

GROTON CONSERVATION COMMISSION

Minutes

Tuesday, May 26, 2015

Chairman John Smigelski called the meeting to order at 7:00 p.m. with Peter Morrison, Rena Swezey, Mary Metzger and Marshall Giguere present. Susan Black arrived at 7:05 p.m.; Bruce Easom arrived at 7:15 p.m. Conservation Administrator Takashi Tada was present.

7:00 p.m. – Public Meeting: RDA, Proposed Trail in Groton Woods, Will Premru

Applicant: Will Premru, Boy Scout Troop 1

Site Walk: 5/23/2015

Will Premru presented his proposed Eagle Project to build a trail in Groton Woods Conservation Area. The trail would be approximately 0.25 mile long. It would start off Paugus Trail and connect to an existing trail at the large culvert structure. Mr. Premru would install several railroad tie steps with gravel and rebar to improve access and minimize erosion on the steep slope down from the Paugus Trail road shoulder.

P. Morrison asked how wide the proposed trail would be. Mr. Premru said he wasn't sure. Paul Funch, Chairman of the Trails Committee, said the width would vary but 4-6 feet wide is typical. M. Metzger asked about adjusting the trail route to minimize impacts to an intermittent stream and an old stone wall, as noted during the site walk. Mr. Premru said he reflagged the route per the site walk. M. Metzger and S. Black said they were willing to flag invasive plants to be removed along the trail route. M. Giguere asked about the intermittent stream crossing. Mr. Premru said he would try placing stones to step across the stream, which is typically dry for most of the year. There are plenty of stones available along the route. S. Black said she liked the idea of stepping stones to cross the small stream channel, instead of a bridge. J. Smigelski asked if any property boundary stones would be relocated. Mr. Premru said no.

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

VOTED: to issue a Negative #3 Determination for Will Premru's proposed Eagle Project.
The vote was unanimous (6-0).

Moving on to General Business – Meeting Minutes approval, the Commission reviewed draft meeting minutes from 4/28/2015.

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

VOTED: to approve the meeting minutes from 4/28/2015, as written. The vote was 5 in favor, with P. Morrison abstaining.

Under General Business, the Commission considered the Request for Extension, Academy Hill (South Entrance), DEP #169-917. George Gallagher of Habitech, Inc. was present on behalf of the applicant, D. Bruce Wheeler. Mr. Gallagher said they were nearly ready to close out the Order of Conditions, but needed more time to conduct the water quality sampling per Special Condition #51. He thought a one-year extension might be sufficient. The current OOC is set to expire 6/16/2015.

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

VOTED: to issue a two-year Extension Permit for Academy Hill (South Entrance), DEP #169-917. The Extension Permit will expire 6/16/2017. The vote was unanimous (6-0).

7:10 p.m. – Public Meeting: RDA, Tree Removal/Landscaping, 133 Gratuity Road (P. Jones)

Applicant: Phillip Jones

Site Walk: 5/23/2015

Phillip Jones presented his RDA proposal to remove up to 5 trees, expand the existing deck, and add a patio in the small yard area behind his house at 133 Gratuity Road. All of the work would occur within 100 feet of wetlands, but no work is proposed within 50 feet. Two oak trees are within approximately 17 feet of his house with overhanging branches; one of the oaks is damaged and leaning toward the house. These trees pose a hazard to his house and family. The existing deck is 8x10 feet; the expanded deck would measure 13x15 feet. Mr. Jones would also like to install a patio area between the deck and bulkhead, but this is beyond their immediate budget and would not be done this year.

R. Swezey asked if he was going to remove just the two oak trees nearest the house. Mr. Jones said removing the two hazard trees was his main concern. M. Metzger agreed that the two trees should be removed; she also thought a third oak tree was close enough to present a safety issue. However, she preferred to leave the one pine tree and one maple tree closer to the wetlands. There are invasive plants in the understory that would get a boost from the increased sunlight and space. M. Giguere asked if the area beneath the deck would remain pervious, and if the proposed patio would have runoff mitigation. Mr. Jones said the area under the deck would remain in its current condition, and the patio would likely be made of flagstone with a crushed rock drip edge along the back of the house. P. Morrison noted that a Determination of Applicability is good for three years and recommended that the proposed patio work be included in this application.

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

VOTED: to issue a Negative #3 Determination for 133 Gratuity Road, with the following two (2) special conditions.

