

TOWN OF GROTON  
Conservation Commission  
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**Groton Conservation Commission  
Meeting Minutes**

Tuesday, April 27, 2021 @ 6:30 p.m.  
Virtual Meeting

BROADCAST ON ZOOM AND THE GROTON CHANNEL  
PURSUANT TO GOVERNOR'S EXECUTIVE ORDER  
CONCERNING THE OPEN MEETING LAW

**Present:** Larry Hurley, Chair; Bruce Easom, Vice Chair; Eileen McHugh, Olin Lathrop, Peter Morrison, Allison Hamilton, Clerk\*; (\*arrived at 7:00)

**Absent:** John Smigelski

**Others Present:** Nikolis Gualco, Conservation Administrator

6:30 PM- L. Hurley, Chair called the meeting to order.

## 1. APPOINTMENTS AND HEARINGS

6:30 PM – NOI (cont.), 85 Boathouse Road, for repairs and renovations of existing retaining walls, deck, and parking area, MassDEP#169-1213.

**Applicant:** Mark Enright

**Representative:** Nick Facendola, Engineer; Level Design Group

N. Facendola, representing the applicant, proposed replacing three existing retaining walls, constructing a new garage with a parking area, and replacing an existing deck. N. Facendola explained the applicant would install concrete walls directly in front of the existing retaining walls and then remove them and backfilling the empty spaces. Temporarily silt socks would be placed at the base of the site to prevent any silt or debris from entering the lake. M. Enright clarified the middle concrete retaining wall will remain as is and proposed reconstructing the connecting deck.

B. Easom questioned the process of rebuilding the wall closest to the lake. M. Enright stated that he is not replacing that wall. He continued explaining that the top timber retaining wall is holding back the soil and in order to keep the soil stabilized the new wall needs to be built in front of the existing wall. The wall is projected to be 33 feet in length by 6 feet high, a concrete form will be installed and filled by a pump truck. B. Easom was concerned with the wall being constructed closer in proximity

to the lake and commented that the ConCom generally requests that applicants do not build walls closer to waterfronts. Over time the walls will end up in the water.

P. Morrison requested the dimensions of the wall closest to the lake and questioned how it would be replaced. M. Enright responded that the wall is 8 feet in length by 3.5 feet high and stated the retaining wall has already been completed. The middle wall is not going to be rebuilt. The top wall is the only retaining wall that needs to be replaced and is holding back the soil. While P. Morrison stated that he typically would agree with B. Easom, however, in this case he does not have a problem with the top retaining wall being installed in front of the existing wall because he is unsure how the soil would remain stabilized otherwise.

E. McHugh wanted clarification on the retaining walls that are being replaced. M. Enright discussed that the concrete retaining wall that is located closest to lake has been there for years and is not being replaced; the concrete wall located next to the deck would also remain. The third wall that is made of timber would be replaced with concrete as well as 3 upper timber walls closest to the shed and the parking area. Those retaining walls will be constructed at a later date. E. McHugh stated that the plan should represent all the retaining walls that are in need of replacement. E. McHugh then questioned the detailed plan showing the infiltration pit. N. Facendola explained the first infiltration pit will accommodate any runoff from the new garage. The second one is located at the base of the site which will tie in the two weeping drains from the new walls. With the new changes made by the applicant the infiltration pit will be reduced in size. E. McHugh then questioned if the plan showing previous pervious areas and impervious areas had been completed. N. Facendola stated that he did not have the plan at this time and would provide it at a later date. E. McHugh requested that the plan also include the work that was performed without a permit and the new impervious areas which entail the parking area, the new garage, and the set of steps.

There was a brief discussion among the Commission regarding a lot of confusion with the current plan and the walls that require replacement. The applicant had stated earlier in the discussion that the wall closest to the water was an existing cement wall when the property was purchased and not being replaced.

O. Lathrop was concerned with the amount of pervious area being replaced with impervious areas and all being within the 100 foot buffer zone. O. Lathrop continued to express that he is looking for a balance and would like to see for example if a deck is built then something needs to be more natural in another place. The additional impervious areas may cause more runoff into the lake. M. Enright ensured that nothing on the site is going to runoff into the lake.

