

REPORT CONCERNING THE PERMITTING OF THE PROPOSED GELD BUILDING

Prepared by:

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The Electric Light Commission voted recently to reduce their Payment In-lieu of Taxes (PILOT) to the Town of Groton in Fiscal Year 2013 by \$15,000. They also informed the Board of Selectmen that they would consider reducing it in future years as well. The reason for this vote was, in their words, to recoup the additional costs they incurred during the permitting process to permit their new proposed building on Station Avenue.

At the request of the Board of Selectmen and Electric Light Commission, Kevin Kelly, General Manager of the Groton Electric Light Department, and Town Manager Mark Haddad were asked to perform a “post-mortem” study to determine what happened during that process. Assisting Mr. Kelly and Mr. Haddad were Land Use Director Michelle Collette and Conservation Administrator Barbara Ganem.

Mr. Kelly, Mr. Haddad, Ms. Collette and Ms. Ganem met several times to review and discuss the process. In addition, all minutes concerning the permitting process before the various Boards were thoroughly reviewed and reports were prepared from the perspective of the Light Commission, Planning Board and Conservation Commission. The main focus of the review was to determine what happened during the permitting of the new building, what could have been done differently, and what improvements, if any, should be made to the permitting process for the future. One of the first things that the review committee examined was the overall length of the permitting process. The following is a timeline of the process from initial concept of the proposed building to the issuance of the several permits:

<u>Date</u>	<u>Board/Committee</u>
11/3/2010	GELD brings proposed building concept to the Land Use Departments for comments.
11/17/2010	Six Month Demolition Delay Commences with Historical Commission (current GELD Administrative Building is over 75 years old and it was proposed to be demolished to make room for the new building)
2/23/11	Historical Commission Public Hearing on Demolition Delay
3/16/11	Historical Commission Vote to Allow Demolition
8/9/2011	Pre-Submission Review with Conservation Commission

8/10/2011	Pre-Submission Review with Town Center Overlay District Design Review Committee
8/30/2011	Second Pre-Submission Review with Conservation Commission
9/8/2011	Preliminary Meeting with Planning Board
10/11/2011	Electric Light Commission Meets with Board of Selectmen to Discuss Proposed Fire Station
12/1/2011	GELD files Notice of Intent (NOI) with Conservation Commission
12/10/2011	Site Walk with GELD; no engineer present
12/13/2011	Conservation Commission Opens Hearing on NOI
1/24/2012	Continuation of NOI Hearing – Concerns ranged from permeable area to number of square feet inside the 50’ buffer zone
2/13/2012	GELD files Abbreviated Notice of Resource Area Delineation (ANRAD) to correct wetlands delineation
2/23/2012	Pre-Submission Review with Planning Board – Planning Board raised a concern with the Wetland Delineation. Planning Board agrees that 21 parking spaces would be adequate for this project
2/25/2012	Second Site Walk with Members of the Conservation Commission to review inaccurate wetlands delineation. Questions were raised about missing flags in the field and misidentified flagging on the plan.
2/28/2012	Actual Wetland Delineation presented to the Conservation Commission by Ducharme & Dillis, the engineer who did the original delineation for the Station Avenue Overlay District. The Town GIS, used by GELD and previously approved by the Conservation Commission to determine wetland locations was not based upon a field survey.
3/13/2012	ANRAD Hearing Before Conservation Commission – ANRAD continued as there is a discrepancy between the plan and the flagging in the field. A third site walk is planned.
3/17/2012	Third Site Walk with Members of the Conservation Commission for ANRAD. Stan Dillis is present to match flag numbers with those shown on the plan.
3/19/2012	ANRAD and NOI Public Hearing Both Close – Decision Due in 21 Days
3/29/2012	Conservation Commission Approves GELD Plan under State Wetlands Protection Act, M.G.L. c. 131, §40, but denies Plan under Town Bylaw, Chapter 215 of the Code of the Town of Groton. ANRAD Plan approved as revised.

4/2/2012 Joint Meeting with GELD, BOS and Conservation Commission to figure out how to move the project forward after the Conservation Commission refusal.

