

## GROTON CONSERVATION COMMISSION

### Meeting Minutes

Tuesday, August 22, 2017

Location: Town Hall, 2<sup>nd</sup> Floor

Members Present: John Smigelski (Chair), Peter Morrison (Vice Chair), Marshall Giguere, Bruce Easom

Members Absent: Olin Lathrop (Clerk), Susan Black, Eileen McHugh

Others Present: Nikolis Gualco (Conservation Administrator)

**7:03 p.m.** – The meeting was called to order by Chairman J. Smigelski.

Starting with General Business, the Commission took the following actions:

Certificate of Compliance for 8 Nicole Lane, MassDEP #169-1128.

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

VOTED: to issue an Certificate of Compliance under the MA Wetlands Protection Act and the Groton Wetlands Bylaw for 8 Nicole Lane, MassDEP #169-1128, under the condition that the silt fence is removed. The vote was unanimous (4-0).

Meeting Minutes, the Commission reviewed draft minutes from 7/11/2017.

Upon a motion by M. Giguere, seconded by B. Easom, it was

VOTED: to approve the meeting minutes from 7/11/2017 as drafted. The vote was unanimous (4-0).

Meeting Minutes, the Commission reviewed draft minutes from 8/8/2017.

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

VOTED: to approve the meeting minutes from 8/8/2017 as drafted. The vote was three (3) in favor with M. Giguere abstaining.

Moving on the Land Acquisition Topics the Commission discussed procedural logistics of how to best communicate about a property they are discussing under Executive Session. Specifically,

between executive sessions, how can the Commission discuss time sensitive information without violating open meeting law or compromising its ability to negotiate in regards to real estate? The Commission agreed to not use the parcel name during email communications and asked N. Gualco to inquire to Michael Bouchard, Groton Town Clerk, about the best and most appropriate methods of communicating matters such as these.

The Commission reviewed the draft Order of Conditions for 109 Chicopee Row, MassDEP #169-1155.

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

VOTED: to issue an Order of Conditions under the MA Wetlands Protection 109 Chicopee Row, MassDEP #169-1155. The vote was tied (2-2 with M. Giguere and B. Easom dissenting).

Following the vote a discussion ensued on the topic of approving development within the 100 foot wetland buffer zone for previously altered sites.

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

VOTED: to table the discussion until later in the meeting to allow time for absent Commissioners to show up. The vote was unanimous (4-0).

**7:25 p.m.** – Public Meeting: RDA, Paving of gravel driveway, 314 Hill Road.

Owner/Applicant: Diane & Micah Abbott

Site Walk: 8/19/2017

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

VOTED: to issue a Negative Determination (#3) for the proposed driveway paving at 314 Hill Road with no special conditions. The vote was unanimous (4-0).

Returning to General Business, the Commission heard Committee Updates beginning with an update from M. Giguere Great Ponds Advisory Committee on the status of weed harvesting at Baddacook Pond. The project is running behind due in-part to the renegeing of \$10,000 from Groton Water Department, which may lead GPAC to approach CPC about possibly funding opportunities.

**7:32 p.m.** – Public Hearing: OOC (request for amendment), 65 & 65A Island Pond Road, MassDEP#169-1127.

Owner/Applicant: John & Laura Masiello

Rep: Maureen Herald (Norse Environmental Services, Inc.)

M. Herald presented an amendment to the active OOC MassDEP#169-1127 – the installation of two septic systems for 65 and 65A Island Pond Road – to permit the after-the-fact construction of a residential structure (a second dwelling) and several appurtenances that were built without the permits between 2007 and 2009 within the 100 foot buffer zone of Massapoag Pond. Specifically, this includes one residential structure (65A Island Pond Road), garage, dock, as well as improvements (deck) to the existing dwelling (65 Island Pond Road). Additionally, the Massiellos would like to build two retaining wall and patio to connect the two residences.