L. Hurley questioned if the applicant was going to install pervious pavers for the parking area. M. Enright stated that he is going to install an 18 foot by 2 foot deep trench. The parking area will be paved and pitched towards the trench. L. Hurley suggested that the lower cement area be replaced with pervious pavers. The ConCom does not allow buildings or structures to move closer to waterfronts. L. Hurley then questioned the top timber wall that is being replaced and its height above the grade level. M. Enright explained that the new retaining wall will be 6 feet from the footing and extend 6 inches to 1 foot higher than the existing wall. L. Hurley requested that a new drawing be submitted which includes all the existing walls that will be worked on or replaced, anything that is new is required to be marked new, identify pervious areas, and the parking lot and

the trench need to be included. The plan of the existing pervious and final pervious areas and documentation of the storm water were both requested as well.

Upon a motion by B. Easom, seconded by P. Morrison, it was:  
Voted to continue to the next public hearing on May 11, 2021.

**The motion passed by a roll call vote: (Yes: BE, PM, EM, OL, LH)**

## 2. GENERAL BUSINESS\*

### Permitting

COC, 91 Gay Road, MassDEP#169-688

Upon a motion by E. McHugh, seconded by P. Morrison, it was:  
Voted to issue the Certificate of Compliance for 91 Gay Road, MassDEP169-688.

**The motion passed by a roll call vote: (Yes: EM, OL, BE, PM, LH)**

### Squannacook Sportsmen's Club, Environmental Assessment update

Peter Cunningham discussed that the recently conducted Environmental Assessment revealed that there is lead contamination in the soil. The DEP reviewed the findings and identified the areas that exceeded the standard levels. They proposed installing a snow fence around the depressed area and encapsulating the high elevated levels of lead with a poly barrier then covered by 2 feet of top soil.

L. Hurley questioned the reasoning to encapsulate the area. P. Cunningham explained the lead is so close to the surface that this will provide a quick fix and not the final solution. Brownsfield Grants are being explored to cover the remediation to either remove the lead or encapsulate it. L Hurley stated that he has performed lead remediation before and dug up the soil until it was clean. P. Cunningham explained that the lead can be removed and disposed of which can be very expensive. There is concern of the elevated levels of lead found in the ground water due to it being in close in proximity to the West Groton Well Site. L. Hurley stated he did not receive a sampling survey on what was found in the tested locations. P. Cunningham stated that the Licensed Site Professional (LSP) has a copy of it and it can be requested.

E. McHugh questioned if the ConCom should request that the lead be removed within a deadline. P. Cunningham explained that the Town does not own the Sportsmen Club. The Town needs to work with the DEP on receiving a Brownsfield Grant. The DEP is appreciative that the Town is stepping up and taking care of the immediate solution, the larger problem is removing the lead. It was explained that Brownsfield Grants require that the land be developed after the completion of the remediation, as of now there is no plan of development which could result in limited funding. E. McHugh noted that P. Cunningham is proposing not preventing the lead from entering the ground water. P. Cunningham stated that is correct and that they are currently trying to keep people out of the highly contaminated areas.

O. Lathrop was curious when the shooting range was active. P. Cunningham stated in 1986 or 1987. O. Lathrop clarified that the lead has been sitting for 30 plus years and questioned if the remediation is going to take place in 2 or 3 years is it worth

installing a fence and bringing in soil. P. Cunningham stated that some of the testing areas revealed immediate action was necessary by DEP standards. The LSP is working with other towns and in some circumstances, they have been able to receive funding from the DEP.

L. Hurley questioned the contamination levels inside the building located on the site. P. Cunningham stated that the contamination levels were very elevated and for right now it is contained and sealed inside the building.

B. Easom was concerned with rain water being acidic and entering the lead contaminated ground causing a plume of water towards the West Groton Well. The barrier of plastic is a good first step in remediation. B. Easom was willing to provide support in gaining grants and believes that this is a very important project for the Town.

Upon a motion by B. Easom, seconded by P. Morrison, it was:  
Voted to issue an emergency certificate to allow the deposition of soil over the lead contamination on the property and the installation of a poly barrier and a snow fence to mark the contaminated area.

