



TOWN OF GROTON

173 Main Street
Groton, Massachusetts 01450-1237
Tel: (978) 448-1111
Fax: (978) 448-1115

WETLANDS BYLAW REVIEW COMMITTEE

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

Meeting Date: January 16, 2013
Members in Attendance: David Black, Peter Cunningham, Steven Webber, Marshall Giguere, Robert Pine, Alexander Woodle, Scott Wilson
Others in Attendance: Craig Auman, Michelle Collette, Bruce Easom, Barbara Ganem
Handouts: November 20, 2012 minutes (draft)
Location: Town Hall, First Floor Meeting Room, 173 Main Street, Groton, MA 01450

David Black called the meeting to order at 4:05 p.m. and convened the public hearing. The group discussed needed changes to the draft minutes from November 20, 2012.

Peter Cunningham moved to accept the November 20, 2012 minutes as amended. Steven Webber seconded. Motion carried 5:0 (two abstentions from Scott Wilson and Marshall Giguere).

David Black called the group's attention to the recommendations under consideration which are the items described in Robert Pine's draft as well as several items suggested by Kevin Lindemer. David Black suggested that a revised preamble to the bylaw might be on the group's working list of recommendations. Steven Webber expanded on this point asking why does Groton think we need something beyond what the State protects through the Wetlands Protection Act? Robert Pine offered to draft language for the group to respond to. He noted that Groton has extraordinary wetlands and rare species and rare habitats. Perhaps only three or four towns in the Commonwealth have wetlands similar to ours. The geology of Groton permits this concentration and diversity.

Minutes show language under consideration in numbered boxes for ease of reference. The Groton Bylaw is found in Chapter 215. Conservation Commission regulations promulgated pursuant to the Bylaw are located in Chapter 344.

Section 215-1. Purpose and Intent.

Preamble language forthcoming from Robert Pine.

Bruce Easom asked whether a change to the present language in Section 215-3.B Exceptions operates to flip the burden of proof to the Conservation Commission and away from the applicant. Craig Auman stated that he would like for the proposed change to stay. Adding a reasonableness standard seems helpful for the Conservation Commission and applicant when searching for solutions. Robert Pine asked the group to proceed with the assumption that the remainder of the phrase after maintained will come out but that the Conservation Commission will think about it. Marshall Giguere said that he saw no harm in leaving the language in. Craig Auman noted that the clearer the language is, the easier it will be to apply. Scott Wilson added that people read bylaws to learn the expectations of the permitting bodies.

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Section 215-3.B Exceptions. current wording:

"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 MGL C. 131, § 40."

The Committee recommends that consideration be given to changing this section to a performance-based requirement that would apply to any existing use within the buffer zone.

"Notwithstanding any provision of this chapter to the contrary, the Conservation Commission may grant an Order of Conditions for the alteration of residential, business or institutional buildings or customary appurtenances thereto, such as lawns, gardens, landscaped or other developed areas within the buffer zone, if it determines that the alterations will result in no permanent degradation to the wetlands or buffer zone, that the interests of the chapter will be maintained, and that the Conservation Commission determines there is no reasonable alternative."

Robert Pine asked how Town boards will know to step in to make an assertion of public benefit. Barbara Ganem explained the current distribution list system which gives early and broad notice to boards and committees about upcoming projects. Michelle Collette cited the example of the Subdivision Control laws which require Board of Health input. The group discussed the merits of a requirement that the Conservation Commission 'shall solicit input' if public good and public benefit is claimed. Robert Pine offered to draft some language for the group's consideration.

Scott Wilson stated that he was not in favor of any exceptions for public good because he believes that town government should set an example for private applicants by complying with its own bylaws. Discussion moved to unusual situations in Town such as the Broadmeadow Road crossing of the James Brooks and whether it is possible to build in room to allow certain worthy projects.

Public or Environmental Benefit Provision, Section 215-5.C current wording:

"The Conservation Commission may grant an order of conditions for projects within wetland resource areas if it determines that the granting of such an order of conditions will result in a significant public or environmental benefit and that, because of the characteristics of the land, the proposed alterations, and/or proposed mitigation measures, the interests of this chapter will be maintained."

The Committee recommends that the wording of this section be retained but that Town Boards such as the Selectmen and Planning Board be encouraged to send written recommendations to the Conservation Commission including specific reasons why they believe that a project constitutes a significant "Public or Environmental Benefit."

In the Bylaw's coordination with other boards subsection, Steven Webber noted his dislike of the 'as appropriate' qualifier. Peter Cunningham and David Black agree.

Chapter 344, Section 15 E. Coordination with other boards.

As appropriate, the Conservation Commission may choose to solicit the advice and opinions of other Town boards and officials in the course of its deliberations. Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before the public hearing. The Commission shall take any such comments and recommendations into account but shall not be bound by them. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

David Black stated that Town Counsel's recommendations prompted a revision to the Notice and Hearings Section. The proposed change codifies current Conservation Commission practice of continuing a hearing only with permission of the applicant.

Notice and Hearings, Section 215-6.C: Current wording:

"The Commission may, in the exercise of its reasonable discretion, continue the hearing from time to time to a date certain announced at said hearing for reasons stated, which reasons may include but are not limited to: curing any defect in notice; allowing additional testimony or documents as may be deemed necessary or appropriate by the Commission; and/or obtaining comment or recommendation of any municipal board or officer referred to in § 215-4 above."

The Committee recommends changing this section to read:

"Continuance shall only be by permission of the applicant."

David Black asked the group to decide today whether to offer a more detailed definition of mitigation or leave the provision as written. Mitigation is usually a negotiation between the Conservation Commission and the parties except for the fact that some forms of mitigation have a performance standard that is fixed under state law. The group engaged in a discussion of the whether to call negotiation discussions horse trading.