P. Morrison asked what is currently permitted and what is not.

M. Herald responded that the main house (65 Island Pond Road) was pre-existing and that the previous owner had undertaken unpermitted work at the house and deck. The garage and decks are also unpermitted.

M. Giguere commented that this request for an amendment is quite a long list.

M. Herald responded that she initially wasn't quite sure how to approach this filing, but after speaking with the Town she was encouraged to file a request for amendment as this would be the quickest way to reach site compliance.

At this time the Commission reviewed the 2015 OOC (MassDEP#169-1127).

M. Giguere expressed a discomfort with amending an OOC to such a lengthy list of after-the-fact additions.

M. Herald restated that the Town had recommended the amendment approach to try and expedite the process, but reminded the Commission that it is their prerogative to deny the amendment and require the filing of a new NOI. To this M. Giguere responded that the Town doesn't always know the best process for each Board.

B. Easom asked N. Gualco to share any relevant findings he made during the past week, to which N. Gualco responded that he had read excerpts from a 2009 letter between the property's previous owner's lawyer and former Land Use Director, Michelle Collette. The letter referenced a series of negotiations that had taken place in late 2009. N. Gualco also shared a copy of Conservation Commission minutes from 2009 that highlighted several violations known at the time.

B. Easom shared a memory of the creation of a super committee created to address the mitigation of the site – due to the overlap with multiple boards (Building, BOH, Planning, and Conservation) – and inquired about the status. N. Gualco commented that he would take a deeper look into the files and directly speak with M. Collette in the coming days on these matters.

L. Massiello recalled attending some of the committee meeting in 2009 including the creation of an easement on the property for access.

B. Easom asked if it may be time to reconvene the super commit to wrap this up once and for all, to which J. Smigelski responded that he liked this idea.

L. Massiello mentioned that the former owner (M. McCarthy) was responsible for paying a \$50,000 fine and getting all the necessary permits. She stated that he paid the fine but most likely didn't do anything else.

B. Easom mentioned that a proposal like this would usually require mitigation.

At this time due to the hearing running late, J. Smigelski request the applicant grant the Commission a continuation to the next meeting to allow time to review. To this J. Massiello responded by asking for permission (at the applicants own risk) to go forward with the gas/plumbing permitting, which are being held up in the Building Department since the property is before the Commission. The Commission did not reply to this request at this time and instead deliberated on whether an amendment was appropriate for this request.

P. Morrison stated that he personally was not concerned with the proposal coming via request for amendment. M. Herald agreed with P. Morrison and suggested that since the Commission got lost on 8/19/2017 and was therefore not able to conduct a site walk at 65 and 65A Island Pond Road that re-visit the site walk on 9/9/2017 and then discuss how the Commission would like to move forward.

Karen Corey (an abutter and member of a local Rod and Gun Club) spoke about the proposal and stated that she expressed concern about the well running dry. The Massillos informed K. Corey that two wells were dug in the last decade and replaced the old wells. With that said K. Corey states that she has no other concerns.

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

VOTED: to continue the public hearing for the request for an amendment to the OOC MassDEP#169-1127 for 65 & 65A Island Pond Road, to 9/12/2017. The vote was unanimous (4-0).

**8:04 p.m. – Public Hearing: OOC (request for amendment), 67 Island Pond Road, MassDEP#169-1140.**

Owner/Applicant: John & Laura Masiello

Rep: Maureen Herald (Norse Environmental Services, Inc.)

M. Herald introduced the request for amendment to OOC MassDEP#169-1140 to include the construction of a 9'x12' enclosed stairwell within the 100 foot wetland buffer and showed on the plan where the proposed erosion controls would be placed.

B. Easom asked for the applicant to explain the stairwell further.

J. Masiello explained that in order to get from the lower level of the dwelling to the upper level one must currently utilize a ladder or run up and down the steep embankment.

