



**TOWN OF GROTON
Conservation Commission**

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**Groton Conservation Commission
MEETING MINUTES
June 25th, 2019**

Present: John Smigelski, Chairman; Olin Lathrop, Vice Chair; Bruce Easom, Clerk; Laurence J. Hurley; Eileen McHugh; Peter Morrison

Not present: Marshall Giguere

Others present: Nikolis Gualco, Conservation Administrator, Town of Groton.

6:35 PM Chairman Smigelski called the meeting to order

The Commission began with item **1.1 RDA, 187 Whiley Road**, for the installation of a privacy fence. The applicant, Laurie Manley, would like to install a 55 ft vinyl fence. The house next door is used as an Airbnb and guests are often wandering into the applicant's yard. O. Lathrop asked what they will do with the remaining dirt from the installation. The applicant answered that she will move it to the top of the hill and use in the gardens. O. Lathrop stressed not to put the dirt in the lake. B. Easom suggested installing the fence above ground so that frogs and other small animals will have access across the yards.

Upon a motion by P. Morrison, seconded by E. McHugh it was voted to approve the installation of a privacy fence under the condition that no protected area is altered by a unanimous vote. The applicant inquired if she is able to start the work immediately, to which N. Gualco advised that she wait the 10-day appeal period before starting work.

6:40 PM Commission members signed invoices.

The Commission discussed item **2.8 Meeting Minutes**.

Upon a motion by L. Hurley, seconded by P. Morrison it was voted to approve the meeting minutes for June 11, 2019 as amended by a unanimous vote.

The Commission discussed item **2.3.2 65 Gay Road, MassDEP#169-1176 to issue a Certificate of Compliance**. The Commission reviewed photos of the project.

Upon a motion by O. Lathrop, seconded by B. Easom it was voted in favor to issue a Certificate of Compliance by a unanimous vote.

The Commission discussed item **2.5.4 Other Discussions – Procedure for reissuing duplicate documents**. N. Gualco brought this item to the Commission to discuss the process of reissuing duplicate documents for the purpose of recording that an item has happened -- for example, if a Certificate of Compliance is issued, but not recorded. As this is an administrative task, the Commission discussed and is in

agreement that the Conservation Administrator can issue a copy of a document for the purpose of recording.

6:45 PM the Commission discussed item **1.2 NOI, 19 Baby Beach Road**, for the re-construction of two retaining walls and installation of a patio, MassDEP# not yet assigned. As of this evening's meeting a DEP number has been assigned. The applicant S. Dean missed the last hearing. E. McHugh and B. Easom suggested waiting until the end of this evening's meeting in the event that he attends this evening.

6:50 PM the Commission discussed item **2.5.1 Gibbet Hill Trail Bridge, MassDEP#169-1136**. B. Easom informed the Commission that the NOI for the Gibbet Hill Trail Bridge expired in March and he would like to resubmit. The Commission discussed if it might be a possibility to request an extension as it expired recently in March. It was also discussed if, since this is a municipality project, it is exempt from a filing fee. The Commission discussed moving this discussion to the next meeting.

6:51 PM the Commission discussed item **2.1.1 Scarlet Hill Encroachment Discussion**. The property owner that expressed concern with the encroachment issue would like to discuss the issue with her neighbor. The Commission is a CR holder and is interested in knowing if the issue is resolved. N. Gualco suggested adding this to the July 20th site walk. O. Lathrop expressed if the issue is resolved that he would be interested in keeping it on the site walk schedule.

6:53 PM the Commission discussed item **2.1.2 Sargisson Beach Discussion**. The Port-o-Potty vendor for the beach has brought up the issue that the trucks are getting stuck when trying to drive back up the road. It is a bark mulch road making it very difficult to move around. It was also discussed that this is a safety issue as emergency vehicles have a difficult time driving up the hill from the beach. N. Gualco spoke with Groton Select Board Member Josh Degan who recommended that access is improved on the road for the port-o-potties and emergency access vehicles. Improvements would be paid for by the Sargisson Beach fund. The Commission discussed. P. Morrison expressed his concern that emergency vehicles do not have dependable access to exit the property. L. Hurley discussed looking at other service providers that could assist if there is a conflict of interest in using Josh Degan. It was discussed to use ¾" packed grade. E. McHugh agreed that addressing the access issue would be an improvement for the property. She would like to see a written scope of work to get 3 proposals. P. Morrison discussed that the quotes would go to the Sargisson Beach committee, and not to the Conservation Commission. E. McHugh was in agreement that Sargisson Beach should have control. N. Gualco would like to see the time and materials purchase to hit FY19. It would come out of the water safety budget and will address the certain level of quality the Commission expects to have on their properties.

Upon a motion by P. Morrison, seconded by L. Hurley it was VOTED to support the reconstruction and improvement of Sargisson Beach access for port-o-potty and emergency vehicle access by a unanimous vote.

