

GROTON CONSERVATION COMMISSION

Minutes

Tuesday, June 9, 2015

Chairman John Smigelski called the meeting to order at 7:00 p.m. with Peter Morrison, Susan Black, and Mary Metzger. Marshall Giguere participated remotely on speakerphone. Bruce Easom and Rena Swezey were absent. Conservation Administrator Takashi Tada was present. Chairman Smigelski announced that all votes taken during M. Giguere's remote participation would be roll call votes, per the Open Meeting Law.

Beginning with General Business, T. Tada announced that the Board of Selectmen withdrew their Notice of Intent (NOI) to apply Sonar herbicide in Baddacook Pond, DEP #169-1123. The withdrawal occurred after the closing of the public hearing. Chairman Josh Degen provided a brief explanation of the Selectmen's decision and apologized for the lengthy hearing process.

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

VOTED: to accept the withdrawal of the NOI for Sonar treatment in Baddacook Pond, DEP #169-1123.

Moving on to General Business – Invoices, the Commission approved payment of an invoice from Myette Power Equipment in the amount of \$145.19 for service and maintenance of the brush mower. P. Morrison indicated that additional repair work (welding) on the mower deck/skid would be completed soon. The Commission also approved an invoice from The Groton Herald for legal notices published in the month of May.

On the topic of Pipeline Working Group Committee updates, P. Morrison reported that the committee did not have a quorum yesterday to hold an official meeting; however, the members did allow residents Richard and Diane Hewitt to present a summary update of recent pipeline-related news and activities. The next meeting is planned in September, date TBD.

Under Open Session, T. Tada reported that the Commission has been asked to identify its top 3 priority sites for the forthcoming ADA Self-Evaluation and Transition Plan being done by the Commission On Accessibility. The list of potential sites was provided for review and discussion at the next meeting. He also mentioned that the Trails Committee observed No Trespassing signs that appear to be located on the Watson Way Conservation Area off Brown Lane. It is likely that the abutting resident at 25 Brown Lane, Richard Frank, intended to place the signs along his back property line. T. Tada will ask B. Easom if he can GPS survey the property boundary and signs to confirm their location.

7:10 p.m. – Public Hearing: NOI, Boulder Wall & Filling, 60 Valley Road – MassDEP #169-1125

Applicant: Paul Johnson

Representative: Josh Degen, Earthscape Inc.

Site Walk: 6/6/2015

Josh Degen presented the NOI on behalf of applicant Paul Johnson. The proposed plan includes a 98-foot long, 3-tiered boulder wall (4 feet max. height) with backfilling to stabilize and level the existing single family house lot on Whitney Pond. The property is unstable and has eroded over time due to flooding of Whitney Pond. Mr. Degen said there used to be an old cart road along the pond bank that provided access to the house; this road has been mostly washed away. The initial plan showed the proposed wall being 105 feet in length, but they reduced the length to under 100 feet to avoid the need for a Category 2 Permit from the Army Corps of Engineers. They are now eligible for a simpler Category 1 Permit. The proposed project includes work on inland Bank, in Land Under Water (LUW), and in the 100 year floodplain. The property is also mapped as Rare Species Habitat by NHESP; a copy of the NOI was sent to NHESP by the applicant for concurrent review.

P. Morrison asked what time of year they intend to do the work. Mr. Degen said he preferred to do the work in July, which is typically the driest time of year (i.e. lowest water level). Whitney Pond is downstream of the Lost Lake Dam. P. Morrison also asked if the rubble currently in the pond would remain or be removed. Mr. Johnson said they had no intention of removing the rubble.

S. Black mentioned that her husband Bennett used to help maintain the old cart road when he was a kid. She asked if the proposed plan had been reviewed by the Board of Health with regard to the septic system and private well. Mr. Degen said the well and septic system are located outside of the project area. S. Black wondered if the higher water levels in recent years might be related to beaver dams and/or blocked culverts downstream. Mr. Degen said he consulted the DPW Director, Tom Delaney, who informed him that the culvert under Route 40 is checked routinely.

M. Giguere asked about the performance standards for compensatory flood storage and work on the Bank of a resource area. T. Tada explained that the comments from MassDEP indicate the proposed project does not meet the standards for work on Bank, LUW, and in floodplain. Compensatory flood storage is required for work in the floodplain. Work on Bank, in excess of 50 linear feet, requires a Wildlife Habitat Evaluation unless it is in NHESP Rare Species Habitat. NHESP will issue a determination letter on the matter of rare species. Mr. Degen asked how it would be possible to compensate for flood storage when the entire site is within the floodplain. M. Giguere also asked if the proposed wall would be made of boulders or blocks. Mr. Degen said he was planning to use boulders to construct the wall, which would have the added benefit of protecting the septic system.