P. Morrison mentioned that during the site walk the Commission had observed two PVC pipes that appear to exit the foundation and inquired to what they were. J. Masiello responded that one of the pipes helped drain condensation build up. Neither John nor Laura Masiello were aware of what the other pipe was and offered to investigate it further.

M. Giguere asked if there were plans to excavate in the areas around where the stairwell is proposed, to which J. Marsiello responded yes as the stairwell will require a foundation including a frost wall. The proposed erosion controls appeared to the Commission to address potential concerns of sediment runoff during construction.

B. Easom suggested that runoff from the stairwell's roof be recharged.

Upon a motion by M. Giguere, seconded by B. Easom, it was

VOTED: to issue an amendment to OOC MassDEP#169-1140 for 67 Island Pond Road to include the construction of an enclosed stairwell under the condition that runoff from the roof is recharged. The vote was unanimous (4-0).

**8:25 p.m. – Public Hearing: NOI, 132 Cow Pond Brook Road for the construction of approximately 50 feet of driveway to access a planned single family home, MassDEP#(not yet received).**

Owner/Applicant: Sandi Roberto  
Rep: Keith Traywick (KC Building, Inc.)

K. Traywick provided an updated plan to the Commission to address some of the questions that were brought up during the 8/19/2017 site walk. The new plan shows the culvert at the foot of the driveway, flow of water along the graded areas, and the rip rap recharge at the edge of the driveway.

P. Morrison inquired about the specification for the culvert, to which K. Traywick responded that he will seek recommendations from DPW, but most likely the pipe would be 6 – 8 inches in diameter.

M. Giguere asked if there were other filings necessary (e.g., MESA), to which K. Traywick said no there were not, however MassDEP had not yet issued a number.

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

VOTED: to continue the public hearing for 132 Cow Pond Brook Road to 9/12/2017 to allow MassDEP time to issue a file number. The vote was unanimous (4-0).

**8:30 p.m. – Public Hearing: NOI, 25 Whitney Pond Road for the upgrading of a septic system, MassDEP#(169-1157).**

Owner/Applicant: Cyndi Dusek

Rep: Russell Wilson (R. Wilson and Associates)

R. Wilson described the proposal which includes the removal of an existing leaching pit and redirecting the flow of sewage away from Whitney Pond to a proposed leaching field outside of the 100 foot wetland buffer. This proposal would involve minimal removal of vegetation.

B. Easom asked how the existing system would be removed, to which R. Wilson responded the old system will be pumped and back-filled with Title 5 approved sand/fill. A second plan sheet was presented to the Commission which provided details of the removal and engineering schematics. Upon reviewing the second plan, B. Easom commented that it calls for all disturbed areas will be loamed and seeded and all areas of disturbance appear to be lined with straw wattles and silt fencing.

J. Smigelski asked what type of pipe was being proposed to connect the septic tank to the leach field. R. Wilson stated that plan calls for schedule 40 PVC and schedule 80 PVC through the driveway which will be strong enough to handle traffic, including emergency vehicles, which utilize the shared driveway. R. Wilson stated that the sewage line will cross the water line and will require a double pipe.

P. Morrison expressed concern about potential erosion from the trench during construction releasing sediment into the pond downslope and pointed out that there are no sediment controls on the plan. He argued that if a severe rain event occurs after disturbance occurs during or in the day after construction there may be a good amount of sediment runoff. Additionally, P. Morrison mentioned that if this trench was to occur in a field the Commission would simply require the applicant to add silt fencing on either side, but since this is a shared driveway he wasn't quite sure how to approach addressing the concern of runoff without blocking access. The Commission continued to discuss possible methods for mitigating the possible erosion into the neighbor's lot and Whitney Pond (i.e., stone trenches, stone over road, stone over disturbed area, etc.).