6/26/2012 New NOI Filed with Conservation Commission

7/10/2012 Joint Meeting with GELD, Conservation Commission and Earth Removal and Stormwater Committee – CEI hired to conduct Peer Review (at this meeting, a member of the Conservation Commission makes statements that compel the Electric Light Board to file a complaint with the Board of Selectmen, which causes a delay in the permitting while it is resolved)

8/10/2012 Pre-Submission Review with Town Center Overlay District Design Review Committee

8/14/2012 Continuation of Earth Removal Stormwater Public Hearing - Hearing closed and permit issued.

8/14/2012 Conservation Commission NOI Public Hearing Continuation – Most issues resolved with Peer Review Consultant – Hearing continued for two weeks to resolve any lingering issues

8/28/2012 Conservation Commission NOI Continuation – Hearing Closed

9/11/2012 Conservation Commission issues Order of Conditions under Town Wetlands By-law.

9/20/2012 Planning Board endorses ANR for Station Avenue and Lowell Road

10/25/2012 Official Meeting with Town Center Overlay District Design Review Committee (TCOD)

11/8/2012 Meeting with TCOD to continue review of plans

11/15/2012 Meeting with TCOD to find mutually agreeable solutions

11/15/2012 Planning Board Public Hearing on Site Plan – First Official Meeting

11/28/2012 Final Meeting with TCOD – Letter of Recommendations Drafted (Published on 12/7/2012)

12/13/2012 Planning Board Public Hearing Closed and Permit Issued

From initial inception of the GELD proposal to final approval it took over two years. This fact raised concerns with the review of the project permitting process. A thorough review of all of these Committee meeting minutes was conducted by Haddad, Kelly, Ganem and Collette. From this review, it was determined that several issues created this lengthy process. It should be noted that not one issue caused this lengthy process, but a series of issues on both sides of the permitting. In the end, the project was permitted and GELD is moving forward with their building plans on Station Avenue. The following is a list of issues identified (not listed in any specific order), followed by an explanation of the issues:

Issues Identified During Review of Permitting Process

1. Lack of/misunderstood communication between GELD and Conservation Commission.
2. Original Delineation of Wetlands/Understanding of what pre-disturbed means.
3. Number of meetings/site walks needed prior to and during public hearing process in order to make a decision with no clear direction.
4. Proposal to construct Center Fire Station on same parcel as GELD Building
5. Memo of Understanding between the Board of Selectmen and Electric Light Commission.
6. Decision of GELD to file sequential permit applications, instead of utilizing expedited permitting as allowed by Chapter 43D.
7. GELD and their consultants were not able to successfully address the concerns of the Conservation Commission in both their plans and public presentations.
8. Personal Agendas/Overreach by certain boards.

1. Lack of/misunderstood communication between GELD and Conservation Commission.

From the review of the minutes and discussions with Kevin Kelly and Barbara Ganem, it is clear that there was a problem with the communication between GELD and the Conservation Commission. After the pre-submission meetings between both Boards, the Electric Light Commission believed that they had a gentlemen's agreement on the project and how the building could be situated on the site. They specifically asked for written comments but were told by the Conservation Commission that they could not provide written comments until they had an official filing before them. Nevertheless, GELD firmly believed that the Commission would allow minimal construction within the fifty (50') foot buffer zone because the area was pre-disturbed. In reading the minutes, it does not appear that such a commitment was made by the full Conservation Commission. At the second presubmission review meeting on August 30, 2011 there was a quorum of four Conservation Commission members who left the Light Commission with a positive impression that a deal could be struck. At the Conservation Commission meeting of December 13, 2011 which was the first official meeting under the Notice of Intent there was a substantial change in the demeanor of the Conservation Commission which made it extremely challenging to reach a deal. This misunderstanding/change doomed the permit approval from the beginning. GELD moved forward with their plans strongly believing they could work towards an agreement and they would receive their permit because the buffer zone had deteriorated to a terrible condition and their project would actually improve the wetlands buffer zone as provided for in both the local bylaw and state act. The Conservation Commission should endeavor to provide better guidance to applicants in pre-submission review meetings to avoid such a situation in the future. Conversely, without having something in writing, GELD should not have made such an assumption.

