



TOWN OF GROTON
Conservation Commission

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Groton Conservation Commission
MEETING MINUTES
July 23rd, 2019

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

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

6:30 PM Chairman Smigelski called the meeting to order. He announced that there will need to be a recess during the item 1.1 discussion to address item 1.2 as the applicant, T. Orcutt, needs to leave the meeting at a specific time.

The Commission began with item **1.1 ANRAD, 63 Gratuity Road, MassDEP#169-1190**. E. McHugh read the ANRAD hearing notice. In attendance at this evening's meeting was Desheng Wang of Creative Land and Water Engineering. He thanked the Commission for making the time for the recent site walk. He displayed a plan and summarized some of his preliminary findings. He mentioned areas around Gratuity Brook contain very permeable soil. There is evidence of old farm land. In his surveys around the stream, there is evidence of water draining toward the stream. He mentioned the mature white pine forest in the area and white pines prefer sandy soils. All of the samples showed medium sand. He also noticed the presence of the invasive plants bittersweet and barberry. He commented that the property owner Mr. Lagasse grew up on the property and witnessed the drying up of the brook each summer. This area is being marked for a 3-lot subdivision. It is documented dry according to USGS maps. They do not anticipate flooding; it is not under the WPA as 'Bordering Land Subject to Flooding.' P. Morrison commented on the similarity between this parcel and Academy Hill. The intermittency of a stream must be proved or it is considered perennial. To determine intermittency, there needs to be 4 days of documentation. It was also commented that the entire streambed has not been inspected.

The Commission needed to move into a brief recess to address the next agenda item. Upon a motion by P. Morrison, seconded by L. Hurley, the Commission VOTED in favor by a unanimous vote to table this discussion to address agenda item 1.2.

The Commission discussed item **1.2 RDA, 541 Lowell Road** for the installation of 30 feet of water pipe (T. Orcutt). E. McHugh read the RDA. Tom Orcutt was in attendance at this evening's meeting. The water pipe at Baddacook Well needs to be replaced. The work will require digging to gain access to the fitting and replace the pipe. It will require approximately a 4X6 hole. The work is done with "Roto Rooter"-like technology. E. McHugh inquired if they plan to re-seed the area to which he answered yes. There was a

discussion of how long the process will take and what will be done with the materials. The soil will be stockpiled away from the water.

Upon a motion by M. Giguere, seconded by P. Morrison the Commission VOTED in favor of a negative 3 determination under the following conditions: 1) the usage of a silt sock; 2) soil is stockpiled to the left of the work area (i.e., on the side away from the pond); 3) the area will be re-seeded upon completion of the project and; 4) the work will be completed by the end of one work day.

The Commission reconvened to continue the discussion from agenda item **1.1 ANRAD 63 Gratuity Road**.

The Commission members each had an opportunity to discuss. L. Hurley passed on commenting.

E. McHugh asked for clarification that the MassDEP burden of proof is that the stream is being shown as perennial and it will continue to be monitored until it is shown as having 4 documented dry days in the period of one year. N. Gualco confirmed this and stated that the days do not need to be consecutive.

M. Giguere commented on their recent site walk and that they observed significant wetland communities. He commented on various factors including that the drainage might be over the ½ square mile limit and should be treated as perennial. D. Wang continued to explain that physical evidence can overrule what is described in the regulations. He commented that this is a unique stream. He commented that the former resident has described that in the summers the river is dry. D. Wang is trying to obtain physical evidence. From preliminary findings he is confident it is an intermittent stream. M. Giguere expressed his concern that area impoundments are impeding the flow. D. Wang commented that it is not likely to be as he does not see a lot of damming that creates dry streams. In cases of remediation, the water is often pumped and brought back into a stream right away.

B. Easom reviewed the descriptions of intermittent versus perennial according to USGS. A stream is documented as intermittent when there is a dry stream bed for four days during a 12-month period. During the site walk, B. Easom and O. Lathrop observed the bank along the stream was higher and inquired if this could be isolated land subject to flooding. D. Wang replied that he has not seen evidence of this. He also assured the commission that any specific areas they want checked, he will do. N. Gualco commented that he has a list of the specific areas the Commission would like to recheck.