M. Giguere asked how the engineer plans to get equipment down the steep slopes to the cesspool, to which R. Wilson responded he planned to have a large backhoe lower a small backhoe down from the area above the retaining wall. M. Giguere continued and inquired about the plan for the removed materials associated with the cesspool removal. R. Wilson said that the removed materials could be pushed back and graded towards the retaining wall and loamed and seeded. To this, M. Giguere stated he would prefer to see the fill removed from this area.

B. Easom proposed that the wattles/silt fence be extended along the 80 foot elevation grade on the east side of the house.

P. Morrison asked about the drainage swale that was observed during the 8/19/17 site walk along the edge of the driveway. Bryan Krol, the husband of C. Dusek, discussed how he created the swale as a means of mitigating water coming down the driveway and collecting on the

neighbor's lot (23 Whitney Pond Road). B. Krol continued by discussing how he improved the swale and driveway over the years. At this point, P. Morrison asked if the drainage/driveway modifications were ever permitted, to which B. Krol responded 'no.'

J. Smigelski inquired about the flow patterns of water on this property before opening the hearing up for public comments at 8:59 p.m.

At this time, Joseph and Emily Bozek introduced themselves as the owners of 23 Whitney Pond Road and neighbors of C. Dusek and B. Krol (23 and 25 Whitney Pond share the driveway access). J. Bozek began by pointing out three features that were missing from the plan: (1) the drainage swale; (2) a retaining wall on the east side of the house; (3) stairwell going down to the pond. J. Bozek continued by stating that his property feels the burden of every storm event, which he believes has been greatly augmented with the creation of the drainage swale. He explained that he tried to address the issue with the neighbors, but he stated that tensions have risen between neighbors to the point where the police have been called numerous times. J. Bozek mentioned observing B. Krol moving earth from the bank along the driveway to create the drainage swale. While J. Bozek believes that the intent to comply with Title 5 is a good thing, he is greatly concerned about the soundness of the plan and pointed to two examples (1) the foundation of 25 Whitney Pond Road is listing and may not be strong enough and (2) the retaining wall (where the small backhoe is to be lowered off of) is in bad shape and is currently the location where the majority of the water runs through during storm events. J. Bozek continued and stated that he was given the impression by the former owner of 25 Whitney Pond that the cesspool is currently not in use and that effluent may be currently pumped into the area behind the retaining wall. Finally, he asked the Commission how he, his wife, and emergency vehicles were to access their property during construction.

E. Bozek then spoke and asked if the septic is upgraded does the property go back to the status quo because the current way that water drains between these properties does not work and requires constant maintenance and grading after even the smallest storm. At this time E. Bozek showed the Commission a video on her mobile phone of a recent rainstorm. E. Bozek concluded by stating that currently the septic pumping contractor, who the Bozeks have been using for years, recently has refused to enter the property due to concerns of getting his truck stuck in the drainage swale. This appears to be the case for some delivery drivers as well. This was never the case before the creation of the swale.

At this time, M. Giguere recommended the applicant consult a civil engineer to review the plan and make a proposal on how to mitigate the drainage problem in regards to 10 or 20 year rainfall events.

R. Wilson and the applicant agreed to this term.

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

VOTED: to continue the public hearing for 25 Whitney Pond Road to 9/12/2017 to allow time for a civil engineer to review the current plan and create a revised plan to mitigate the drainage problem. The vote was unanimous (4-0).

**9:19 p.m. – Public Meeting: RDA, creating a sign to demarcate the Northwoods Conservation Area.**

Owner: Groton Conservation Commission

Applicant: Alex Scheufele

Site Walk: 8/19/2017

A. Scheufele began the meeting by discussing the Eagle Scout Project, which includes the creation of three signs at three different conservation areas in Groton. He has received a permit from the Groton Sign Committee for the creation of these signs. The sign at the Northwoods Conservation Area will be in the 100 foot buffer zone.

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

VOTED: to issue a Negative Determination (#2) for the proposed creation of a sign at the Northwoods Conservation Area. The vote was unanimous (4-0).

