



# 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: November 20, 2012

Members in Attendance: David Black, Peter Cunningham, Steven Webber, Robert Pine, Alexander Woodle

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Others in Attendance: Craig Auman, Michelle Collette, Bruce Easom, Barbara Ganem,  
Erich Garger, Kevin Lindemer (GELD Commissioner), Kevin Kelly (GELD Manager)

Handouts: Recommendations under consideration (drafted by Robert Pine)  
November 15, 2012 letter to Committee (drafted by Alexander Woodle)  
November 20, 2012 e-mail to Committee (drafted by John Mann)  
October 24, 2012 minutes (draft)

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

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David Black called the meeting to order at 7:07 p.m. and convened the Public Hearing. David Black provided an overview of the Committee's past efforts and deemed the presentation by Town Counsel particularly helpful to the Committee in its work. Steven Webber clarified that any proposed changes that the Committee identified in the regulations would be directly recommended to the Conservation Commission for its consideration.

Michelle Collette clarified that proposed changes to the wetlands Bylaw can be made if Town Meeting voters approve the measure with a simple majority vote. By contrast, all proposed changes to the zoning Bylaw require a two-thirds level of support from Town Meeting voters.

David Black described the changes contemplated by the Committee as administrative changes, small wording changes and recommendations for future practice that might clarify Conservation Commission actions to improve the dynamics of the process. Regarding the draft Recommendations, Robert Pine noted that Marshall Giguere is still considering the wording of some of these changes.

Peter Cunningham pointed to Section 214-3 language as an exception that has outgrown its usefulness. Robert Pine added that the proposed change updates the exception by bringing such lots under the Bylaw but still allows for things to happen on those lots. Committee members followed up on this language. Michelle Collette noted that the Bylaw has been in effect for ten years and she suggested that the amended language end after the phrase "interests of the Chapter will be maintained". This edit would leave off the 'no reasonable alternative' bar as it may be too high. For example, Michelle Collette explained that a reasonable alternative might be interpreted to mean no building and no alteration at all. Peter Cunningham agreed that with the importance of the 'interests of the chapter' standard in this context.

Robert Pine explained that this Bylaw provision is of great significance given the fact that Groton has a huge amount of wetlands edge and stream edge areas. This comment met with general agreement.

David Black recognized Kevin Lindemer, one of the three elected commissioners for the Groton Electric Light Department. Kevin Lindemer stated that he and Manager Kevin Kelly are here because of their experience with the Conservation Commission. Lindemer referenced the new GELD facility that was recently permitted on Station Avenue. Lindemer stated that there are unintended consequences with any regulatory effort and our actual experiences highlight this aspect. In fourteen months, GELD attended fifteen meetings and expended \$75,000 of ratepayers' dollars that did not need to be spent. We are in a unique position to comment because we have an alternative. We could have built on our existing footprint on Station Avenue.

Kevin Lindemer asked whether the Town needs to have this Bylaw. Is the Commonwealth's Wetlands Protection Act (WPA) inadequate? From a plain reading of the Bylaw, this vision is not set out to explain the rationale for an additional regulation. Peter Cunningham explained that this conversation occurred ten years ago when the Bylaw was initially adopted at Town Meeting. Peter Cunningham expanded on the particular conditions in Groton with a reference to the fact that three hundred and fifty years ago the native Nashaway tribe, a group of Algonquin speakers, called the Groton area Petapawag, a name that translates to 'swampy place'.

Robert Pine added that there are some very strong reasons for the Bylaw in Groton. Craig Auman cited the overview that the Massachusetts Association of Conservation Commissions website map provides (see [http://maccweb.org/resources/bylaw\\_map.html](http://maccweb.org/resources/bylaw_map.html)). On that map, the vast majority of the communities located in the eastern third of Massachusetts have bylaws. Going west, the numbers of communities that have bylaws fall off. The state WPA is clearly a compromise. There are many things that are not protected in the WPA, such as all vernal pools. David Black agreed with Lindemer's initial assertion that the exercise of articulating the reasons for the enactment of the Bylaw is a good one.

