

July 29, 2013

Board of Selectmen Meeting
First Floor Meeting Room
173 Main Street
Groton, Massachusetts

Selectmen present: Peter Cunningham, Vice-Chair
John G. Petropoulos
Anna Eliot
Joshua Degen

Others: Mark Haddad, Town Manager
Donald Palma, Groton Police Chief
Thomas Delaney, DPW Director
Michelle Collette, Town Planner
Robert Anctil, Esq. representing PCM Realty Trust
John Amaral, Omni Properties LLC representing PCM Realty Trust
Kenneth Cram, P.E., Director of Traffic Engineering at Bayside Engineering
George Wheatley, member Groton Historical Commission
Dorothy Mack, 116 Main Street (Janes Properties Limited Partnership)
Shane Grant, 247 Main Street
Russell Harris, Groton Herald journalist and local homeowner
Robert Pine, member Wetlands Bylaw Review Committee
Steven Webber, member Wetlands Bylaw Review Committee
Marshall Giguere, member Wetlands Bylaw Review Committee
Alexander Woodle, member Wetlands Bylaw Review Committee

Peter Cunningham convened the Board of Selectmen meeting and gave an overview of agenda items for the evening. Regarding the Lost Lake Sewer Committee, one candidate cannot be present this evening so this agenda item has been put off until the Selectmen's August 12, 2013 meeting.

As an announcement, Peter Cunningham referenced correspondence from the Alzheimer Association regarding the July 13, 2013 bicycle ride which passed through the Town of Groton. The Alzheimer Association wrote the Town expressing its sincere appreciation for the municipal help received with logistics including signage, route planning, police and emergency health services.

Anna Eliot announced that the Town now has five new businesses that have opened or are imminently opening. These businesses are:

Second Hand Prose at 30-A Hollis Street,
Buddha's Nest Yoga at 134 Main Street,
Luth's Family Karate at 306 Main Street,
Ixtapa Mexican Grill and Cantina at 765 Boston Road, and
Bliss Bakery at 134 Main Street.

Anna Eliot expressed her hope that residents will go and patronize these local businesses.

Town Manager Mark Haddad started his Town Manager's report by describing a letter received today from Attorney James Gmeiner regarding the PCM Realty Trust's requested license to allow limited landscaping along a portion of Route 119. In the letter, Attorney Gmeiner recommended against granting the license and stated his concern that tree and vegetation removal along Route 119 will increase water runoff at the public golf course along the 7th fairway. Also, removal of trees and vegetation may lead to many incidents of golf balls from the course striking vehicles on Route 119.

Mark Haddad arranged for the attendance of Groton's police chief and DPW director so that they would be available to address any questions the Selectmen may have. In addition, representatives from proposed licensee PCM Realty Trust are on hand to speak to their interests and answer questions.

John Amaral addressed the meeting. He stated that no tree removal is planned. Instead, lower lying vegetation from the ground level of Route 119 up to a height of 6 feet is planned. He explained that the average elevation of drivers' eyes along Route 119 is about 3.5 feet and noted that the elevation from the roadway down to the golf course drops 4 to 5 feet. The Massachusetts Department of Transportation typically performs such pruning and such pruning may take place entirely within the Commonwealth's road right of way.

Next, Kenneth Cram addressed the meeting. He is an engineer working with PCM Realty Trust and he explained the need for the license. The project needs a Route 119 curb cut and current site distances allow for 200 foot stopping distance and the project must provide a 300 foot stopping distance. There are three relevant sight distances under consideration:

1. Stopping sight distance on Boston Road,
2. Intersection sight distance for vehicle exiting site onto Boston Road, and
3. Turning in sight distance for vehicle on Boston Road turning in to the site.

Kenneth Cram described scope of the cutting as cutting the lower limbs on two mature trees and clear out weeds on the ground. Anna Eliot asked Chief Palma if the proposed cutting will make a difference in the line of sight. Chief Palma answered yes and that he was not opposed to the work. Chief Palma stated that he would want the licensee to follow Massachusetts Department of Transportation laws and regulations for the work which will involve coning and channeling of the Route 119 vehicular traffic.

