



## 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: October 30, 2013  
Location: Town Hall, First Floor Meeting Room, 173 Main Street, Groton, MA 01450  
Members present: David Black, Marshall Giguere, Peter Cunningham, Robert Pine  
Others: Art Prest, Barbara Ganem, Michelle Collette  
Handouts: Draft minutes from October 2, 2013, Art Prest comments from October 28, 2013

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David Black called the meeting to order at 8:30 am.

*Peter Cunningham moved to approve the October 2, 2013 minutes as presented. Marshall Giguere seconded. Motion carried 3:0 (Robert Pine abstained; Scott Wilson, Steven Webber and Alexander Woodle absent).*

The Committee will consider proposed language noted in October 2, 2013 minutes for Chapter 215(3)(b):

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 in a previously altered area, shall not be subject to Performance Standards in this Chapter, but shall be regulated exclusively by the provisions of MGL C. 131, § 40.

Robert Pine and Marshall Giguere do not support this language change. Marshall Giguere stated that the proposed language exempts literally any project from the Bylaw entirely. With this language, could the previous alteration be as recent as the day before application. The applicant who alters buffer areas without a permit may be subject to an enforcement action, but the Conservation Commission (Commission) has generally been lenient on such enforcement. David Black commented that he will entertain any alternative language. This current proposal came about as a result to the push back received by the Committee to its inclination to remove the date certain language. Please note that the performance standards of the WPA are still in place as state law cannot be exempted by local governments.

Robert Pine said that in his view it is not worth the battle to substitute this language for the present language. Instead, the Town can retain the present language but enforce the present language, insisting that applicants establish their right to work under the altered areas provisions for alterations prior to the 2001 adoption of the present Bylaw language. The burden of proof is on the applicant to show that he/she qualifies for the exemption. Then, in the future, the Town might amend Bylaw to move to a better place that unifies standards. Robert Pine prefers to have the Bylaw cover everybody and if the Town is not going to remove that exemption, then it should leave the current language alone.

It is generally agreed that proving pre 2001 conditions on a site becomes harder and harder over time. David Black does not want to bring forward a Bylaw that makes life harder on the applicants. Michelle Collette commented that a proposal to simply remove grandfathering would be unlikely to pass at Town Meeting.

Next, the 215-7(3) 'standards for altered areas' current language was reviewed by the group:

Standards for altered areas. 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.

Michelle Collette commented that Massachusetts zoning which is known for containing some of the most generous provisions in the country will only allow 8 years' grace for grandfathering. Here, the first general

wetlands bylaw was enacted in 1980 and the current Bylaw allows grandfathering for alterations made before 2001. This is a 12 year and counting grace period.

Marshall Giguere and Robert Pine discussed possible edits to 215-7(3) that try to incorporate some of the 215-3(b) language aspirations without expanding the exemption. David Black commented that for a proposed project that establishes pre-2001 previously altered conditions, the Commission should have regulated solely under the WPA provisions not the local Bylaw. Michelle Collette said that the Town Hall retains a set of flyover aerial photographs taken in 1952 prior to the Town's zoning Bylaw. This aerial data is good evidence of prior conditions.

Robert Pine observed that although the Committee has heard about objections to the removal of date certain, there is also large contingent in Town who identify as environmentalists and will not want the date certain removed if the overall effect of the change results in diminished environmental protections.

Peter Cunningham referenced recent October 15<sup>th</sup> report that shows pathway between adjacent private septic systems and the lake. The test results do not violate a standard because there is no standard for residual pharmaceuticals detected in lake water.

David Black proposed drafting language for 3 alternatives that will give the Committee a total of 4 choices:

1. no changes;
2. remove date certain from 215-3 and regulate under the WPA only similar to the 10/2/13 language;
3. keep date certain and clarify performance standards; and
4. remove entire exceptions section 215-3(b) and supply a much greater definition of 215-7.

David Black strongly recommends settling the jurisdictional question before spending time and effort on Bylaw performance standards. David Black asked to defer beaver discussion and have those issues discussed at a future meeting. David Black also noted that this was a carefully composed Committee and some voices are presently absent from the Committee's discussions.

Marshall Giguere reviewed current remedies for beaver activity. David Black cited best management practices for beaver control that have been published at the Commonwealth level.

Michelle Collette recommended that the Committee consult DPW Director Tom Delaney who does beaver management with respect to the Town's road culverts. Also, the Committee might consult with Board of Health agent Ira Grossman about the public health role in beaver control. Michelle Collette noted that the Conservation Commission is only one of several entities having jurisdiction on such matters. In the past, one developer breached a West Groton beaver dam without permission. The flood waters contaminated private wells downstream and washed out a culvert on Townsend Road. This resulted in a criminal action brought against the developer.

The next meeting will be November 20, 2013 at 8:30 am. Committee attendees could also meet on November 13, 2013 at 8:30 am depending on the preferences of the absent Committee members. Fran Stanley will poll absent members.

*Peter Cunningham moved to adjourn meeting at 9:45 am. Marshall Giguere seconded. Motion carried 4:0 (Scott Wilson, Steven Webber and Alexander Woodle absent).*

Notes by Fran Stanley.