2. Original Delineation of Wetlands/Understanding of what pre-disturbed means.

The delineation of the wetlands is a crucial part of the notice of intent process. The exact location of the wetlands is how the buffer zone is determined. Wetlands which are not properly delineated on plans submitted for approval could lead to a significant delay in any project approval. This is exactly what happened with this project. Through a decision by their civil engineer to use the Towns' wetlands boundary which was approved by the Conservation Commission and recorded on GIS maps instead of actually going on site to determine the boundary (which did not change since the original delineation several years ago), the wetland line depicted on the Plan was wrong. The 2006 delineation was done by Ducharme & Dillis as part of the Station Avenue planning effort. The wetlands were flagged by Ducharme & Dillis and points located by GPS by a Water Department employee. Applied Geographics prepared the map for planning purposes only and that plan was approved by the Conservation Commission as an Order of Resource Area Delineation DEP# 169-976 on March 13, 2007. The delineation was not intended to be used in place of a field survey. GELD had to file for a new Abbreviated Order of Resource Area Delineation to correct this mistake. This led to a month's delay in the project, including additional expense to GELD as they had to hire another engineer to delineate the wetlands properly on the plan.

There is also a question as to whether or not the Conservation Commission should have applied the Town's Wetlands Bylaw to this project. Section 215-3 Exceptions of the Wetlands By-law states:

"B. Notwithstanding any provision of this Chapter to the contrary, the alteration of any residential, business or institutional building or customary appurtenance thereto, such as lawns, gardens, landscaped or other developed areas, where such structure or appurtenance existed prior to the effective date of this chapter, shall not be subject to this chapter, but shall be regulated exclusively by the provisions of M.G.L., c. 131, §40."

In addition, GELD assumed that since the entire area was altered, they would be improving the wetland with their project. However, §215-7(a)(3) sets the following standards for altered areas:

"Standards for altered areas. Where an adjacent upland resource area is already altered in such a manner that the purpose of this chapter is not being met, the Commission may issue an order of conditions for a project, provided that it finds that the proposed alterations will not increase adverse impacts on that specific portion of the adjacent upland area or associated wetlands and that there is no technically feasible construction alternative."

GELD also assumed that there would be a reasonable interpretation of no technically feasible construction alternative. Members of the Conservation Commission, in reviewing the proposed project, felt that the Light Commission did not adequately address if there would be an increase in adverse impacts, or prove that there was not a technically feasible construction alternative. GELD felt that pulling their transformer, new pole, and used pole storage area away from the current location directly adjacent to the wetlands and adding low impact water treatment to all of the runoff from their impervious surfaces was substantially improving the uplands. Better communication between the Conservation Commission and Light Commission during this process could have addressed this issue. The issue of "previously disturbed sites" was never fully resolved to the satisfaction of the parties, not only as a result of communication problems, but as a result of contradictory language in the Wetlands By-law. Please note that the Earth Removal Stormwater Advisory Committee treated the GELD project as a "redevelopment site"

under Stormwater Regulations. The standards for redevelopment differ from the standards for new development.

3. Number of meetings/site walks needed prior to and during public hearing process in order to make a decision with no clear direction.

From a review of the records, it appears that the Light Commission needed to attend over fourteen (14) meetings/public hearings/site walks with the Conservation Commission on this project. This is extremely burdensome and expensive to any applicant, not just the Electric Light Department. A review of the record further shows that all members were not present at all meetings (however, they were present at all public hearings, with the exception of a hearing Nadia Madden missed during her maternity leave). GELD would get direction during one meeting from those members in attendance, and then at the next meeting with other members reviewing this for the first time, they would receive different direction. This led to many starts and stops on this project. The Conservation Commission needs to provide better direction to applicants seeking their advice. While they cannot provide exact direction without a submitted plan, there is no reason why they cannot give clear direction to an applicant. Not until the second filing and at the continued public hearing on August 14, 2012 (a year after the initial meeting between GELD and the Conservation Commission) did the Commission provide a written outline of information the Commission needed to make a decision. This should have been done earlier in the process. This could have avoided a year's worth of meetings, delays and expense to the applicant. This situation described above is one of the reasons the Mullen Rule was adopted by the State Legislature. Only members present at all but one public hearing are eligible to vote on only after they have read the record of the hearing they have missed. This practice applies to all Land Use Permitting Boards, not only the Conservation Commission.