M. Metzger asked about the schedule of manipulating the boards at Lost Lake dam to control water levels. Mr. Johnson stated that the dam boards have been tampered with in the past. Mr. Degen said the dam boards are typically removed by November and replaced in April. M. Metzger also wanted clarification about the rising water levels in recent years. Mr. Johnson replied that they used to have a small beach area that is has been underwater for the last six years. M. Metzger asked if they would consider installing the boulders directly in front of the existing block wall, as a way of allowing the project to move forward. T. Tada indicated that

such an adjustment to the plan would avoid the requirements of work on Bank and in LUW; although it might still trigger the floodplain requirements. Mr. Degen wondered if there might be a happy medium that would allow for the boulder wall construction with some filling behind the wall to help restore the yard, while avoiding direct alteration to the Bank (i.e., moving the boulder wall back five feet).

Chairman Smigelski asked for details on the boulder wall installation. Mr. Degen said it would be a 3-tiered wall with the bottom tier dug in approximately 6 inches. Chairman Smigelski asked if this would be enough to prevent undercutting. Mr. Degen said the concern here is slumping of the ground, rather than undercutting.

There being no further discussion, the applicants agreed to a continuation.

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

VOTED: to continue the public hearing for 60 Valley Road, DEP #169-1125, to 6/23/2015. The roll call vote was unanimous (5-0).

7:45 p.m. – Public Meeting: RDA, Addition & Deck, 48 Boston Road

Applicant: Suzanne Debeaucourt & Dennis Denault

Site Walk: 6/6/2015

Suzanne Debeaucourt & Dennis Denault presented their RDA plan to build a 20' x 22' addition and a 6' x 8' deck on the existing structure at 48 Boston Road (The Salon @ 48 Boston). They need the additional space for a bathroom, break area, and storage. The addition will require installation of up to 9 sonatubes (12" diameter). The proposed work area is existing lawn within the Buffer Zone, but greater than 50 feet away from the edge of wetland.

M. Giguere asked if they would consider adding pea stone under the deck to mitigate runoff. He also asked about roof runoff from the addition. Mr. Denault said they would install gutters on the addition to match those on the existing building.

S. Black urged the applicants to monitor the invasive Black Swallow-wort plants that were identified during the site walk. M. Metzger suggested digging up the plants and offered to help them identify other invasives growing around the edge of the lawn.

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

VOTED: to issue a Negative Determination of Applicability, subject to the following special conditions:

1. Erosion controls to be installed per the plan.
 2. Stone to be placed under the deck to mitigate runoff.
- The roll call vote was unanimous (5-0).

7:50 p.m. – Public Meeting: RDA, Garage Replacement, 257 West Main Street

Applicant: Kevin Egan

Site Walk: 6/6/2015

Kevin Egan presented his RDA plan to rebuild an old, snow-damaged garage with a slightly larger, more functional garage centered on the existing footprint. The existing garage measures 22.5' x 22.5' and has roof that collapsed this past winter under the weight of excessive snow. The proposed new garage will measure 26' wide x 24' deep. The work will occur within 100' of Wrangling Brook. One tree next to the southeast corner of the garage will need to be removed for construction; a second tree in the same vicinity could end up being removed as well.

M. Giguere asked about roof runoff. Mr. Egan said he would install a gutter on the west side facing the house, and a French drain on the east side facing Wrangling Brook. M. Metzger mentioned the invasive plants near the brook/property line that were observed during the site walk, including the buckthorn that she flagged. She offered to help Mr. Egan identify the invasives. Chairman Smigelski reminded members to focus on the proposed work within our jurisdiction.

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

VOTED: to issue a Negative Determination of Applicability, subject to the following special condition:

1. Erosion controls to be installed on the grassed slope on the east side of the garage. The roll call vote was unanimous (5-0).

7:55 p.m. – Discussion: NESSP Temple Project, 993 Boston Road, DEP #169-1104

Permit Holder: New England Shirdi Sai Paarivar, Inc. (NESSP)

General Contractor: Nalin Mistry, President; Forest Lindwall, consulting engineer; & Scott Nelson, Construction Supervisor (NM Construction)

Design Engineer: Ian Rubin (Markey & Rubin)

Nalin Mistry introduced himself and his team as the new General Contractor for the NESSP Temple project. They have been reviewing the plans approved under the Order of Conditions (OOC) and would like the Commission's feedback on two potential changes to plan. Forest Lindwall said the tenants in the existing house on Boston Road will move out on 6/13/2015. After this the house will be demolished, the well and septic system decommissioned, and temporary construction trailers moved onsite. Tree clearing work will also begin after the tenants vacate the house.

