



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: August 1, 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, Craig Auman, Bruce Easom, George Barringer

Handouts: Agenda
July 11, 2012 minutes (draft)
Town Counsel opinion on 134 Main Street dated June 10, 2011

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

David Black called the meeting to order at 4:05 pm and asked committee members to review the minutes from their prior meeting on July 11.

Peter Cunningham made a motion to accept the July 11, 2012 minutes as corrected. Marshall Giguere seconded. Motion carried 7:0.

Peter Cunningham reported that during its July 23, 2012 meeting, the Board of Selectmen voted to amend the Wetland Bylaw Advisory Committee Charge to include a review of the Conservation Commission's Regulations for the purposes of clarification and consistency with the bylaw. Any recommendations should be made directly to the Conservation Commission.

Marshall Giguere commented that the constraints of the state wetlands law have not been reviewed by this committee. Perhaps Town Counsel can give a presentation to this group? The group discussed the fact that state law takes precedence should a locality decide to waive constraints of the local bylaw. Prior case law has clarified that a local bylaw can be more stringent than the state law, but it cannot pre-empt state law by instituting more relaxed standards than the state law demands. The group then discussed whether David Black might offer a one meeting colloquium on the value of the buffer zone. After some discussion, committee members concluded that a presentation by Town Counsel would be useful. Peter Cunningham and David Black offered any needed assistance to Marshall Giguere in setting up Town Counsel training. The group noted that the Town should try to line up the environmental specialist in the Kopelman and Paige law firm (Town Counsel) rather than rely on an overview by a general municipal lawyer.

Taking up the matter of the a buffer zone that consists of previously disturbed land, Steven Webber asked about allowing a project that results in 'no worse' conditions for instances when the fifty foot buffer zone is already in use. This approach assumes a grandfathering of pre-existing use. The group discussed the evidentiary difficulty of establishing use at particular times and over time. Marshall Giguere stated that the state law does not cite fifty foot buffers as its buffer references are in one hundred foot increments. Reference was made to Town Counsel's June 10, 2011 opinion on buffers in the field behind 134 Main Street. A copy of this three page legal opinion was distributed.

Michelle Collette pointed out the local bylaw exception in § 215-3b for customary appurtenances including lawns. If the exception applies, then use is governed exclusively by MGL ch. 131 § 40. Robert Pine observed that this clause is now ten years old and may need attention or change. David Black asked if there was a way to give the option of jurisdiction to the Conservation Commission in the Bylaw.

The committee continued to discuss the § 215-3b exception. It was explained that the exception was drafted to garner support from the Lost Lake community as this support was necessary to pass the local bylaw at Town Meeting. On the subject of grandfathering, Scott Wilson stated that this exception, while written with Lost Lake's interests in mind, benefits all parts of Town because you must exclude existing structures to avoid unfair results when adding land use restrictions.

Robert Pine's proposal for § 215-3b met with general approval from David Black and Steven Webber. Robert Pine's recommendation read:

"This is a somewhat unusual and rather liberal and flexible provision for a wetlands bylaw, but a provision that has generally served the Town well given the large number of existing uses within prescribed buffer zones. There are two issues with this section. The first is the need for more clarity as to what land qualifies for an exception. Some of the limits of this section were defined in Town Counsel's opinion relative to 134 Main Street but further clarification is important. The words "such as" and "or other developed areas" create confusion. The second issue is that use of this section depends on knowing conditions on a specific date: September 19, 2001. Documenting conditions on September 19, 2001, becomes increasingly difficult with each passing year. I think that consideration should be given to changing this section to a performance-based requirement that would apply to any existing uses within the buffer zone. Changes to existing uses could be allowed if an applicant can demonstrate there would be no permanent degradation to the wetlands or buffer zone. This is similar to the last part of Section 215-5.C that requires that the interests of bylaw be maintained."

Peter Cunningham asked the group to avoid fragmenting its recommendations. Instead, the committee should present all recommendations together.

Steven Webber moved that the committee put this Bylaw change in its final package of recommendations. Peter Cunningham seconded. Motion carried 7:0.