7:00 PM the Commission discussed item **1.3 Discussion, review Lake Massapoag 2019 Management Plan, MassDEP#169-1062**. A representative from the Tyngsboro Rod and Gun Club was in attendance at this evening's meeting. She informed the Commission that Tyngsboro was meeting at the same time this evening. Dunstable met last night and agreed to amend the order of conditions to allow for Diquat treatment. The treatment plan is the responsibility of the Rod and Gun Club for payment. Part of the land is on Groton property. The Order of Conditions has been put together, and they are seeking flexibility to allow this to happen in the OOC. Because they are amending an OOC, they must inform abutters. The 2019

plans fit with the existing documentation. Natural Heritage has been consulted and there is a restricted time of year with Diquot can be applied.

Upon a motion by P. Morrison, seconded by E. McHugh it was VOTED to accept the 2018 report, Dated December 10, 2019, from All Habitat on Lake Massapoag for file number 18-37588. Also accepted is the 2019 plan conditional to the recommendations by Natural Heritage.

AYE – O. Lathrop, E. McHugh, L. Hurley, P. Morrison.

ABSTAINED: B. Easom

7:15 PM the Commission discussed item **1.4 Discussion with Bob France, Boynton Meadows, MassDEP#160-1062**. N. Gualco invited B. France to join this evening's meeting to discuss outstanding items from the project. The Planning Board and Stormwater Committee have also been involved. B. France began by stating that the development company is broke. \$2.5 million has been lost in this project. There are no funds available to complete the project. He stated that many of the outstanding items have been done and he wants to ensure the paving is completed. The purpose of his attending this evening's meeting is to discuss what items have been done and ask for relief for some of the outstanding items. The first item he asked for relief is the \$25k donation. He also requested relief from providing the as-built as that will cost an additional \$15-20k. He stated that drainage issues the development is experiencing is likely due to the need for paving to be complete. In response to a letter from N. Gualco, Conservation Administrator, Mr. France reviewed some of the items in question. He stated that the restoration work is complete. Engineers have expressed the work is complete and disturbed areas have been revegetated. They plan to reinspect in September. The engineers plan to inspect the constructed wetland as noted in item #5 in the letter. In response to item #6, for the installation of conservation markers, the plan is for areas to be identified and markers installed during the mitigation inspection.

The Commission discussed the issues. E. McHugh expressed that she understands the developer cannot do all that has been requested. She stated her uneasiness with the inability to provide stamped plans. She inquired if the other committees involved have similar requirements. B. France replied that the paving that remains will cost \$35k and the light poles an additional \$10k, which he believes to be the best allocation of resources. E. McHugh restated that she would like to see a signed as-built, as this is also a condo association.

O. Lathrop stated that he is concerned with the statement that the developer does not have the money but he is incorporated. B. France responded that he intends to complete the project to the best of his ability. The corporation is in existence but does not have funding. O. Lathrop expressed his concern that the \$25k donation was a requirement for what he was getting in return. He also expressed the need for signed plans to be on file so that it is known that work was done in accordance to plans. He recommended that any invasive treatment in the constructed wetland be done before the fall. P. Morrison also expressed his concern with the Commission granting a Certificate of Compliance with the absence of an as-built. He expressed the need for an engineer to review work that is done within the 100-foot buffer. He stated that the loss of the \$25k donation hurts the town and the Commission. The Conservation markers are easy to do. L. Hurley commented that he would like to ensure the constructed wetland is filled in with the appropriate species. B. France replied that the inspection in September will address that. J. Smigelski also agreed that a stamped as-built is necessary. B. Easom inquired if the Order of Conditions has language about a successor. His concern if there is a bankruptcy, how will the Order of Conditions be followed. N.

Gualco looked into the language in the Order of Conditions related to a successor. E. McHugh commented that the Commission should come to an agreement that this cannot live in perpetuity. P. Morrison reiterated that he cannot approve a Certificate of Compliance without an as-built. Upon a motion by P. Morrison, seconded by E. McHugh the Commission VOTED to require the items identified in the letter dated June 3rd, 2019 and will not issue a Certificate of Compliance unless all items are address, with the exception of item 2C, the donation of \$25k to the Conservation Commission. It is recommended the Commission accept the removal of the special order related to MassDEP#169-1062 for the requirement to pay \$25k to the Conservation Commission.

The Commission discussed and O. Lathrop expressed that he believes the motion is premature and he does not accept. With the question of the assets of the corporation, he would like to wait. E. McHugh expressed that various groups have come together to work with Laurel Development and is ok with giving something back in the interest of the homeowners being able to move on. P. Morrison was in agreement stating that if there was one thing to give back, he was ok with it being the \$25k so that everything else outstanding can be addressed.

The Commission voted in favor by a majority vote

AYE – E. McHugh, L. Hurley, P. Morrison

NAY – O. Lathrop, B. Easom

P. Morrison informed B. France that the Commission expects all items in the Order of Conditions with the exception of the \$25k to the Conservation Commission.

