



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: February 13, 2013
Location: Town Hall, First Floor Meeting Room, 173 Main Street, Groton, MA 01450
Members present: David Black, Peter Cunningham, Steven Webber, Robert Pine, Marshall Giguere
Others: Craig Auman, Michelle Collette, Bruce Easom, Barbara Ganem
Handouts: 215-1 Purpose and Intent language by Pine and Giguere
Recommendations under consideration by Pine and Giguere (revised February 8, 2013)
Definition of Structure, Building, Appurtenance by Pine and Giguere
Michelle Collette proposal dated February 12, 2013
Agenda
January 16, 2013 minutes (draft)

David Black called the meeting to order at 4:06 pm.

Steven Webber moved to accept the January 16, 2013 minutes as corrected. Peter Cunningham seconded. Motion carried 5:0 (Alexander Woodle and Scott Wilson both absent).

David Black introduced the topic of the Committee's work product and whether Bylaw changes would be ready to be proposed at Spring Town Meeting. Peter Cunningham explained the process for warrant articles. First, there can be a placeholder for a warrant article proposing Bylaw changes. There is a warrant placeholder presently holding a place for any proposed wetlands Bylaw revision. In the next step, the proposed warrant article would be drafted. Town Counsel reviews all warrant articles in advance of Spring Town Meeting. Also, the Board of Selectmen will review and discuss all proposed warrant articles.

Peter Cunningham stated his understanding that this Committee would report back to the Board of Selectmen on the Bylaw and that the Committee would report back to the Conservation Commission on the regulations. Robert Pine responded that he is not comfortable with this process. He suggests reporting directly to the Conservation Commission. Allow the Conservation Commission to bring forward recommended changes. In this way, the next step would come through the Conservation Commission. If the Conservation Commission does not act, then the Board of Selectmen or himself acting as a private citizen could initiate the warrant article process. Peter Cunningham will review the charge of the Committee. He commented that the Committee has had vigorous participation from Conservation Commission members and that he does not think that it is wrong for the Selectmen to submit. Michelle Collette offered the possibility of Bylaw revisions that could be cosponsored by the Board of Selectmen and the Conservation Commission if both bodies are in agreement. In the discussion that followed, Committee members welcomed this alternative and discussed calling a joint meeting of the Committee, Board of Selectmen and the Conservation Commission that would be the mechanism for the Committee to report back its findings.

Marshall Giguere has been updating the Conservation Commission on this Committee's progress, but the Conservation Commission as a whole has not had the opportunity to weigh in on final wording of proposed changes. Craig Auman noted that any Bylaw change needs to pass a review by the Attorney General. The formal review is post Town Meeting, but informal reviews can be requested in advance. Craig Auman used this informal review process when working on the Town's initial wetlands bylaw proposals. With respect to Town Meeting process and the preferred path for proposed warrant articles, Craig Auman recommends that the Committee and/or the joint meeting solicit the input of other relevant boards. The public hearing and pre Town Meeting process is useful outreach, it's educational and improves the chances that the proposed warrant article will succeed at Town Meeting. The group mentioned a number of boards and private nonprofits that might be contacted and invited to the joint meeting: Groton Conservation Trust, Planning Board, Board of Health, Water Department, Greenway and Parks Commission.

David Black reopened the Public Hearing on Bylaw and regulation changes at 4:25 pm. The group started with the purposes and intent section that introduces the Bylaw. Robert Pine drafted a new introduction that describes the distinctive geological features and ecological diversity that comprise the Groton network of wetlands. Marshall Giguere added a couple of edits and explained that these edits are designed to emphasize and explain the upland area protection that the Bylaw affords. Peter Cunningham and Steven Webber are fine with the changes and recommend including those changes in the final packet.

David Black asked the group to consider Michelle Collette's language proposal on requiring comments regarding public benefit rather than simply inviting comments. Michelle Collette compared the Town's wetlands regulations to the subdivision control law. There, the Town's zoning Bylaw calls for mandatory comments with the force of the Bylaw rather than the regulations. Michelle Collette observed that major projects come to the Town on occasion as was the case with the Hydro Quebec power line. For such occasions, let a public benefit recommendation be supported by the Planning Board or the Board of Selectmen. Peter Cunningham suggested that the 215-4 application section, the coordination with other boards, would be a suitable place to insert such language. Robert Pine offered to work on this section and produce suggested wording. Michelle Collette asked the Committee to avoid inserting requirements for submission of paper copies. The Land Use Department is trying to reduce its paper use and more submissions are now in electronic formats. Steven Webber observed that even electronic submissions can be designed to conserve resources. For example, sending a URL link for a document location can be superior to transmitting multiple PDF copies that burden electronic storage.