Marshall Giguere observed that flood plains and replication have performance standards now. Marshall spoke against specifying because the specificity is limiting. David Black asked whether it is the group's recommendation to leave mitigation as is. Is the Committee happy with the Bylaw as written? Robert Pine noted that the benefits and mitigation off site is beyond what he had envisioned when the Bylaw was initially drafted and enacted. Off site mitigation seems odd to Pine but he is not necessarily against it. Steven Webber spoke in favor of the flexibility it offers. Marshall Giguere offered that the Commonwealth allows this sort of approach. The group discussed whether there would be a one to one ratio for off site mitigation; might there have been a trade off for affordable housing at 134 Main Street; and whether off site mitigation within the same sub watershed made sense.

Committee members discussed the proposed change from 'technically feasible' to 'reasonable' in the standards for altered areas. Marshall Giguere does not like the change, but he opted to withdraw his objections.

Standards for Altered Areas, Section 215-7 (3): Current wording

"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."

The Committee recommends changing the words, *"and that there is no technically feasible construction alternative."* to *"and that the Commission determines there is no reasonable construction alternative."*

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Michelle Collette asked the Committee to please define the word 'structure' in a manner that is consistent with Groton's building code. The point was made that the Bylaw should regulate low retaining walls but not call them structures to avoid confusion. Bruce Easom suggested that structure could be defined with specific reference to the building code definition and then add itemized non structures like low retaining walls and fire pits. The group discussed that a stack of firewood would not be a structure, that play 'structures' would not be regulated, and that pools would be considered structures. Parking lots need to be addressed.

Definitions, Section 215-9, Structure: Current wording

"Any construction, erection, assemblage, or other combination of materials upon the land."

The Committee recommends changing the words to

"Any construction, erection, assemblage, or other combination of materials upon the land that may include, but not limited to: houses, garages, sheds, patios, decks, fire pits, retaining walls, driveways and stormwater structures."

Also in the definitions section, Alexander Woodle reminded the Committee of its previous intention to revise the definition of a freshwater wetland by eliminating the square footage reference entirely. David Black indicated that the revised language should put a period after the phrase 'isolated vegetated wetlands'.

Definitions, Section 215-9, Freshwater Wetland

Shall include all wetlands whether or not they border on a water body. For the purposes of this chapter, lakes or ponds of any size, all bordering vegetated wetlands, as well as isolated vegetated wetlands with a minimum of 10 contiguous square feet shall be protected.

As with the continuance language, David Black identified the security deposit provisions as Bylaw changes recommended by Town Counsel.

Section 215-10. Current Wording

A. As part of a permit issued under this chapter, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder, including conditions requiring mitigation work, be secured wholly or in part by one or more of the following methods:

(1) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission to insure completion of proposed work or conditions of any permit, said security to be released in whole or in part upon issuance of a certificate of compliance for work performed pursuant to the permit.

(2) By conveyance of a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Groton, acting through the Conservation Commission, and providing that the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

B. It shall be a condition of every application for a permit or RFD that the applicant assent to the entry by the Commission or its agent to the subject property at reasonable times for the purpose of conducting site inspections to determine wetland boundaries and the compliance with or violation of this chapter or any permit or determination thereunder.

The Committee recommends deleting the word "Security" in the heading and sub-sections (1) and (2) in their entirety.

Issuance of Administrative Permits, control of invasive or other minor projects with limited potential impact:

The Committee recommends that procedures be developed over time to allow specific types of limited impact projects to be permitted through administrative procedures rather than Public Hearing /Full Commission procedures. Issuance of "Generic Orders of Conditions" may be required to allow some permits. The intent is to facilitate work that will have positive affects and to reduce the work of the Commission for such projects yet to retain administrative control over such work. The Committee believes that no Bylaw changes are required to allow this possibility.

Robert Pine expressed an intention to expand on certain proposed Committee recommendations. He will work with Marshall Giguere, time permitting, to draft additional language for the Committee's review at its next meeting on February 13th. For that work, Pine and Giguere will exclude stormwater structures from consideration as wetlands in an effort to make it easier to maintain stormwater structures. Also, attention will be paid to a biorention exemption list.

The Committee also recommends changes to the following sections in the Wetlands Bylaw Regulations, Chapter 344.

- a. 344-17-C clarify wording relative to "stormwater facilities"
- b. 344-22 define the referenced "three forms of disturbance areas"
- c. 344-25 eliminate references to "past performance"
- d. 344-26-A eliminate reference to the "Commission recording of enforcement orders"
- e. 344-26-C eliminate references to revoking permits based on non-payment of fines

Steven Webber asked the high level question of whether the wording of the Bylaw includes the Wetlands Protection Act or does it dovetail with the Wetlands Protection Act? Robert Pine answered that when the Bylaw and the Wetlands Protection Act language overlaps, then the strength of the language differs as do the appeal avenues.

The Committee discussed the timing for proposing Bylaw changes that could be considered at the upcoming Annual Town Meeting to be held on April 20, 2013. The warrant closes as soon as February 22, 2013 so a placeholder for a warrant article would need to be submitted before this date.

David Black expressed a need to leave the meeting in order to attend to other commitments. The group found that it had made the progress it could make today and was ready to end the meeting.

Peter Cunningham moved to continue the Public Hearing until 4 p.m. on Wednesday, February 13, 2013. Steven Webber seconded. Motion carried 7:0.

Next meeting set for Wednesday, February 13, 2013 at 4 p.m.

Notes by Fran Stanley.