**The motion passed by a roll call vote: (Yes: BE, PM, EM, OL, LH)**

Upon a motion by O. Lathrop, seconded by B. Easom, it was:  
Voted to allow filling of the contaminated area where the lead was found because it will not materially impact the conservation value of the site as defined by the Conservation Restriction. **The motion passed by a roll call vote: (Yes: BE, EM, PM, OL, LH)**

Discuss progress on detention basin at Olivia Way – added 4/22/2021

E. McHugh stated at the last Earth Removal and Stormwater Advisory Committee (ERSAC) meeting that the Stormwater Management Permit continues to remain unfulfilled on Olivia Way. The Committee issued an Enforcement Order to finish their work on the roadway and the common area. The ERSAC would like for the Planning Board and the Conservation Commission or anyone that holds an outstanding permit with Olivia Way to follow up on it. The Conservation Commissioners conducted a site walk at the detention pond which still holds an active 2 year warranty. Last spring a conservation mix was seeded in the center of the site and a perennial ryegrass was planted on the outer edge. The ryegrass had sparsely sprouted and the conservation mix failed to germinate and seems to have blown away. E. McHugh suggested writing a letter to Peter Cricones, the developer; stating that the ConCom is not satisfied with the vegetation growth in the detention basin and question how he plans on establishing new growth.

B. Easom commented that site was mostly sand and questioned if the mix would be successful. E. McHugh stated that top soil was used; and the Conservation Mix was recommended.

A. Hamilton agreed that the vegetation growth failed and questioned what could be enforced. E. McHugh explained the reason why an Enforcement Order was issued was due to P. Cricones not responding to any letters that were sent by ERSAC and not following through. Two steps the ConCom may want to consider is 1. Notify the developer and make him aware that this is unacceptable. 2. There is a concern that the developer may walk off the project. A. Hamilton proposed bringing a group of students to the site for a day and have it be an educational experience and be beneficial to the ConCom by having them plant new vegetation.

E. McHugh mentioned the developer had asked for the homeowners to water the vegetation last fall. After speaking with Andy George, a homeowner on Olivia Way, she explained that the neighbors are very exhausted with the upkeep of maintenance required.

L. Hurley questioned if the ConCom has contacted P. Cricones. E. McHugh commented at this point nothing has been done, a letter needs to be sent stating a site walk through has been conducted and the site contains a high percentage growth failure. The ConCom is requesting the plans and the schedule to remedy this.

B. Easom questioned the status of the turtle barrier and the rocks at the bottom of the basin. N. Gualco responded the turtle barrier is a requirement under the Conservation Management Plan held with the State. E. McHugh explained it was the design the ConCom approved. O. Lathrop noted the rocks were meant to prevent erosion. N. Gualco commented that this spot previously contained standing algae and Cattails.

The Commission had a brief discussion regarding legality and if they held any leverage with the warranty that was between them and the developer. N. Gualco commented that there is language in Easement the Town granted the developer stating the developer in subject to the Easement Plan and Drainage Plan which includes the Planting Plans.

Upon a motion by O. Lathrop, seconded by B. Easom, it was:

Voted to send a letter requiring a response by May 10, 2021 to the developer recording what was found and requesting what his plan of actions are to remedy the vegetation growth failure.

**The motion passed by a roll call vote: (Yes: EM, AH, OL, BE, PM, LH)**

Discuss the approval process for small-scale vegetation management within the buffer zone.

N. Gualco summarized that at a previous meeting a homeowner requested for approval for invasive species management and intentionally choose not to attend the hearing and requested that the Board proceed with the determination. At that time it initiated the idea that the ConCom might want to reevaluate the process for approval for very small invasive management. At the last meeting it was mentioned instead of submitting an RDA that a discussion could occur. The Wetland Protection Acts allows trimming of invasive vegetation by homeowners, the bylaw is where there may be issues.

B. Easom was concerned that without filing or talking with the Commission some homeowners are not able to identify invasive species. The RDA allows us to give guidance and to allow work in the wetlands. P. Morrison suggested a square footage area not to be exceeded.

N. Gualco envisioned that a site visit would be conducted then a creation of a habitat management plan would be given to the applicant. He was unsure if that process saved the applicants anytime.