For the 215-6c section regarding no extensions without permission of the applicant, the group is satisfied with this language as written.

Robert Pine introduced specific criteria in 215-7(3) that uses the word practicable. Barbara Ganem observed that the Commonwealth Department of Environmental Protection (DEP) uses that word a lot in the context of wetlands protection. The group discussed the fact that a prior draft's reasonable standard covered both methodology and site considerations yet this new language focuses on site more prominently. Robert Pine found similar phrasing elsewhere in the regulations and found the criteria apt for this purpose.

For 215-9 section on freshwater wetland definition, the question was asked whether this list is exhaustive. Fens might be added. Also, the DEP tends to call certain wetlands marshes while avoiding references to swamps. Robert Pine will revise and try to supply the group with final language for a 'such as' list.

For surety and performance bond sections, the group had a broad discussion. Does the current Bylaw open the door to future litigation about trespass on private land to remediate violations? To what extent can the Town avoid legal pitfalls by requesting written permission from applicants to allow certain future access to the site for inspections and work to bring site into compliance with an order of conditions. This revision was suggested by Town Counsel. However, Craig Auman notes that lawyers can disagree and that the Committee might want to see if there is a legal consensus on such provisions. The lawyers at MACC may be a helpful resource. Craig Auman will ask MACC.

Committee members discussed the goals of the Bylaw with respect to stormwater structures. A property owner needs a permit to construct a stormwater structure and a maintenance plan will be required in the same order of conditions. There is a goal that stormwater structures within buffers be regulated and that already built stormwater structures located outside the buffer not be regulated.

In the regulations at 344-19, the Conservation Commission sets a future line with medallions on posts to mark the no disturb zone. Marshall Giguere notes that this current practice has evolved over time to respond to past circumstances encountered by the Conservation Commission. Because of the specificity of the regulations that may differ from other town's local wetlands regulations, Marshall Giguere explained that Town Counsel may not have understood the Conservation Commission intent.

Steven Webber asked what happens when wetlands move. A wetlands delineation is good for three years. After that, the classification of the land can change and expand to include more land if the characteristics of the land have changed.

For 215-3 exceptions, Committee members discussed the definitions of structure, building and appurtenance. Structure in the Bylaw appears to mean building whereas structure in the building code means an assemblage of

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materials that is permanent. Keying the definition of structure or building to the building code definitions may not accomplish Committee aims. Robert Pine wondered if the Committee could designate a new word that is defined in a way that is clear and not in conflict with other Town bylaws. Steven Webber suggested that a structure may be defined as a manmade edifice. Appurtenance may have value as a defining phrase. However, Marshall Giguere states that appurtenance is defined as 'incident to' and can include references to easements which would be a broader reference than the Committee wants. The group discussed how other towns handle this issue in their bylaws. Sometimes, there are no references and sometimes a structure or building is defined as anything that requires a building permit. For those Bylaws, towns appear to regulate a disturbed area and, theoretically, even mowing a lawn would be an alteration that would require a permit. Clarity can protect the Town if it is an achievable goal. Concord's wetlands bylaw is vague and leaves the Town of Concord open to litigation.

Robert Pine notes that it is because of the exceptions concept that we want to define uses. Marshall Giguere stated that as the purposes and goals of Bylaw drive the definitions, it may not be possible to reconcile definitions across bylaws because the domains of discourse differ. Bruce Easom recommended explaining why you used your own definition and to memorialize this explanation.

Barbara Ganem drew the group's attention to the limited projects section and stated that driveways were included in official wording as per the 2003 Town Meeting vote but that this wording is not in the published Bylaws. a correction will be made, but the Committee had previously wondered at the apparent absence of driveways from subsection C, but the language is in fact in the Bylaw.

Steven Webber moved to continue the Public Hearing until 4 p.m. on Tuesday February 19, 2013 and to adjourn the meeting. Marshall Giguere seconded. Motion carried 5:0 (Alexander Woodle and Scott Wilson both absent).

Meeting adjourned at 5:45 pm.

Notes by Fran Stanley.