4. Proposal to construct Center Fire Station on same parcel as GELD Building

When the 2011 Spring Town Meeting declined to purchase the former Sacred Heart Church Property as the new location for the Center Fire Station, the Electric Light Commission was asked by Donald Black, Chairman of the Fire Station Relocation Committee if the Town could consider utilizing land on Station Avenue adjacent to their proposed building for the Fire Station. It was studied over the summer of 2011 prior to the initial meeting in August with the Conservation Commission. While it was determined that this site was not viable at first, once the 2011 Fall Town Meeting rejected Sacred Heart a second time, the Station Avenue location was re-examined. This was a very tight site to begin with. A high water table combined with adding more impervious area to the site proved to be extremely problematic. While this issue was studied separate from the Light Department's desire to move as far away from the Rail Trail as possible, the addition of the Fire Station issue complicated the overall presentation to the various Town Boards looking to permit the proposed GELD building. Considering this site for the new Center Fire Station definitely had an adverse impact on the GELD Building permitting.

5. Memo of Understanding between the Board of Selectmen and Electric Light Commission

The redevelopment of Station Avenue has been a major initiative of several Town Departments for many years, lead primarily by the Board of Selectmen and Planning Board. In 2010, when the Light Department first announced their intentions of staying on Station Avenue, the Board of Selectmen and Light Department entered into a Memorandum of Understanding on the proposed GELD building development. Specifically, the Board of Selectmen and Light Commission agreed to a land swap for the development. The Board of Selectmen would turn

the control of the former MacGregor Property to the Light Commission, and in return, the Light Commission would turn over the control of their property of equal size along the rear portion of their property that abuts Broadmeadow Road to the Board of Selectmen. Another component of the MOU was that the surplus land left over (after they constructed their building) along Station Avenue would be sold to kick start Station Avenue redevelopment and reimburse the rate payers for the Downes Property purchase. In order to make this a viable agreement, the Light Department would be required to build as close to the wetlands as possible. This was the most significant impact to permitting the building. For reasons outlined in Item #2, GELD's adherence to the MOU with the Board of Selectmen had a significant impact on their ability to receive approval from the Conservation Commission.

6. Decision of GELD to file sequential permit applications, instead of utilizing expedited permitting as allowed by Chapter 43D

Chapter 43D of the Massachusetts General Laws provides for expediting permitting for projects within certain zones in Town. The Town of Groton, when it created the Station Avenue Overlay District (now known as the Town Center Overlay District), adopted MGL, c. 43D. This allows for what is called expediting permitting. Better explained, it requires a single permit application for a project and requires all permits to be either issued or denied within 180 days (six months) after a complete set of plans is received by all Boards. Had the Light Commission utilized expedited permitting, the lengthy permit process may have been avoided. By filing a single permit application as required by Chapter 43D, it would have forced the Conservation Commission, Planning Board, Earth Removal Stormwater Management Committee and other Town Boards to issue their approval, or deny the project within 6 months. This could have saved the Light Commission at least one year (and significant consultant fees) of permitting delays. That said, the Light Commission strongly felt that expedited permitting would not have helped move the project forward. An applicant can not prepare a complete set of plans for all Boards without a building footprint, this project, from the onset, had difficulty because of the issues related to the wetlands, and the challenges the wetlands buffer caused in defining a building footprint. They felt by tackling the most difficult permit first (Conservation Commission approval) and receiving approval would have created a "tail wind" which would help push the project forward. They felt expedited permitting would have made the process more expensive because they would need a full set of plans without having a secure footprint. In the end, we may never know the effect Chapter 43D would have had on the project. In what may be an indication that the Light Commission strategy was correct (although it took over a year to receive), once the Conservation Commission approved the project, the approvals from the Planning Board and Earth Removal Stormwater Committee were very routine.

It is always easier to have 20/20 hindsight, but many problems with GELD's project could have been avoided with the Expedited Permitting process which fosters interaction and communication among permitting Boards, but because they did not have a solid footprint due to wetland buffer concerns, they chose not to pursue Expedited Permitting. The Town has been encouraging all applicants to take advantage of the Town's voluntary "coordinated permitting" process since the Land Use Departments were consolidated over four years ago.

7. GELD and their consultants were not able to successfully address the concerns of the Conservation Commission in both their plans and public presentations.