Kevin Lindemer cited Section 215-4(C) Coordination with other boards. Practical experience is that this does not work very well. In Lindemer's view, the provision created activity and paper work. Under Section 215-4(D) 2. Consultant Fees, the applicant's money is important. Lindemer would like to see provisions that have the effect of not spending the applicant's money without telling the applicant and putting a control on the costs. The issue is how to bring fiscal management to these points. Peter Cunningham responded that he is sensitive to this comment regarding setting a not to exceed amount.

Michelle Collette, Town Planner and director of the Land Use Department spoke. She stated that a new policy with respect to consultant fees was rolled out at the Land Use Department meeting that morning. The new policy addresses issues with respect to scope of work, written estimates, not to exceed orders and written notices. This new policy will apply to all boards that hold applicant's funds. Steven Webber commented that he is happy to hear that. Several boards do not seem to care about applicants' money and this goes well beyond the Conservation Commission. Boards can order more tests which applicants must spend money to perform and these actions can cause a month's delay in reaching a decision. Steven Webber concluded that this matter calls for a high level policy about how to deal with that.

Next, Kevin Lindemer recommended that the Bylaw simply state that building within the one hundred foot buffer is a stop order unless there is a clear path to approval. David Black commented that approximately half of the discussions of the past five months have addressed this point. Peter Cunningham explained the change that will have other boards recommend to the Conservation Commission that a particular proposal concerns the public good. Steven Webber noted that unless the Conservation Commission accepts a determination of public good, then the change will not be useful. Kevin Lindemer stated that when GELD discussed it with the Conservation Commission, we had a circular argument. We quantified the impact of building elsewhere economically and received an argument citing intangibles. Lindemer commented that Board of Selectmen is in the best position to weigh in on the issue of public good and the only group that he would want involved in this determination. Peter Cunningham said that as a Selectman, he would look to the Master Plan as he would want to base the determination on some process that was inclusionary. Robert Pine noted that the electric light department's public purpose is only one example of a public good.

Bruce Easom did not find recognition of public good difficult. Instead, Easom said that the crux of the matter for him was weighing the magnitude of the public good for the utility versus the magnitude of the public good of preserving the wetlands. Michelle Collette recommended that the particular public health concerns of contaminated waste sites such as Conductor Lab lead her to recommend mandatory consultation or a joint meeting with the Board of Health as well as the Conservation Commission and the Board of Selectmen.

Craig Auman stated that the Conservation Commission needs to retain a level of discretion. Auman gave the example of a plan that could be improved from the Conservation Commission's standpoint. What happens when the Conservation Commission asks for improvements and improvements are not made? Peter Cunningham added that the Town has had colorful processes in the past but that a review of the past is not helpful in the present instance. Robert Pine and Peter Cunningham pointed out that even with a finding of public good, the protections are still there.

Next, Kevin Lindemer directed the Committee's attention to Section 212-5 (D) language regarding denials based on 'failure ... to submit necessary information and plans'. In GELD's case, an economic analysis of alternatives

was requested. These were off site alternatives. Is it the intention of the Bylaw to give such broad reach? Where is the cutoff on due diligence? Robert Pine responded that this sort of provision is typical in many board's bylaws because Town Counsel wants boards to make a clear expression of grounds that they rely on for denials. As with many provisions, there can be room for abuse. Regarding the matter of costs, Pine gave his opinion which is based on having represented hundreds of plans. From Pine's experience, costs are not usually part of this because the Conservation Commission's focus is to protect the resource.

Lindemer asked if the Committee was comfortable with the power vested in the Conservation Commission in this provision. It may rarely happen that an applicant is asked to produce the economic alternatives of building off site, but it happened to us. Should there be a boundary? Perhaps there is a different answer for public versus private.

Moving on to Section 215-6(C) on notice and hearing, Lindemer shared the perspective that from the applicant's point of view it can be difficult to discern whether it is being asked questions by seven individuals or the Conservation Commission asking as a whole. However, at one point, after several meetings, the Conservation Commission provided to GELD a written list of questions and this was the best direction that we received because it focused our efforts and helped to advance the process. Steven Webber characterized this experience as another high level question as this happens in other committees too. Michelle Collette commented that a motion for continuance of the public hearing should include articulated list of what is expected and/or hoped for the board to receive from the applicant. The applicant must be okay with the continuance of the public hearing too.

