



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: April 10, 2013
Location: Town Hall, Second Floor Meeting Room, 173 Main Street, Groton, MA 01450
Members present: David Black, Alexander Woodle, Peter Cunningham, Scott Wilson, Robert Pine, Marshall Giguere
Others: Craig Auman, Dan Wolfe, Bruce Easom, Barbara Ganem
Handouts: Possible Wordings Relative to Streams and Vernal Pools by Pine
March 28, 2013 minutes (draft)

Peter Cunningham moved to open the meeting. Scott Wilson seconded. Motion carried 6:0 (Steven Webber absent).

David Black reopened the continued public hearing.

Peter Cunningham moved to approve the March 28, 2013 minutes as drafted. Marshall Giguere seconded. Motion carried 6:0 (Steven Webber absent).

David Black explained that the focus of today's meeting would be an examination of wording relative to critical rivers and streams and enhanced buffer zones. Scott Wilson asked whether the protective buffers are defined by a map. Regarding vernal pools, it was noted that there are certified and mapped vernal pools in Groton. Some vernal pools are marked on the map but are not vernal pools because they contain fish. Some vernal pools are not on the map because aerial photography can often miss areas screened by dense foliage such as Hemlock stands. David Black used an overhead projector to display Groton's priority habitats for rare species, protected open spaces (some of the open spaces are not protected) and known vernal pools. Robert Pine likes to use a bio map layer that only appears on high magnification of the selected area.

David Black zoomed in on the Groton Woods parcel as this area has a lot of vernal pools. David Black reminded the group that at its last meeting Peter Cunningham asked about the impact of vernal pool expanded buffer on lots that could be subdivided. Alexander Woodle commented that putting an added burden to even one landowner is too much. Also, expanded jurisdiction would place an extra burden on the Conservation Commission.

Robert Pine countered with respectful disagreement. He stated that the one hundred (100') foot buffer is a minimalist level of protection. Even a two hundred (200') foot buffer is on the low end of the protection scale. We have endangered species here and I think we have a responsibility. I think that the environmental benefits dwarf the downsides. I don't see that much land is being protected.

Alexander Woodle responded that he wants to protect the homeowners. Peter Cunningham also disagreed with the proposed language. He commented that there needs to be a balance. Is there a great emergency? Are there studies that show great mortality of rare species?

Scott Wilson noted that zoning has changed a lot in Groton. There was the uplands requirement and the move from 40,000 to 80,000 square feet for buildable lots. Robert Pine said that the 80,000 lot limit includes land within the buffers. Robert Pine posed a question related to the ten percent (10%) rule for riverfront disturbances. Does this apply? Scott Wilson added the term riparian setback to the exchange. Marshall Giguere responded saying that the Bylaw quotes back to the Wetlands Protection Act or it should. Barbara Ganem added that the Bylaw references the Wetlands Protection Act which allows two hundred feet (200') protection and that there is no mention of the ten percent (10%) rule in the Bylaw.

David Black answered Peter Cunningham, saying that there is no emergency and that studies do prove the value of a broader buffer for endangered species.

Committee members then considered the potential impact for a landowner who owns a lot containing a house and a vernal pool. The homeowner might need to make a MESA or Natural Heritage filing. Would the operation of this proposed language permit a utility shed to be placed off the lawn surrounding the house and within the vernal pool buffer? Utility sheds placed on permanent concrete pads are more disruptive of wildlife and the wetlands than utility sheds placed on concrete blocks that allow pervious soil under the shed and the shaded area under the shed would be a habitat in and of itself.

Regarding the opportunity for credible evidence to be considered by the Conservation Commission, Alexander Woodle asked whether credible evidence is something that a homeowner has to pay for, i.e., does this create additional expenses for the landowner?