GELD Manager, Kelly, and GELD's civil engineer, Places, Inc., began the pre-submission review process with the Conservation Commission. At the second pre-submission review meeting they were joined by the GELD Board and by the end of that meeting, GELD felt very positive about the process going forward. Things changed so substantially at the first public hearing on the Notice of Intent that Manager Kelly began looking for legal services from a local attorney very experienced at presenting plans and public presentations. GELD ended up retaining Attorney Robert Collins with an expected budget of \$4,000 to communicate the plans and public presentations for the permitting process. Public presentations by Places were difficult to follow and did not completely address issues raised by the various Boards. While one cannot say definitively if another Engineer would have done a better job addressing the wetland concerns, Places did not adequately address them in both their plans and public presentations. It appears that matters improved significantly when Attorney Collins combined with Ducharme & Dillis presented GELD's plans to anew and improved Conservation Commission in mid 2012. By the time successful communication had taken place, GELD had spent over \$40,000 on legal for the permitting process.

8. Personal Agendas/Overreach by certain boards

In reviewing all of the issues surrounding the proposal and ultimate approval for GELD to construct their new operations center on Station Avenue, a thorough review of all meeting minutes was completed. In reviewing these minutes, it was clear that issues other than the merits of the proposal came into play in making a decision by certain Boards. Some of the comments noted had to do with moving the GELD facilities off of Station Avenue to allow for the redevelopment of Station Avenue and whether or not global warming would be impacted by this proposal. Another area of concern was asking the Light Commission how much land they had and to inventory that land. In addition, a request for a cost benefit analysis of their project was requested, as well as one Committee member asking in a public meeting why a new facility was even needed. Another member from the Conservation Commission asked whether or not trucks would be visible from Station Avenue. This all appears to be outside the scope of project review and impact on wetlands. Projects should be reviewed based on the merits of the project and plans presented, not whether or not a board member agrees with the project. What also raised a concern in the review of the minutes were members of the Conservation Commission asking for a donation of land to mitigate the impact of the wetlands on Station Avenue. Not every applicant that comes before a Town Board has the ability to make donations of land or money to the Conservation Fund. The Commission should avoid the appearance of requesting donations in the future.

CONCLUSION

It does not appear that any one issue caused the lengthy permitting process. It was a combination of several issues. Neither the Town's permitting Boards nor the Electric Light Department is completely blameless in this process. What is clear from this review is that the approval process before the Planning Board, Earth Removal Stormwater Management Committee and Design Review Committee went smoothly and did not cause any additional costs that are not faced by all applicants before Town Boards. The major obstacle to this project approval was the issuance of an Order of Conditions from the Conservation Commission. A lack of communication between the applicant and the Conservation Commission caused problems for this project from the onset. Lack of flexibility when considering "the public good" and "adverse impacts" on predisturbed wetlands buffer also caused substantial challenges. Adding personal agendas, the decision not to pursue expedited permitting and the Center Fire Station only added to the complication of permitting this project. What is also of importance is that all Town Boards pursuing various projects should follow the same rules that all applicants follow and not expect special treatment. The standard in the local wetland bylaw states "the proposed alterations will not increase adverse impacts on that specific portion of the adjacent upland area or associated wetlands and that there is no technically feasible construction alternative" is an extremely subjective standard that should be addressed by the Wetlands Bylaw Review Committee.

The Town should take this process as a learning experience and work to improve the way it goes about permitting various projects, from routine to difficult. As a matter of fact, the Land Use Departments have already taken steps to improve communications with applicants based on these issues.

1. Improved Communication to Applicants on Peer Review Cost.
2. Appointment of Wetlands Bylaw Review Committee.
3. Better Communication from Boards and Committees to applicants on expectations.
4. Improved Flexibility from Town Boards and Committees when reviewing permit applications.
5. Implementation of Coordinating Permitting among Land Use Departments.

The Town will continue to strive to improve its delivery of services. It is recommended that the Town schedule a seminar with Town Counsel on how to properly conduct a public hearing and the role of Board Chairman. It is extremely challenging for any applicant when receiving input from all of the individuals on a board rather than "official" requests from the majority of a board. Outlining what issues are relevant and what issues should be avoided would be very helpful.

A two way communication procedure has to be created and should be followed for all decision makers. The process should be similar to:

1. An applicant needs to provide the proper information needed for the permitting Board to make their decision far enough in advance so the Board has time to digest it.
2. The Board needs to clearly communicate back what the Board as a whole needs and the timeframe involved in that request. The list of deliverables should include everything needed or missing.
3. Return to step one. This is a cycle that should have a clearly defined limit of iterations.