1. Area under the deck to remain pervious.
 2. Patio to consist of flagstone with a crushed rock drip edge.
- The vote was unanimous (6-0).

Moving on to other General Business items, T. Tada brought up the request from New England Wild Flower Society (NEWFS) to conduct a survey of wild lupine plants on Commission property in the vicinity of the Nashua River Rail Trail, north of Sand Hill Road. NEWFS has past records of wild lupine along the Rail Trail and in Rich State Forest (both property of MassDCR) as well as Longley Estates Conservation Area. NEWFS will send out some of its Plant Conservation Volunteers to conduct a survey and, if possible, collect a small sample of seeds for its rare plant seed bank. Commissioners walked along the Rail Trail on Saturday morning after site walks and observed a handful of wild lupine plants on the shoulder of the Rail Trail.

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

VOTED: to grant permission to New England Wild Flower Society to conduct a survey of wild lupine plants and engage in selective seed harvesting on Commission property, with the stipulation that copies of all results and reports be provided to the Commission.

On the Land Management topic of Surrenden Farm Trail Update, T. Tada recapped his walk with Olin Lathrop of the Trails Committee and Jennifer Jones of MassWildlife. They walked the main trail along the Nashua River. There is an unauthorized wooden footbridge across an intermittent stream/drainage ditch, near a large hemlock grove. The bridge is offset from the main trail, further away from the Nashua River. This has resulted in new paths being created through the woods to/from the bridge. Ms. Jones said she would like to see the bridge removed/relocated along the main trail to minimize impacts to sensitive wildlife habitat. She also said that MassWildlife is evaluating whether to close off or relocate certain sections of trail that are eroding the riverbank or disrupting wildlife. She also mentioned that MassWildlife is considering the possibility of adjusting the mowing/haying restrictions on the agricultural fields. The restrictions are in place to protect grassland bird breeding.

Under Land Management updates, T. Tada provided updated on Baddacook Field. T. Tada and S. Black met with consultant Tom Christopher of Christopher Environmental Associates, at Baddacook Field on 5/21/2015. Mr. Christopher will prepare a proposal/cost estimate for chemical control of Black Swallow-wort and Japanese Knotweed. Another consultant, Jeff Taylor of Vegetation Control Service (VCS), is scheduled to visit Baddacook Field on 6/10/15 at 8:00 AM.

On the topic of the proposed bridge on Gibbet Hill, B. Easom reported that Steve Webber approved of the draft notification letter, despite the misspelling of his surname. The letter is being sent via Certified Mail to MassDCR and the Commission, per the requirements of the Conservation Restriction.

7:30 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* and Jim Luening requested, and were granted permission, to record the proceedings. The public hearing had been previously continued to allow Mr. Luening to get feedback from MassDEP regarding Town Counsel's recent legal opinion reaffirming the standing of the Board of Water Commissioners (BOWC) to control certain activities within Baddacook Pond, including the use of herbicides.

Mr. Luening reported that he had telephone communications with Marielle Stone of MassDEP Central Region. Ms. Stone told Mr. Luening that the state has asserted control over certain Great Ponds, acting through the Department of Conservation & Recreation (MassDCR). Baddacook Pond is not controlled by MassDCR and there is neither the will nor the resources to do so. Ms. Stone said it would be up to the Town to decide how to handle the Baddacook Pond NOI. She reiterated to Mr. Luening that the use of Sonar has never presented a problem, and MassDEP is comfortable with its appropriate use.

Jim Gmeiner asked to see the comments received by MassDEP. Mr. Luening reiterated that he received no new written comments. Mr. Gmeiner asked if any of the information provided by Ms. Stone was contrary to Town Counsel's legal opinions. Mr. Luening said no.

Bud Roberston, of 179 Main Street, said life is all about risk/reward, and as a water consumer the proposed use of Sonar in Baddacook Pond is all risk/no reward. Susan Horowitz, of 171 Lowell Road, said she is also a water consumer and has no problem with the use of Sonar. She said the opponents of Sonar treatment exaggerate the risk; and 30 years of empirical data suggest it is safe to use as recommended.

Chairman Smigelski asked if Commissioners were ready to close the public hearing. S. Black asked for clarification on the procedure. Chairman Smigelski said there would be no more public comments after closing the hearing. M. Metzger asked if there had been any action on the BOWC's list of Sonar treatment experts. There had not.

