



TOWN OF GROTON

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WETLANDS BYLAW REVIEW COMMITTEE

David Black, Chair
Steven Webber, Vice Chair
Marshall Giguere, Secretary
Peter Cunningham
Robert Pine
Scott Wilson
Alexander Woodle

Meeting Date: June 27, 2012

Members in Attendance: David Black, Peter Cunningham, Marshall Giguere, Robert Pine, Steven Webber, Scott Wilson, Alexander Woodle

Others in Attendance: Michelle Collette, Barbara Ganem

Location: Town Hall, First Floor Meeting Room, 173 Main Street, Groton, MA 01450

Robert Pine was appointed to the Committee but has not yet been sworn in by the Town Clerk so he did not vote.

Peter Cunningham posted an initial agenda for the tasks of organizing the commission by electing leadership, discussion of an approach for bylaw or regulatory changes and the scheduling of future meetings.

Initial discussion centered on the goal that leadership of the Commission avoid the appearance of any particular outcome or agenda. Specifically, any person identified with a position such as the bylaw's definition of the public good or the interests of Lost Lake homeowners may not have the appearance of a neutral arbiter.

Peter Cunningham nominated David Black to serve as Chair. Steven Webber seconded. Motion carried 5:0 [Robert Pine did not vote and David Black abstained].

Alexander Woodle nominated Steven Webber to serve as Vice Chair. Peter Cunningham seconded. Motion carried 6:0 [Robert Pine did not vote].

Peter Cunningham explained that the office of clerk has light duties, but may be needed in order to sign for the minutes of the group's public meetings.

Peter Cunningham nominated Marshall Giguere to serve as Secretary. Steven Webber seconded. Motion carried 5:0 [Robert Pine did not vote and Marshall Giguere abstained].

Peter Cunningham stated that it may be helpful for the Commission to examine the historic intent of the wetlands bylaw (Chapter 215, initially adopted May 20, 1980, repealed and replaced in 2001). As preparation for this meeting, Alexander Woodle interviewed two planning firms, two homeowners and recalled his own experiences before the Conservation Commission (Con Com). Steven Webber suggested that the Commission's review include a look at the real science behind certain fixed measures such as the one hundred foot buffer and the fifteen feet from septic.

Scott Wilson said that Groton's bylaw was based on models from the Massachusetts Association of Conservation Commissions. Michelle Collette agreed and noted that the Dennis bylaw was upheld by Massachusetts courts and Groton subsequently enacted the bylaw in 1980. At that time, the Commonwealth's Department of Environmental Protection (DEP) routinely overruled localities so the Dennis ruling opened up a path that would allow for the preservation of local control. David Black added that in the late 1980s lots of rulings were couched as environmental decisions but were actually political decisions.

Peter Cunningham wanted the Commission to look at the role for engineering solutions and mitigation. David Black observed that it would be a simple matter if the wetlands bylaw only goal were to preserve water quality because the science on water quality is well established. Because the wetlands bylaw has the additional charge of protecting wildlife habitats, this element is harder to discern and put into an enforceable bylaw.

Peter Cunningham stated that wetlands differ. For example, the Station Avenue wetlands have accommodated a two highly polluting uses -- rail road station and coal depot – for many decades.

Robert Pine stated the need for common sense. There are carved out exceptions in the current bylaw that are Groton changes to the original bylaw template. For example, the existing lawns exception was written with the Lost Lake small lot homeowners in mind. Robert Pine said that it is obvious that not all wetlands and buffer zones are created equally. It is hard to create those rules and enforce them in a fair realistic way. Michelle Collette offered that this point brought the group back to politics. The original proposed bylaw was withdrawn, not defeated, after comments about the wording of certain portions. The Bylaw was then resubmitted at the next town meeting and adopted. The original amendment to the Bylaw was postponed indefinitely at Town Meeting (October 2000, Article 15). Changes were made to the bylaw and then the changed bylaw did pass at a later meeting (April 30, 2001, Article 41). Robert Pine agreed saying that he was a strong opponent at the first Town Meeting and a strong proponent the second time around.

Alexander Woodle noted that he has filed notices that brought him before the Con Com in three instances. Each time went well and the Con Com worked with him. People are intimidated by the bylaw and are willing to take chances and try not to get caught.

Peter Cunningham observed that it is not easy for homeowners to control invasive species in a manner that adheres to state law and local bylaws. Barbara Ganem explained that Groton needed to use the state forms because the single application process covers matters pertaining to both the local bylaw and the state's laws. The DEP Notice of Intent application package is nineteen pages long and includes an eight page application and other explanatory information [see <http://www.mass.gov/dep/water/approvals/wpaform3.pdf>]. Even so, there is a blanket permission to remove weeds and even the hand raking of weeds is allowed.