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

VOTED: to choose option #1 for the location of the new sign, which will not block the view of the pond from the trail head. The vote was unanimous (4-0).

**9:23 p.m. – Public Meeting (con't): RDA, Lost Lake & Knops Pond.**

Owner/applicant: The Groton Lakes Association/Great Ponds Advisory Committee

Rep: Brad Harper

Site walk: 8/5/2017

B. Harper shared an email he received from NHESP stating that the proposed areas of bladderwort harvesting in Lost Lake and Knops Pond will be occur outside of the portions of these two water bodies that are designated as Priority Habitat. B. Harper stated that GLA/GPAC intend to stay out of these jurisdictional areas.

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

VOTED: to issue a Negative Determination (#2) for the proposed harvesting of bladderwort at Lost Lake and Knops Pond. The vote was unanimous (4-0).

At this time the Commission returned to the draft Order of Conditions for 109 Chicopee Row, MassDEP #169-1155.

P. Morrison inquired about a recent building or structure that was permitted within the 50 foot Do Not Disturb buffer zone.



B. Easom said his main issue was he did not believe that the waiving of the buffer zone restriction would benefit the resource. To this P. Morrison offered the following reasons: (1) the applicant offered the removal of invasives and (2) the potential of leaking automobile fluids and therefore dispersal of leaked fluids into the resource will be eliminated if the antique cars are able to be stored inside the proposed barn.

M. Giguere shared that he believes that this type of construction is what the bylaw was intended to address. This point was debated between the Commissioners for several minutes.

B. Easom expressed a concern about how effective an OOC can be in requiring the removal of invasives in perpetuity, specifically he wondered how can the Commission realistically enforce this. The Commission debated these points for several minutes.

N. Gualco read the following excerpt from Ch. 215-1:

*The purpose of this chapter is to protect the wetlands, related water resources, and adjoining land areas in the Town of Groton by controlling activities determined by the Conservation Commission to be likely to have a significant or cumulatively detrimental effect upon any wetland resource area or value protected by this chapter...*

P. Morrison stated he didn't believe that the proposal will have a significant effect upon the resource, but M. Giguere countered with his opinion that the barn have a cumulatively detrimental effect.

The Commission agreed that they desired to have more members present for the vote and therefore made the following motions:

Upon a motion by B. Easom, seconded by John Smigelski, it was

VOTED: to rescind the previous vote to issue an Order of Conditions under the MA Wetlands Protection for 109 Chicopee Row, MassDEP #169-1155. The vote was unanimous (4-0).

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

VOTED: to rescind the previous vote to issue an Order of Conditions under the MA Wetlands Protection for 109 Chicopee Row, MassDEP #169-1155. The vote was unanimous (4-0).

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

VOTED: to continue discussion to allow for other Commissioners to participate in the vote for 109 Chicopee Row OOC, MassDEP#169-1155 to a special meeting on 8/25/2017. The vote was unanimous (4-0).

**10:25 p.m.** – J. Smigelski made a motion (seconded by B. Easom) to adjourn the meeting. The vote was unanimous (4-0).

Notes taken by Nikolis Gualco  
Conservation Administrator

**Exhibits on file at Conservation Commission Office:**

1. COC, 8 Nicole Lane, MassDEP#169-1128
2. NOI, 109 Chicopee Row, MassDEP#169-1155
3. DOA, 314 Hill Road, D. & M. Abbott
4. OOC, 65 & 65A Island Pond Road, MassDEP#169-1127
5. OOC, 67 Island Pond Road, MassDEP#169-1140
6. NOI, 132 Cow Pond Brook Road, MassDEP#(not yet received)
7. NOI, 25 Whitney Pond Road, MassDEP#169-1157
8. DOA, Northwoods Conservation Area, A. Scheufele
9. DOA, Lost Lake & Knops Pond, Groton Lakes Assoc. & Great Ponds Advisory Committee

**Approved on September 12, 2017.**