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

VOTED: to close the public hearing for Baddacook Pond NOI, Sonar Herbicide Treatment, MassDEP #169-1123. The vote was unanimous.

B. Easom requested that T. Tada draft two separate decisions for the Commission to consider at its next meeting: one a draft denial of the NOI, and the other a draft OOC approving the project. S. Black asked about potential conflicts of interest due to familial ties to certain abutters of Baddacook Pond. Chairman Smigelski recommended consulting with Town Clerk Mike Bouchard.

Mr. Luening asked if there was a chance to comment on the OOC. He was told no.

Moving on to another Land Management topic, the Commission discussed the draft Memorandum of Understanding (MOU) for the use of Williams Barn. M. Giguere reviewed his most recent revisions. The draft MOU needs further revision to include the acreage of the area

controlled by the Williams Barn Committee (WBC), and the effective term. P. Morrison suggested a term of five years. M. Metzger asked if the WBC took care of maintenance such as snow plowing. M. Giguere said yes. M. Metzger also suggested expanding Section 4.2 to include the removal of invasive plants. S. Black agreed that invasive plants are a priority concern and said it is important to educate the WBC members on this issue. Chairman Smigelski asked if it made sense to limit the number of events allowed at the barn.

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

VOTED: to approve the draft Williams Barn-Sorhaug Woods Memorandum of Understanding, as amended. M. Giguere will make the approved edits and add a signature line for the Williams Barn Committee Chairman.

Moving on to Open Session, M. Giguere said he had an update on a potential Land Acquisition. The Commission agreed to hold a special meeting with Executive Session on Friday, 5/29/2015 to discuss this. T. Tada will post the meeting first thing Wednesday morning.

Under Land Management updates, M. Metzger reported that she prepared a draft letter to residents in the Hidden Valley Road/New Pond Road subdivision. The letter educates residents about the ownership and management of the ecologically sensitive and important conservation land in their neighborhood. She emailed the draft letter to T. Tada, who will review, finalize, and mail out the letter to residents. The draft letter was previously reviewed by the new volunteer steward, Jodi Valenta, who reported seeing a Blanding's turtle in the area last week.

M. Metzger also mentioned that she walked the Farmers & Mechanics parcel with Adam Burnett, an abutter and volunteer steward. Mr. Burnett is a professional forester who has been hand-pulling invasive plants and undesirable seedlings on the parcel with the help of his son. He said there is a mature chestnut tree on the parcel that produced nuts within the last few years.

On the topic of O'Neill Way Conservation Area, M. Metzger said she thought this field was a good place for enhancement as a pollinator meadow.

Dr. Jean Nordin-Evans, former resident on O'Neill Way who kept her two cows on the field in 2014 under a short-term agricultural license from the Commission, was present to discuss her past and future agricultural plans. She has moved to Pepperell and no longer requires use of the O'Neill Way field. However, she said it was a good learning experience for her and wishes she could have done things better. She has since attended a grazing program in Missouri led by Ian Mitchell Innes, an expert in holistic land management. She is sponsoring a holistic land management workshop, featuring Mr. Innes, at Groton Wellness on 6/27/15. S. Black said she is very interested in attending the workshop and learning new ways to improve the pasture on her property. Dr. Nordin-Evans offered samples of ground beef from one of the two cows she kept on the O'Neill Way field. B. Easom declined. Other members thanked her and wished her well.

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

VOTED: to adjourn the meeting at 8:25 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. 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 & Francoise 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. Additional information/comments received between the 5/12/2015 public hearing and the 5/26/2015 public hearing on Baddacook Pond NOI:
 - a. Massachusetts Public Records Request filed by J. Gmeiner, dated 5/15/2015, requesting all communications between GPAC and MassDEP pertaining to the legal opinion from Town Counsel.
 - b. Email from J. Luening, sent 5/16/2015, responding to public records request from J. Gmeiner.

11. RDA, Eagle Project, Proposed Trail in Groton Woods, off Paugus Trail (W. Premru).
12. Meeting Minutes, 4/28/2015.
13. Request for Extension, Academy Hill (South Entrance), DEP #169-917.
14. RDA, Tree Removal/Landscaping, 133 Gratuity Road (P. Jones)
15. Draft MOU, Williams Barn-Sorhaug Woods

Approved 6/23/2015