O. Lathrop questioned if a homeowner proceeds and cuts an invasive how the Commission differentiates with someone who mistakenly cuts a noninvasive. L. Hurley stated that is why a discussion would be important and limits would be regulated.

A. Hamilton commented to not make significant changes on the RDA process however, change how it is perceived by the homeowner. The applicant would still be required to submit paperwork to the administrator and the homeowner would have the option to attend the hearing, making it less scary.

E. McHugh agrees with A. Hamilton and that some people are intimidated about the process. B. Easom wants to ensure that people do what they are supposed to and N. Gualco could accomplish that. The Commission wants to urge people to remove invasive species. O. Lathrop suggested that the RDA fee is waived as long as it is within the wetland buffer. The ultimate goal is to preserve the wetlands.

L. Hurley questioned if a discussion is sufficient enough so that the resident do not have to be present and then the administrator would contact them. N. Gualco stated he will further research the rules and regulations to ensure legality. B. Easom stated that a regulation can be changed by the ConCom, the bylaw however, needs to be changed at Town Meeting. A. Hamilton commented that going to Town Meeting would be beneficial and would ensure residents are aware the new process.

#### General Discussions/Announcements

##### **Planting a memorial tree at William's Barn (Friends of the Tree Warden).**

N. Gualco updated that this item is to be removed and is outside of ConCom jurisdiction.

##### **Lost Lake CR update and discussion (recording fees for CR, Trustees Certificate)**

N. Gualco updated the Commission that he received the signature from the secretary last week on the CR and the question is does the ConCom want to pay for the affidavit.

Upon a motion by E. McHugh, seconded by P. Morrison, it was:  
Voted to pay for the filing fees for the CR at lost lake.

**The motion passed by a roll call vote: (Yes: OL, BE, PM, AH, EM, LH)**

**Hayes property development, ANR plan memo – updated 4/22/2021**

N. Gualco updated the Commission that an ANR memo was submitted on the Hayes property. N. Gualco briefly discussed the previous plans for a 100 visual foot buffer along Maple Ave. and 60 acres of open space that would be deeded to the Town and a few units would be constructed for affordable housing. Back in February 2020 a Definitive Subdivision Plan was submitted to the Planning Board. The ConCom was approached for a chapter 61A right of refusal, when the ConCom received a letter from developer's attorneys they conditionally agreed to recommend the Select Board waive the Town's right of the first refusal under the conditions that the Town receive the 60 acres of open space and there was access permitted to the Subdivision Road and Pepperell Road. N. Gualco found discrepancies within the new ANR. The acreage amount had been decreased to 48 acres and the location of the proposed access points changed. An ENF form was submitted and comments have been filed from concerned residents.

B. Easom questioned what caused the requirement for the ENF. O. Lathrop commented the valuable wildlife habitat. N. Gualco also commented there are vernal pools on the site.

E. McHugh commented the original plan was not an ANR. N. Gualco explained that originally it was submitted as a Flexible Development which would allow for smaller lots. O. Lathrop commented that the Natural Heritage requirements may not be met under the new ANR. The ComCon compared the two ANRs in relevance of the access points and the number of parcels being constructed. B. Easom commented on the article written the Groton Herald and discussed a number of people were not pleased with the Chapter 61A not meeting statutory requirements.

E. McHugh questioned the agreement between the ConCom and the developer. N. Gualco stated there was an agreement made at an open meeting and a formal letter was provided by the attorney.

Deb Collum, a resident on Maple Ave, explained the ENF was filed for three main reasons. 1. Direct alteration of 25 acres of land. 2. Project within the designated area is a critical concern; priority habitat. 3. Greater than 2 areas of disturbance of a designated habitat. The original review of the plan last February showed concern of The NHESP's 3 certified vernal pools. Lots 11, 12, and 13 along Pepperell Road contain a portion of a vernal pool. A number of citizens submitted to the Select Board regarding the additional waiver of the first refusal and the consequences of the ANR. D. Collum questioned if the ConCom would consider following up with the Select Board. N. Gualco confirmed that he already forwarded the information to the Town Manager. D. Collum provided 33 signatures on the ENF letter.