Robert Pine commented that as a rule people are intimidated to appear before town boards in general. Marshall Giguere added that this comment can apply to any board not just the Con Com.

David Black asked the group if there are components that are particularly onerous that should be removed. Too contentious? Con Com has authority to allow permission but chooses not to.

Peter Cunningham stated that the definition of public good or public benefit drives his own interest in this topic. Marshall Giguere replied that no less an august body than the U.S. Supreme Court took a pass on attempting to define the public good. Marshall Giguere cited the eminent domain case Kelo v. City of New London, 545 U.S. 469 (2004). There, the Supreme Court deferred to the local definition of public good.

Scott Wilson noted that some proposals concern the interests and trigger the jurisdiction of more than one board. More common hearings in such cases may be beneficial to foster better inter board communications. There is nothing in the bylaw about joint hearings and whose interests might be compromised.

An applicant wishing to appeal a local bylaw decision brings their case to superior court. At the time of adoption, MacGregor thought that the appeal of a bylaw decision to court instead of the DEP would provide a more neutral arbiter.

David Black wondered if the Commission should mandate a cooperative approach if the plan is thought to be in the public good. Or, remove the public good provision entirely? Robert Pine replied that instead of removal, the Commission should clarify if possible. Perhaps the Commission should clarify the regulations instead of the bylaw.

Peter Cunningham suggested that a Town Meeting vote may be an indicator of public good. Steven Webber suggested a public good committee. The group continued to discuss the proper scope for its review. Rather than looking at problem project, Scott Wilson asked if there are things to be learned from an example of a good project. Marshall Giguere cited 134 Main Street as an example of a good project. In the end, the Town of Groton and the Con Com got some benefit. There was temporary disturbance of the fifty foot buffer, a permanent conservation restriction and a third bedroom of affordable housing.

Michelle Collette provided a comment on public benefit measures that involve writing a check. Not all applicants are capable of writing a check and, from the outside; it can look like buying a permit. Case law suggests that there must be a rational nexus with the project. David Black suggested that the Commission might prohibit

checks under the bylaw and/or regulations. Barbara Ganem expanded on the rational nexus with the thought that on site mitigation is best and near site mitigation is better.

Robert Pine commented that the notion of horse trading is huge in Groton. He continued with the thought that the Town of Groton has benefited enormously from such efforts and recommends giving Con Com discretion. Peter Cunningham stated that the process needs to be fair to everybody, including people with modest means.

David Black recommended to the Con Com that they write a pamphlet. Scott Wilson added that the pamphlet or guidelines would ideally be less than ten pages. David Black continued with the question – under what circumstances can work be done within a buffer zone, fifty foot, one hundred feet, previously disturbed land versus the nature of the requested disturbance.

Marshall Giguere recommends that applicants file a Request for Determination (RDA) instead of the Notice of Intent (NOI). However, the Massachusetts application process allows the applicant to present as long as they choose. This applicant driven process can result in multiple hearings and extended timelines for decisions. Peter Cunningham wondered if a conservation board of appeals was needed.

Robert Pine suggested a close reading of § 215-5 Permits and Conditions. C. where a significant public or environmental benefit may be allowed if the applicant can prove no loss to wetlands values.

David Black questioned how the Groton Electric Light Department (GELD) could think that they could succeed with their proposed Station Avenue plan. Could they have misread the bylaw? The group observed that the GELD application never addressed storm water issues even though the area is known for its high water table. GELD's new NOI filing should address that matter.

The local bylaw and state law provide the Con Com with a future orientation. David Black noted the tremendous freedom that the Con Com enjoys with their level of action. David Black asked the group if there was anything that the committee members found objectionable or missing from either the bylaw or the regulations. Items offered included:

1. definition of public good;
2. clear permission to use its discretion;
3. variance;
4. § 215-9 ten contiguous square feet freshwater wetland definition;
5. § 215-9 storm water runoff in seasonal wetlands;
6. § 215-7, A – 1A disturbances within the fifty foot buffer;
7. definition of a structure; and
8. wetlands crossings (see limited projects at state level).

The group agreed to read through the bylaw and perhaps even the regulations and offer comments. Scott Wilson asked for the comments to be submitted to Fran Stanley (fstanley@townofgroton.org) and compiled into one document for the collective review of the group. Michelle Collette will ensure that a Microsoft Word version is made available to Commission members.

Next meeting: Wednesday, July 11, 2012, 4 pm to 5:30 pm at Town Hall with an agenda item of further discussion of the bylaw.

Steven Webber moved to adjourn the meeting at 5:30 pm. Alexander Woodle seconded. Motion carried 6:0 [Robert Pine did not vote].

Notes by Fran Stanley.