to continue the public hearing.
 - d. Email from M. Haddad, sent 5/12/2015, recommending to close public hearing.
 - e. Email from J. Luening, sent 5/12/2015, requesting to continue public hearing.
 - f. Email from M. Haddad, sent 5/12/2015, agreeing to continue public hearing.
10. Plan Change, Temporary Access, NESSP Temple, DEP #169-1104.
11. Property Report, O'Neill Way Conservation Area.
12. Williams Barn Rental Policy, issued by Williams Barn Committee.

Approved 6/23/2015