Anna Eliot asked Chief Palma about traffic accidents along this stretch of Route 119. Chief Palma replied that the matter has not been researched, but that there have been no traffic accidents in recent memory of the department's officers. Peter Cunningham asked about golf ball strikes in Route 119. Chief Palma replied that there is one anecdotal report recalled by a department police officer. Kenneth Cram stated that he did research traffic accidents along Route 119 as a part of his work. He found one traffic accident, a rear end accident that may have occurred due to vehicular queuing at the CVS entrance.

Peter Cunningham asked if the proposed cutting will increase water flow onto the golf course fairway. DPW director Thomas Delaney answered that he did not foresee any increase in runoff. He continued that the majority of the cutting may be within the Commonwealth's right of way and there may be portions on Town land.

Joshua Degen stated that he thinks that this pruning is something that is the State's responsibility. The current sight lines are not a problem for him personally when driving Route 119. He proposed that the scope of the license be narrowed to allow for landscaping to be limited to clearing the 6 feet above road level if this is all that the applicant wants. Peter Cunningham asked PCM Realty Trust representatives if they are willing to provide netting to protect Route 119 traffic from golf ball strikes. John Amaral replied that if within the scope of this work, there is an accident; the applicant is willing to look at mitigation measures. The trimming is 6 feet only and there is no interest by the applicant to keep 'limbing up' to a greater height above the road. So, within the 6 foot clearing range, the applicant will look at it.

Anna Eliot asked why the responsibility of netting is being put on the applicant. The issue is sight distance. If for safety reasons, we want to have netting, I think that is the Town of Groton's responsibility. Joshua Degen commented that if we were to grant the license and golf ball strikes begin can there be a contingency for netting if needed. Anna Eliot stated that we are never going to know the trajectory of a golf ball and be able to tell if it passed through the applicant's 6 foot clearing window.

George Wheatley asked if during this process, the licensee applicant found a colonial marker supposedly installed there in 1777. Kenneth Cram replied that he found it and that the marker is in good shape.

Shane Grant noted that the curb cut/entrance in question doesn't exist yet. If the Commonwealth has an obligation to cut the brush, why are we considering granting a license to PCM Realty Trust to do this work.

Also, Shane Grant asked how do you define the word tree in the context of this proposal? Why not grant the license contingent on Planning Board approval of the project? Peter Cunningham commented that the Commonwealth does allow curb cuts and then the developer has to ensure that its Planning Board submission works with the Massachusetts Department of Transportation concerns. Town Planner Michelle Collette stated that the Planning Board has jurisdiction. Also, the Massachusetts Department of Transportation has the matters of curb cuts and site access under its jurisdiction. We could debate which process should come first, but Michelle Collette commented that she applauds the applicant for resolving the curb cut access prior to submitting its application with the Planning Board. Joshua Degen reiterated Michelle Collette's points as being consistent with his past experience on the Planning Board.

Joshua Degen suggested that the license be made contingent on the Planning Board's site plan approval. Dorothy Mack identified herself as an abutter and commented that she is glad that the license will be contingent and noted that the concept plan has been changed.

Joshua Degen moved that the Board of Selectmen approve the license agreement between the Town of Groton and PCM Realty Trust effective today with the following three contingencies: license language will be changed to limit cutting to a height of no more than 6 feet above the Route 119 road level; full site plan approval granted by the Planning Board; and in the event of golf ball strikes onto Route 119 after vegetation clearing the applicant to consider mitigation measures as represented to the Board of Selectmen tonight. John Petropoulos seconded and motion carried 4:0 (Stuart Schulman absent).

Wetlands Bylaw Presentation

Robert Pine presented the Wetlands Bylaw Review Committee's draft document which the seven member committee produced. Committee representatives have presented this document first to the Conservation Commission and later to the Planning Board. Robert Pine explained that the work product has two parts. The First part proposes changes to the Bylaw that might go to Town Meeting as a warrant article sponsored by the Conservation Commission. The second part is composed of talking points and represents more substantive changes that would serve to make parts of the Bylaw stronger.