Next, the committee turned its attention to § 215-5c or what is thought of as the significant public or environmental benefit exception. Robert Pine suggested using either a Planning Board letter or a Board of Selectmen letter claiming public or environmental benefit to trigger the possibility of relief from the Bylaw by the Conservation Commission. The applicant would still need to show that its plan must not degrade the resources.

Michelle Collette commented that a lot of things have an identifiable public benefit (example, an airport) so the committee may be better off focusing on the identification of an environmental benefit. Robert Pine cautioned that maintenance of the one hundred foot buffer is very important and he is reluctant to approve any measure that might open the door to erosion of those protections. Scott Wilson offered that the door may open for awhile for applications that are too optimistic but that the Conservation Commission will sort out the meritorious projects during its review.

Peter Cunningham introduced the idea of approving a mitigation plan that serves to improve on existing conditions. Marshall Giguere stated that it is hard to improve on a natural buffer. He continued with the observation that a natural buffer takes ten thousand years to create. Alexander Woodle noted that the burden is on the applicant to prove that a proposed plan would result in a benefit to the wetlands. Steven Webber commented that a wetlands buffer can be created in two years as it is dependent on when the plants come in. Robert Pine stated his opinion that one can design and build a better wetland but most people do not do that. Steven Webber surmised that if a project proposes a better wetland then it should be potentially approved.

Peter Cunningham asked what the framers of this exception were thinking at the time the provision was written. Robert Pine said that he worked on the language and that he had the Station Avenue wetlands in mind at the time. David Black offered his concern that he wants the Conservation Commission to have the flexibility it needs.

Steven Webber wondered whether the Bylaw exception should be restricted to Town projects versus a broader public good. Robert Pine reminded the group of the need to attend to the precedent aspect of Conservation Commission decisions over time. Barbara Ganem questioned whether it was appropriate or good to hold the public to a higher standard than the municipality. Peter Cunningham responded that he was comfortable with the distinction due to the fact that municipal projects provide benefits to a larger number of people. Scott Wilson added that a public project may not have a public benefit since not all public projects create a public benefit.

Peter Cunningham suggested that the reinforcement of the James Brook crossing on Broadmeadow Road to support large emergency vehicles may exemplify a public project that confers a public benefit. Marshall Giguere stated that it is always a juggling act or negotiation with the applicant. George Barringer said that as difficult as this may be, the committee might consider putting public good and benefit in the definitions section. Scott Wilson said that we might try to offer some examples of public good.

David Black said the committee will have some sort of language to encourage inter-government communications and coordination.

Marshall Giguere asked the committee to remember that wetlands have value. The problem is that it is hard to quantify the public benefit of the wetlands. Marshall Giguere noted that State law delineates only two kinds of wetlands – wetlands and rivers. Robert Pine commented that there is an argument to be made that previously disturbed wetlands need an even larger buffer than buffers that have remained in their natural state. Peter Cunningham freely accepted the fact that there are benefits to maintaining wetlands, but maintained that not all the wetlands are the same.

Steven Webber used the example of the demolished MacGregor property (situated on a parcel parallel to Station Avenue). He asked how this property was considered under the Bylaw. Marshall Giguere said that for previously disturbed land, one cannot make it worse than it was.

Alexander Woodle asked about the interaction between the Bylaw and the ACEC (areas of critical environmental concern). Robert Pine answered that the ACEC does not affect the Bylaw but that the Natural Heritage designation can add restraints.

David Black stated that the committee might be able to codify support for the Conservation Commission in the regulations. Scott Wilson asked for inclusion of inter-board coordination.

David Black suggested that there might be net environmental benefit shown for proposed projects operating in areas of existing uses as of 2001. Peter Cunningham stated that Town Counsel may need to weigh in on a date certain for existing uses.

Robert Pine suggested creation of an administrative route for removing invasives that avoids RDAs. Marshall Giguere reminded that the state wetlands law determines the need to file. A suggestion was made that the regulations allow right to remove invasives. Also, the committee may focus future attention on the regulations pertaining to wetlands replication.

Next meeting set for Wednesday, August 15, 2012, 4 pm to 5:30 pm at Town Hall.

Marshall Giguere moved to adjourn the meeting at 5:30 pm. Alexander Woodle seconded. Motion carried 7:0.

Notes by Fran Stanley.