P. Morrison commented that there are areas of potential wetlands on the fringe.

In response to a suggestion from Chairman Smigelski, N. Gualco summarized that wetland regulations include a 100-foot buffer zone. A river will have a 200-foot buffer zone, so in essence will have more restrictions and wider protection than if it was determined to be intermittent.

O. Lathrop commented that he is uncomfortable with the proposed delineation due to the apparent presence of a functioning wetland on both sides of the stream. For the Town of Groton Wetland Protection Act, 1 of 3 areas need to show the presence of a wetland – in soils, vegetation or hydrology. Hydrology may be an argument in this case. He would like to see the ferns flagged outside of the stream. You can see where there has been flow and where it has stopped, but it is not bone dry. He also mentioned the question of the upstream impoundment and its effects. He believes there is evidence of more than occasional flooding. He asked if the Conservation Administrator could look into the regulations for isolated land subject to flooding intermittently. N. Gualco commented that for ¼ acre a depth of over 6” would be required. O. Lathrop also

requested more information about the man-made pond and how the recharging could impact the flow of the stream in question. E. McHugh inquired about the monitoring wells. D. Wang answered they are 4-8' to groundwater, it varies. Testing was done in March through April, close to the stream with a high-water table at around two feet. Testing takes into account the water flow changes through the year. For water flow, the calendar begins around October 15 when typically the water table is very high. He commented a stream can be fed by groundwater when the groundwater level is higher than the stream bed. In this case the stream is very flat and the groundwater will flow below the stream bed. P. Morrison inquired if this area is within the 100-year floodplain, to which he was answered no. Chairman Smigelski offered anecdotal data in that he lives near this area and a stream flows under his driveway that does dry up and an area pond is typically down in July and August. Chairman Smigelski offered the opportunity for members of the public to comment.

Adam Burnett, a hydrologist with a background in federal forestry made a comment. He believes the stream to be perennial. He has witnessed continuous flow in July and explained dry days are caused by evaporation. He has witnessed a half an inch of evaporation in one day. He also believes there is an impact on the stream by the impoundment. He has found evidence of flow beneath the surface. He believes this is caused by alluvial activity. He also commented that stated in the bylaws, 4 days of observation of dry stream is a requirement, with the exception of being affected by impoundment structures. If there are other factors, these can negate the four-day findings. He also commented that he has witnessed flooding and standing water in the area. There was an occurrence of 12K CFS flooding in 2010, a Ten-Year event, in the nearby portion of the Nashua River. The area does get inundated with water as the Nashua River backs in to the area. He also noted the presence of wetland flora in the area, including swamp white oak which requires sitting in saturated soil most of the year. He has also witnessed various species of endangered dragonflies and spotted salamanders, which require areas like vernal pools.

D. Wang responded that this stream does not have the same status as a river – it does not have fish and does not have a high level of water. He questioned the flooding information as he did not want it to be misleading when describing flooding of the Nashua River as it does not compare to Gratuity Stream. Everything that he has described today is related to Gratuity Stream and not the Nashua River. FEMA studies are generally where people go for information. P. Morrison expressed that it is important to have this discussion when the Commission has been dealing with flooding issues at Olivia Way, another residential area in Groton. E. McHugh recommended a peer review of the information that was presented this evening. P. Morrison motioned to continue to August 13th. The Commission discussed what information is requested before the next meeting. M. Giguere would like to see the information about what flags are disputed. P. Morrison inquired if there would be another site walk. E. McHugh expressed that she believes there is enough information available at this time to initiate a peer review. She would like to see an evaluation of the potential of alluvial soil, including a review of the soil in the stream and under the surface. D. Wang expressed that his interest is to uphold the law and to understand the site for future development. He will address the impoundment and its effect on rivers.