Peter Cunningham who is a member of the Wetlands Bylaw Review Committee stated that the committee held an ongoing public hearing. The preamble to the Bylaw was rewritten in an effort explain the particular qualities of Groton's wetlands that make the operation of the Bylaw important. Robert Pine expanded on this point stating that Groton has an extraordinary array of wetlands due to the geography of the land. Retreating glaciers left sediments and an intricate network of streams and interconnected wetlands.

Robert Pine noted that some changes cleaned up and clarified Bylaw language such as the removal of the word creek as an inapplicable reference considering the Groton context and current wetlands terminology.

In § 215-2, the jurisdiction paragraph was rewritten to differentiate between perennial and intermittent streams.

In § 215-3 B, a more substantive change is found. Robert Pine explained that Groton has an unusually large amount of wetlands and a number of existing houses are within 100 feet of the wetlands. At the time that the Bylaw came in, Town Meeting voters approved a Bylaw that proposed to apply Wetlands Protection Act ("WPA", the Commonwealth's wetland law) level of protection only. This exemption from the local Bylaw has outlived its usefulness. Town Counsel recommended that wording be found that would resolve this issue. Presently, it becomes increasingly hard to determine the level of development and incursion in the 100 foot buffer that existing houses had at the time of the acceptance of the Bylaw. Another shortcoming of the present Bylaw language is that it creates two standards and Town Counsel recommends trying to get as close to a single standard as possible. As proposed, Robert Pine assured the Board that with existing lots, the applicant will still have lots of exemptions and exceptions that are not available to the owner of a new or undeveloped lot. Anna Eliot offered the feedback that this whole paragraph is extremely confusing. This is an example of why we want wording that is comprehensible.

In § 215-3 B, Joshua Degen raised the wording of the "no permanent degradation standard". This standard appears to prevent the Conservation Commission from granting approval of some proposed plans that might

previously have gained Conservation Commission approval. Robert Pine discussed add the word “net” and promised to review the current wording of this provision.

John Petropoulos noted the word “practicable” and suggested that the Committee try to remove subjective language. As the discussion progressed, Robert Pine and Marshall Giguere explained that practicable seemed an improvement over the “no technically feasible” phrase it replaced. Groton Electric Light Department complained that there is almost always an alternative but that the current Bylaw language does not limit the cost of the alternative so that use of either “reasonable” or “practicable” is an attempt to overcome that shortcoming. The Board of Selectmen preferred “reasonable” over “practicable”.

§ 215-4 C changes require the Conservation Commission to notify other Town boards of pending applications, inviting comments within 10 days. Mark Haddad commented that the Land Use Department already provides notice. Peter Cunningham agreed that this Bylaw change essentially codifies current practice.

In § 215-6 A and B, Anna Eliot asked for clarification of some differences in applicant notice requirements depending on the type of permit application. In this as with many other aspects of the Town’s Bylaw, the ability of a town to simplify language and procedures is limited by the structure and meaning of the Commonwealth’s Wetlands Protection Act.

Following Town Counsel’s advice, § 215-6 C, this document plainly states that the hearing can only be continued with applicant’s consent.

In the definitional section of the Bylaw, Robert Pine explained that building definitions (structure) were revised in an effort to gain internal consistency and avoid conflict with other Town Bylaw definitions. Joshua Degen asked how a beaver dam would be treated. Steven Webber answered that the Bylaw used to be in the definition and that the Committee members would look at this issue.

The stream definitions attracted considerable comment and discussion by Selectmen as well as audience members. Robert Pine stated that without this change only perennial streams are governed by the WPA’s 200 foot buffer. The streams listed on the U.S. Geological Survey map are essential even if they do not correctly match the legal definition of perennial stream. He continued, explaining that the state struggles with a definition of perennial stream and he finds this approach to be fair to the applicant.

Anna Eliot disagreed, stating that she does not think it is fair to the applicant to be stuck with this definition. The problem is that the map can be wrong and the applicant should be able to come to the Conservation Commission and make a case for a perennial stream actually being an intermittent stream. Also, the Bylaw needs a factual basis in order not to be pretextual and preclude rights of the homeowner.