David Black observed that any disturbance to any upland that affects a wetland triggers Conservation Commission jurisdiction. David Black cited Clean Water Act protections and asked whether it would be more palatable if the burden of proof were shifted from the applicant to the Conservation Commission for extending the buffer beyond one hundred feet (100') up to two hundred feet (200'). Marshall Giguere reminded the group that shifting the burden of proof runs counter to the rest of the Conservation Commission's mandate and orientation. Marshall Giguere suggested that a compromise for the vernal pool buffer may be to allow a ten percent (10%) max disturbance rule as is modeled in the Rivers Protection Act.

Robert Pine said that presently, the ten percent (10%) rule is a way to find a way to allow flexibility for homeowners. Robert Pine said that keeping the burden of proof with the applicant will be better if the Conservation Commission decision goes to court. Scott Wilson and Robert Pine expanded on the benefit of the ten percent (10%) rule for each side as the applicant is allowed to violate some percentage of the whole (up to 10%) and the Conservation Commission gains input on the placement of the shed or project.

Stream discussion

Peter Cunningham stated that to convince people at Town Meeting you need to demonstrate that you have taken their impact into account. Scott Wilson offered that a drainage ditch such as he has on his own property can evolve into an intermittent stream if the defining criterion is the presence of vegetative matter. David Black stated that there is no extant GIS database to display critical streams. He continued that the present laws supply an hourglass level of protection – 200' for wetlands, 100' for streams and 200' for rivers – which is implausible.

Dan Wolfe prefaced his comments stating that he usually represents the applicants. He is concerned by the language that gives discretion to the Conservation Commission as its charge as a commission is to protect so taking more land is more protective. Dan Wolfe would prefer measurable standards. The use of percentages is then more appealing to him. Craig Auman picked up on this thread asking the question 'can you defend it in court'. Vagueness is to be avoided. Craig Auman supports expansion as it may be that salamanders may need five hundred (500') which is considerably more space than this committee is contemplating; however, he asked that ambiguity be removed.

Dan Wolfe commented that the GIS layer BioMap II plus the critical landscape area toggle together may capture two-thirds (2/3s) of the streams in this zone. The definition of a critical landscape area equates to an ecological corridor.

Bruce Easom commented that he is both a Conservation Commission member and the owner of a fifteen (15) acre parcel that contains two potential vernal pools. As a landowner with two potential vernal pools, I don't want to be singled out for additional protection as this would diminish the value of my property. Also, Bruce Easom stated that as a Conservation Commission member, he prefers that the Bylaw language be on the quantifiable side. Marshall Giguere hypothesized that up to X percent can be disturbed at the discretion of Conservation Commission. Bruce Easom responded that less discretion works for him and state a maximum number. Robert Pine added that there can be a maximum allowable but permit negotiation for placement. Peter Cunningham commented that courts prefer definitives and frown on horse trading. Marshall Giguere said that the group was looking at a flexibility of how much and where.

David Black said that the jurisdictional piece is still open. The town politics for this proposal need to be considered. He said that he would be uncomfortable proposing something that has a high likelihood of refusal. Peter Cunningham said that a revised Bylaw proposal must build a foundation for Town Meeting. How would this affect the casual homeowner who wants to put up a shed? Dan Wolfe stated that the lot change didn't impact the majority of landowners, but most homeowners have wetlands in their backyard and this proposal will impact them. Looking to build that foundation, the group noted that the public hearing is open and few people have attended. Marshall Giguere said that related to creating the Open Space plan, an outreach survey was sent that received several hundred responses. Many of the responses were in support of the environment. Peter Cunningham asked whether the Committee wanted to put out a survey and he will look at notification provisions. Perhaps future presentations could be recorded and posted on Vimeo online.

Peter Cunningham moved to continue the Public Hearing until 4 p.m. on Wednesday, May 15, 2013. Scott Wilson seconded. Motion carried 6:0 (Steven Webber absent).

Peter Cunningham moved to adjourn meeting at 5:15 pm., Marshall Giguere seconded. Motion carried 6:0 (Steven Webber absent).

Next meeting set for Wednesday, May 15, 2013 at 4 p.m.

Notes by Fran Stanley.