Upon a motion by P. Morrison, seconded by P. Morrison, the Commission VOTED in favor by a unanimous vote to continue the discussion to the August 13th meeting and requested the following items:

1. Establish 3 monitoring locations. Show 4 days of no flow if possible.
2. Look at isolated lands subject to flooding. Determine the area.

3. Rebut impoundment impact on stream status
4. Rebut alluvial soil argument
5. Reflag wetland boundary based on Groton bylaw.

The Commission discussed item number 5 and it was agreed that the best approach would be for the applicant to move the flags and the Conservation Commission will review at a future site visit.

At 8:20 pm the Commission discussed item **1.3 Discussion (cont.) with Diana Mendel about a Girl Scout Gold Award proposal to install bat boxes on conservation lands**. D. Mendel was present at this evening's meeting. It was discussed at a previous meeting to use a utility pole at Baddacook Pond as it is an ideal location for such boxes. She has received permission from Groton Electric to use the pole. P. Morrison inquired how many bats can fit in a box, to which she replied that around 20-25 bats. L. Hurley inquired on how the boxes will be hung on the poles, to which she was answered using the aluminum hardware supplied with the boxes. It will be installed about 12 feet high on the pole.

Upon a motion by P. Morrison, seconded by M. Giguere it was VOTED in favor to approve the installation of bat box at Baddacook Pond as described in the project proposal to the Conservation Commission dated on July 16th by a unanimous vote.

At 8:24 the Commission discussed item **1.4 NOI (cont.) 19 Baby Beach Road** for the reconstruction of two retaining walls and the installation of a patio. E. McHugh read the NOI. S. Dean was present at this evening's meeting. It was noted that control points have been located and S. Dean provided the measurements requested at the last meeting. N. Gualco commented that the measurements compared to the as-builts go along in comparison. The wall that has been built is about a foot further out than the previous wall that was damaged and in need of reconstruction. The Commission discussed that it would not make sense to take down a wall that was in better condition than what was there.

Upon a motion by P. Morrison, seconded by L. Hurley it was VOTED in favor to close the public hearing by a unanimous vote.

At 8:31 the Commission discussed item **1.5 RDA (cont.) Parcel 129-162, Baby Beach Road (D. Jones)**. E. McHugh read the RDA. Upon a motion by P. Morrison, seconded by L. Hurley it was VOTED to continue this discussion to the August 13 meeting as D. Jones was not in attendance this evening.

At 8:33 the Commission discussed item **1.6, Minor change to plan, 419 Old Ayer Road, MassDEP#169-1168**. Mathew Field, property owner and developer, was in attendance at this evening's meeting. He accepts responsibility for the violation that occurred resulting in the remediation work at this property. He proposed the Commission allow him to forego creating the wetland restoration and instead he offered to plant native plants and make a \$2k donation to the Commission. Alternatively, he wondered if there is another area of the property where he could replicate the wetland. E. McHugh stated that she understood the wetland could not be replicated where originally planned and she would like to see the wetland somewhere else. The area does not need to be professionally planned. B. Easom commented that the area that is hydrologically connected to the wetland was disturbed. The Commission members discussed an alternate area and suggested relocating the area by lopping off the top part of the 2605 square foot area and add to the south part.

Upon a motion by E. McHugh, seconded by P. Morrison is was VOTED to accept the new plan as a minor modification signed and dated on July 23, 2019 with the requirement that 2605 square feet be maintained.

At **8:56** PM the Commission voted on the **meeting minutes**.

Upon a motion by E. McHugh, seconded by L. Hurley it was VOTED to approve the June 25th, 2019 meeting minutes as amended.

Adjournment at 8:57 PM.

Upon a motion by P. Morrison, seconded by L. Hurley, the Commission VOTED to adjourn the meeting and move to executive session by a roll call vote: AYE – O. Lathrop. B. Easom, M. Giguere, E. McHugh, L. Hurley, P. Morrison, J. Smigelski.

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

Minutes approved: Aug. 13, 2019