Peter Cunningham cited a past case the an applicant petitioned the Commonwealth to reclassify a stream to intermittent. Anna Eliot replied that this course is not available to the average landowner who will either ignore the Bylaw or appeal the local Conservation Commission decision. The average landowner will not have the resources to get bodies of water redefined. Joshua Degen recited the current level of protection – 100 foot buffer for intermittent streams and 200 foot for perennial streams – with approval and said that he agreed with Anna Eliot’s views on this matter.

Marshall Giguere, Conservation Commission member and Wetlands Bylaw Review Committee member, added that although the USGS map is not entirely accurate, over 20 to 30 years of study data have informed this map and it remains the best resource for stream identification. Other federal mapping overlays were examined but found to be over-inclusive as some counted drainage ditches and old agriculturally created channels. Steven Webber, Wetlands Bylaw Review Committee member, stated that he had a stream on his property that showed on the USGS map as perennial and he knew it to be intermittent. He brought photographs in to the Conservation Commission showing flow levels at certain times of the year and the Conservation Commission agreed not to apply the WPA level of protection. This new language removes that flexibility and I do not like that.

Robert Pine reflected that the stream definition is actually making this Bylaw more permissive. Joshua Degen replied that this is not how he reads the proposed language. Shane Grant asked which stream was taken off and Robert Pine replied that he is not clear if he knows the exact stream that some people are referencing.

John Petropoulos asked if there is an inventory of existing streams that the Conservation Commission can rely upon. Robert Pine responded that the Committee debated this point for many hours and knowledgeable parties agreed that any undertaking to map our own streams would be an expensive process. John Petropoulos added his support for writing in a procedure and exceptions to that procedure as a way forward.

Robert Pine stated that the Committee would go back and look at these definitions. There will be a new set of terminology that will be simpler for streams. We will definitely reconsider as we were hoping to make the end result clearer.

Robert Pine and Peter Cunningham introduced the Committee's second set of possible changes that contemplate a strengthening of wetlands protections. David Black, a wetlands scientist, served as chair to the Committee and his scientific input was valuable. The science supports extended buffer zones. The Committee has looked at language that extends buffer zones in certain areas and institutes a form of design review by the Conservation Commission to implement those protections.

Anna Eliot offered her approach which is that the Town should move away from black and white bylaws with complicated regulations. Instead, the applicant should be able gain permit approval if they can demonstrate that the work can be done without harming the environment. Robert Pine replied that we are moving there, but that we are not there yet. He appreciates this input. Joshua Degen thanked Robert Pine and the rest of the Committee for all of its hard work.

Referencing the previously altered land standard, Russell Harris observed that as a small landowner this could significantly change the permitted use of my land. He continued with the point that not everyone follows the Bylaw. Peter Cunningham replied that the Town cannot be aware of every activity in the Town of Groton. Individuals may take certain acts that may not come to the Conservation Commission's attention.

Robert Pine concluded, stating that we live in an extraordinary place and we are working to protect it. Peter thanked Robert Pine and other Committee members for their work. Marshall Giguere closed with the statement reminding the public that the Conservation Commission likes to work with landowners. Please call conservation administrator Barbara Ganem. He recommends the wetlands delineation process that does not require a civil engineer or much money to accomplish.

Minutes Policy

Mark Haddad referred Selectmen to a proposed amendment to the Board's Policies and Procedures that addresses Town union concerns about the release of Executive Session minutes that pertain to employee personnel matters. In the proposed amendment, Town Counsel's recommended change was seen by Michelle Collette, who spoke for the unions last week, and she did not have a problem with the suggested change as delineated in the Selectmen's packets. Mark Haddad explained that his proposed language divided the treatment of minutes into the two distinct categories of Regular Session Minutes versus Executive Session Minutes. Town Counsel advises removal of the highlighted sentence as it might violate the open meeting law.

Comments made by individual selectmen were all along the lines of this policy sounds like the current law. With these changes, the Selectmen would have to vote to accept changes at the next meeting and so adds one step. This policy would not apply to the correction of scribes' errors.

John Petropoulos moved to adopt as policy proposed minutes language including Town Counsel changes originally accepted on December 6, 2004 and revised on June 18, 2010. Joshua Degen seconded and motion carried 4:0 (Stuart Schulman absent).

Ratification of Trails Committee Appointments

Mark Haddad asked the Board of Selectmen to ratify the Town Manager appointments of the entire Trails Committee members.