B. Easom questioned if the 120 day period had expired on the Chapter 61A right of first refusal. N. Gualco stated yes and the 120 days have been exceeded. The question is in language regarding the purchase agreement and permits that were requested are now expired.

E. McHugh commented that T. Tada was meeting with lawyers and questioned if the ConCom should be monitoring this activity. N. Gualco stated that he will provide updates to the Commission. The Planning Board, Select Board and the Town Council are all involved. O. Lathrop suggested that if the developer were to go back on their agreement then the remedy would be purchasing the property and as of right now the ConCom does not have those funds. The Town Meeting would also have to approve any funding borrowed.

D. Collum said she is willing to organize and raise the funds for purchasing the property and had missed out on the opportunity. The developer is not meeting the demands of the rights of the first refusal waiver.

### Land Management

#### **McClain's Wood stone wall repair – added 4/22/2021**

P. Funch updated the Commission that McClain's Wood was developed in the late 80s and the stone walls on both sides of the road have been knocked over, weathered, and vandalized throughout the years. He is requesting guidance in rebuilding the damaged wall from the ConCom and feels that it is their responsibility to maintain it.

B. Easom suggested removing the stone wall and having the Highway Department install a guard rail. O. Lathrop agreed with installing the aluminum guard rail and requested P. Funch speak with T. Delaney.

L. Hurley questioned if there is any interest in getting a group together to help rebuild the stone wall. P. Funch stated he has the manpower and only requires someone with masonry experience. L. Hurley stated he would call T. Delaney and request his recommendations.

E. McHugh commented that if the Conservation Commission is responsible to maintain the wall she would suggest a timber guard rail might be more appealing. The current stone wall would not prevent a car from exiting the side of the roadway.

#### **Wallace Road, relocation of trail easement – added 4/22/2021**

An RDA has been filed and the Commission agreed to discuss the Wallace Road at a later date.

### Committee Updates

O. Lathrop discussed that the Trails Committee has cleared out the access road leading up to The Priest Hill Property. The markers have been installed on the main trail at the Patricia Hallet Conservation Area as authorized at the last meeting.

O. Lathrop updated the Commission that The Invasive Species Committee had treated Knotweed located on the path by Hayden Road last year. There are some shoots still popping up and requires additional treatment; the major clumps are completely dead. The treatment on Martin's Pond Road was successful. There are Ash Trees located at the boat launch that still require treatment and are issued under



the RDA and questioned if the Commission would like to proceed with a treatment plan. B. Easom asked what treatment was used for treating the Knotweed. O. Lathrop explained that the stems were cut and sprayed with 2ml of Glyphosate and then followed up in the fall with a foliar treatment using Triclopyr.

N. Gualco discussed The Stewardship Committee would be mowing and brush hogging at Priest Hill on May 2, 2021. B. Easom would bring his tractor and make a couple of passes in the field and E. McHugh would be operating the brush hog to help with short term land management.

#### Approve Meeting Minutes

Upon a motion by O. Lathrop, seconded by A. Hamilton, it was:

Voted to approve the meeting minutes for April 13, 2021 as amended.

**The motion passed by a roll call vote: (Yes: BE, AH, OL, LH) PM- Abstain**

#### Invoices

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

Voted to reimburse N. Gualco \$134.95 for a pair of boots.

**The motion passed by a roll call vote: (Yes: PM, BE, AH, OL, LH)**

3. **Open Session for topics not reasonably anticipated 48 hours in advance of meeting\***  
None.
4. Executive Session pursuant to MGL Ch. 30A, Sec. 21(6): \* “To consider potential litigation, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.”  
L. Hurley, Chair; declared that there was business that required the Commission move to Executive Session.
5. Adjournment  
**8:42 PM** Upon a motion by B. Easom, seconded by P. Morrison, it was:  
Voted to move to Executive Session and not to return to the open session for the purpose of considering potential litigation as the chair had declared that an open meeting may have a detrimental effect on the negotiating position of the Commission.  
**The Motion passed by a roll call vote: (Yes: OL, PM, BE, AH, LH)**

**Minutes Approved: May 11, 2021**