The first potential plan change involves a realignment of the proposed driveway. The curb cut on Boston Road will be in the same location, but the driveway centerline will be shifted to the west approximately 8 feet, away from the steep slope on the east side of the property. This will require less cutting into the slope and reduce/eliminate the need for the large retaining wall to hold back the cut slope. However, this change would increase the amount of disturbance in the Buffer Zone for the driveway entrance by 450 square feet, or from 750 s.f. to 1,200 s.f.

The second potential plan change is to eliminate the prominent water feature/landscaped area in front of the main structure. This change would significantly reduce the cutting of ledge required to create a level area for the water feature. This area would have a reduced landscaping plan and would then be used for passive viewing and other religious functions. Mr. Nistry said neither of these potential changes would require modification of the approved stormwater drainage plan.

P. Morrison said he had no issues with either change. He noted the change to the water feature and landscaped area was not a concern except for stormwater management. M. Giguere agreed and added that the increased Buffer Zone disturbance for the driveway realignment was relatively minor and close to the 100' limit. P. Morrison asked who will be doing the tree clearing. Mr. Mistry said he did not know yet. He said they would have a pre-construction meeting before getting started. T. Tada asked what the slopes would be along the realigned driveway. Mr. Lindwall replied that the slopes would be approximately 2:1.

Mr. Mistry thanked the Commission for the feedback and said they would prepare revised plans in order to formally request approval from the Commission.

8:15 p.m. to 8:35 p.m. – Executive Session pursuant to MGL Ch. 30A, Sec. 21(6)

(M. Giguere ended his remote participation at the conclusion of the Executive Session).

Re-entering Open Session, Chairman Smigelski apologized to M. Metzger for cutting short the discussion of invasive plants during review of the previous RDA. He said he is concerned about overstepping the Commission's jurisdiction and wants to keep in mind the protected interests of the Wetlands Protection Act. M. Metzger said the control of invasive plants is in keeping with the protected interest of wildlife habitat. Chairman Smigelski agreed that invasive plants are a major concern but the Commission needs to communicate the issue in a different way, such as providing an informational pamphlet to every applicant. Commissioners agreed that providing information to applicants was a good idea. M. Metzger and S. Black have already done some of this type of outreach and compiled some information, and organizations such as New England Wildflower Society have useful information readily available.

Moving on to Land Management issues, M. Metzger provided an update on Knowles Siding Conservation Area off Whistle Post Lane. She walked the area with volunteer steward Rick Coven and recommended that the meadow portion be mowed every year. She also mentioned there are three nice vernal pools in the wooded portion. Mr. Coven said he would continue to mow the walking path around the meadow as he has been doing. Regarding O'Neill Way Conservation Area, M. Metzger said she would prepare some information about native pollinator plants and gardens for the neighbors.

On the topic of the Deerhaven CR land, S. Black said she would reach out to the homeowners association to possibly coordinate herbicide treatment of Black Swallow-wort that she has

identified on the property. Her husband, Bennett, is paid by the homeowners association to mow the fields every year.

Moving on to General Business – Reorganization, the Commission took the following actions by unanimous votes (4-0):

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

VOTED: to re-elect J. Smigelski as Chairman.

Upon a motion by S. Black, seconded by M. Metzger, it was

VOTED: to re-elect P. Morrison as Vice Chairman.

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

VOTED: to re-elect S. Black as Clerk.

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

VOTED: to appoint M. Metzger as Great Ponds Advisory Committee (GPAC) representative.

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

VOTED: to appoint R. Swezey as Earth Removal & Stormwater Advisory Committee representative.

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

VOTED: to appoint B. Easom as Community Preservation Committee (CPC) representative.

Upon a motion by S. Black, seconded by M. Metzger, it was

VOTED: to appoint P. Morrison as Pipeline Working Group Committee representative.

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

VOTED: to appoint B. Easom as Williams Barn Committee representative.

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

VOTED: to adjourn the meeting at 9:00 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. Additional information received after closing the public hearing on Baddacook Pond NOI on 5/26/2015:
 - a. Email and letter from M. Haddad, dated 6/2/2015, withdrawing the NOI application without prejudice.

12. NOI, 60 Valley Road, MassDEP #169-1125.
13. RDA, 48 Boston Road.
14. RDA, 257 West Main Street

Approved 7/14/2015