Anna Eliot moved to ratify the Town Manager appointments of Paul Funch, David Burnham, Steve Legge, John Wiesner, David Minott, James Molaskey, Wendy Good, Joachim Priess, David Pitkin, Olin Lathrop and Scott Stathis to the Trails Committee. John Petropoulos seconded and motion carried 4:0 (Stuart Schulman absent).

BOS goals

Mark Haddad invited Selectmen to review the first draft of the FY 2014 Goals and Objectives developed at your meeting on July 8, 2013.

John Petropoulos asked for all benchmarks to be written in a way that makes the progress measurable. John Petropoulos stated that sometimes an item that is listed in one column is actually better placed in a different column. For example, under Structure of Town Government is the consolidate government bullet point really a goal instead of a rationale? Joshua Degen suggested that this particular bullet point should read "eliminating antiquated boards and committees". Also, for the "Support Town budget goals and objectives" action plan, delete remainder of phrase beyond objectives and for the related benchmark measure which reads "Defense of Budgetary Goals at Town Meeting when in disagreement with FinCom" let the benchmark read 'when not aligned with FinCom'. He observed that the Board of Selectmen has no trouble disagreeing with the FinCom but that this language avoids an adversarial tone.

Under Communications with the Public, Peter Cunningham recommended the removal of the Action Plan item regarding the appointment of subcommittees. He explained that formal appointment of subcommittees seems to be an unnecessary step.

Under Natural Resource Improvements, move last bullet point from Rationale to Action Plan and have it read "To promote the Town's natural resources and try to increase use of those resources".

Under Affordable Housing Plan, both Joshua Degen and John Petropoulos thought the goal could be restated to read "To implement the Groton Housing Production Plan."

Under Town Center Overlay District, the action plan regarding Prescott School should be revised to read "Include the Prescott School and potential other sites in the Overlay District. As a benchmark, Joshua Degen suggested including this bullet point "Successful increase in business space in the Town Center Overlay District."

Under Town Infrastructure Improvements, revise third benchmark bullet point to read "Increase participation and offer more recreational opportunities at the Pool and Golf Center. Joshua Degen reminded the group of its intention to reach out to surrounding towns to increase offerings to Town residents.

Under Business Development, add action plan for employer TIFs. Consider hanging banner over Four Corners road inviting businesses to locate there.

Under Information Technology, John Petropoulos approved of the benchmark reading "Report on workload and new hire's impact."

Mark Haddad stated that he will these changes and bring the draft back to the next meeting in close to final form.

Pergantis liquor license

Mark Haddad stated that the Board continued its Pergantis liquor license hearing to tonight. Selectmen asked if all of the Planning Board requirements have been met. Mark Haddad replied no, they have not. Although the

applicant was willing to come in, he recommends that the hearing be continued to September 16, 2013. Conversation centered on the fact that the Board had previously stressed with the applicant that he needed to complete all the Planning Board requirements before a liquor license would be granted.

Joshua Degen moved to deny the Pergantis application to the Board of Selectmen for an all alcohol on premise license as contained in submitted application. John Petropoulos seconded and motion carried 4:0 (Stuart Schulman absent).

Joshua Degen asked Mark Haddad to encourage the applicant to come back and reapply but to reapply when he is ready.

Cherry Sheet update

Mark Haddad apprised the Board of the state legislature's unanimous override of the Governor's local aid veto. The Town of Groton's portion is set at \$18,809 which is \$5,000 higher than the amount budgeted for in prior estimates.

Squannacook Hall negotiations

Mark Haddad asked for the Board's Chair and Vice-Chair to join him in negotiations over Squannacook Hall. He reminded the Board that a TIF (tax increment financing) will be involved.

Minutes

Anna Eliot moved to approve the July 8, 2013 minutes as drafted. Joshua Degen seconded and motion carried 3:0 (Stuart Schulman absent, John Petropoulos abstained).

At 9:15 pm, Joshua Degen moved to adjourn the meeting. John Petropoulos seconded and motion carried 4:0 (Stuart Schulman absent).

Notes by Fran Stanley

Approved: Date Approved 8-26-13