7:55 PM the Commission discussed item **2.3.1 10 Rustic Trail**. O. Lathrop commented that the patio is within the 50-foot buffer and suggested the Certificate of compliance be postponed. The applicant would like to add the patio as an after effect and include it when he files a proposal for work that he would like to do on his cabin. L. Hurley discussed that the original drawing shows a porch without a deck. The existing cabin as it sits currently, when compared to drawings, looks like portions have been added. He expressed the need to see a plan of pre-existing conditions. The renovations need to remain in the same footprint. The Commission discussed issuing an enforcement order. An enforcement order can include a NOI and/or allow for a process with an NOI for the cabin. The property owner has stated that he will be filing a NOI for work on the cabin soon. The patio and cabin can be discussed at the hearing for the NOI. The Commission continued the discussion about the pre-existing conditions and the as built from 2008 and if it is accurate with what the cabin looks like today. The cabin is unrelated to the current Order of Conditions. Issuing an enforcement order will start the clock. O. Lathrop recommended filing a NOI for all things not in the original Order of Conditions. As something was built within the 100-foot buffer, a permit is needed. There is an expired Order of Conditions for the project. The Commission discussed what happens now that there is an expired Order of Conditions when he needs to apply for a NOI. P. Morrison stated that he must file a new NOI for the addition of the patio. B. Easom added that he needs to file an after-the-fact NOI.

Upon a motion by L. Hurley seconded by P. Morrison, the Commission VOTED to issue an enforcement order for 10 Rustic Trail for an unpermitted structure within the 100-foot buffer zone which will require an after the fact Notice of Intent to be filed by July 8, 2019. This was voted in favor by a unanimous vote.

The Commission continued the discussion of what happens with the old Notice of Intent and they discussed the Commission could approve the old NOI and accept the old Order of Conditions with the exception of the patio.

8:17 PM the Commission discussed item **2.4.1 Trimper parcel acquisition** (Planning Board and LAND Grant updates). N. Gualco reported that last week there was a public hearing with the zoning board. The Trimpers put the house on the market. B. Easom inquired if it was for the appraised value. N. Gualco replied yes, with the assumption to grant a subdivision. B. Easom inquired if the appraisal is with the permit in place. N. Gualco replied yes and all permitting is up to date.

The Commission discussed item **2.5.2 Boynton Meadow, MassDEP#169-1062 reissue Extension Permit (duplicate)**. As discussed earlier in this evening's meeting, the Commission approved of the Conservation Administrator to issue duplicate copies for recording purposes. The extension permit in this case was not recorded. N. Gualco will copy the original and sign.

8:20 PM The Commission discussed item **2.5.3 MassDEP#169-1182, near 419 Old Ayer Road – approve project Wetland Engineer**. J. Smigelski inquired if anyone on the Commission has worked with him and no one has.

Upon a motion by L. Hurley, seconded by E. McHugh the Commission VOTED to approve Mark Arnold of Goddard and Associates as the Wetland Engineer. All were in favor by a unanimous vote.

The Commission discussed item **2.7 Committee Updates / Announcements**. N. Gualco reported that the Open Space plan has conditionally been accepted by the state. The Commission provided feedback on the process of using a consultant throughout the process and would like to review their original proposal and compare to what the Commission has paid. There have been some items the consultant has come back to Commission for payment. E. McHugh recommended that the consultant provide a list of what she performed outside of the contract, including the hours and what she will charge.

The Commission discussed item **1.2 Baby Beach Road** as the applicant did not show up for this evening's hearing. The Commission discussed whether it was required that he attend this evening, stating that it would be problematic not to have him here. The hearing will be postponed to the July 9th meeting. L. Hurley will visit him and inquire his plans for attending the hearing. The Commission discussed letting him know that they could deny an Order of Conditions if there is lack of information due to him not attending a hearing. The Commission recommended that N. Gualco also send a couriered letter stating that they could deny his Notice of Intent if he does not attend the hearing. The Commission will have the hearing on July 9th with or without his attendance.

Upon a motion by E. McHugh, seconded by P. Morrison it was VOTED to continue Baby Beach Road to July 9th. All were in favor by a unanimous vote.

8:35 PM Upon a motion by P. Morrison, seconded by L. Hurley, it was recommended to conduct the meeting in an Executive Session. Pursuant to Massachusetts General Law Ch. 30A, Sec. 21(6): * "To consider the purchase, exchange, lease, or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body." All voted in favor by a roll call vote AYE - O. Lathrop, B. Easom, E. McHugh, L. Hurley, P. Morrison, J. Smigelski

8:40 Upon a motion by P. Morrison, seconded by E. McHugh it was voted to adjourn this evening's meeting by a roll call vote. AYE - O. Lathrop, B. Easom, E. McHugh, L. Hurley, P. Morrison, J. Smigelski

Minutes approved: July 23, 2019

Minutes respectfully submitted by Naomi Campbell Siok, per diem recording secretary, Town of Groton.