On Section 215-7 (A)(3) standards for altered areas, Kevin Lindemer commented on the Committee's proposal to replace technically with reasonable. Inserting reasonable in the place of technically takes an objective criteria and replaces it with a subjective measure. An evaluation of the economic impact of the action is present only in the sense that costs don't matter for this concept. David Black stated that the Committee has spent time on this point as well.

On Section 215-12 burden of proof, Kevin Lindemer asked whether the Committee wanted the applicant to have the burden of proof. Robert Pine offered the comment that this language is another typical provision for local bylaws.

Finally, Kevin Lindemer suggested that there was nothing on mitigation spelled out in the Bylaw that he could see. He recommended putting a set of boundary conditions around what can be asked for and where. Set a limit as some requests are beyond reasonable. How about mitigation for land in a buffer zone to be land in buffer zone, or some other expression of 'like for like'. David Black stated that the Army Corps of Engineers has such things. We should look there as the wording might already exist. Peter Cunningham commented that this discussion gets to the horse trading that can occur between applicant and a permitting board. David Black stated that setting standards for mitigation in the buffer zone is something that we will have to think about considering the huge variety of buffer zones. Specifically, the wetlands can have different values as a buffer that filters storm water is not equal to a buffer that serves as a wildlife corridor.

Bruce Easom stated that there is a spectrum of opinion on the Conservation Commission. Easom looks at some mitigation offers in terms of duration of the impact. For example, has the Conservation Commission been offered a short term remedy (one time only pulling of invasives) for a long term impact (building within the buffer zone for an indeterminate length of time). Michelle Collette suggested that this sort of information is in the regulations and that the issue can be looked at there. Bruce Easom noted that a true one to one mitigation effort might be an offer to tear down a building in the buffer for every new building that is placed in a buffer.

Kevin Lindemer asked whether it is the proper purpose for the Conservation Commission to use the Bylaw to collect more land to be owned by the Conservation Commission. If so, state this goal in the purposes of the Bylaw. Robert Pine said that this would not be a permissible purpose. Committee members thanked Kevin Lindemer and Kevin Kelly for their comments and noted that their perspective was helpful. The group then generally discussed Groton's reputation among developers. A lot of towns are known to be easy; however, some towns are hard to work with than Groton. Steven Webber noted that part of Groton's reputation is old, perhaps ten years old whereas the experience and reputation has improved in the past five years.

Alexander Woodle reminded the group of the freshwater wetlands definition and the Committee's stated interest in improving that language. Robert Pine promised to revisit that point. Woodle then suggested a practice change of keeping the hearing open during the discussion of the order of conditions in order to level the playing field for

the applicant. Michelle Collette explained interdepartmental policy is to discuss before the hearing is closed. After the hearing is closed, then the decision must be made on the record. The order of conditions is not open for discussion to applicant and abutters. This process is ordered in this way in order to preserve the civil rights of the abutters. Craig Auman suggested that the Conservation Commission could handle the issue in this way – offer applicant a copy of its boilerplate order of conditions language and then verbally describe any anticipated unusual conditions then close the public hearing, then vote. Michelle Collette asked the group to remember that support staff are working under tight statutory deadlines and juggling heavy work loads as it deliberates practice changes.

*Robert Pine moved to continue the Public Hearing until 4 p.m. on Wednesday, January 16, 2013. Steven Webber seconded. Motion carried 5:0 (Marshall Giguere and Scott Wilson both absent).*

*Peter Cunningham moved to accept the September 19, 2012 minutes. Steven Webber seconded. Motion carried 5:0 (Marshall Giguere and Scott Wilson both absent).*

*Peter Cunningham moved to accept the October 24, 2012 minutes. Steven Webber seconded. Motion carried 4:0 (Marshall Giguere and Scott Wilson both absent, Steven Webber abstained).*

Next meeting set for Wednesday, January 16, 2013 at 4 p.m.

Notes by Fran Stanley.