

Minutes from Meeting of 7/10/02 – Sprint, Lost Lake

Members Present: Shaun Sullivan, Stuart Schulman, Robert Cadle, Chase Duffy, David Gandle

The Chairman convened the Sprint hearing by reading the Legal Notice. One board member was unable to attend and Sprint asked for a continuation.

The hearing was continued to 8/21/02 at 8:00 pm. The motion passed unanimously.

The Chairman reconvened the Lost Lake hearing.

Mr. Gandle was substituted for Mr. Mulligan, who was unable to attend.

Mr. Cadle said that he had two questions:

- 1) The width of the appeal;
- 2) The ZBA jurisdiction of the Zoning Enforcement Officer opinion.

Mrs. Collette, said that under Chapter 40a, the PB is a party of interest, and the Board disagreed with the opinion of the Zoning Enforcement Officer. Under 218-30.B.1 the PB voted unanimously to appeal.

Mr. Cadle said that there needs to be more than just civic interest, ie. the PB is just aggrieved by the decision.

Mrs. Duffy said that she felt that the relationship between the primary and secondary water districts is relevant.

Discussion ensued regarding the PB's right to appeal and the difference between being aggravated and aggrieved by a decision.

Mr. Degen noted that the PB was prohibited by the BOS to contact Town Counsel.

The Chairman felt that the ZBA should hear all arguments and make a decision.

Laurie Moskow, abutter, said that she would bring an appeal as an aggrieved party if the ZBA does not continue tonight.

Mr. Degen said that the PB is giving a six person presentation this evening. He said that the BOS conducted a hearing in January 2002 regarding the weed problem in the Lake and the application of an herbicide. He said that there was a Town Meeting vote and the Con. Com. conducted a hearing on intent in March 2002. He said that the PB responded to the Con. Com. on 3/7/02 and they have yet to hear a counter-response. He said that in 1984, a water overlay district was created. He said that on 5/7/02 the PB requested an opinion under 218-30. He said that on 5/21/02 the BI issued a permit. He said that on 5/24/02, an appeal was filed and on 5/29/02 a letter from Town Counsel was received. On 6/5/02 the Groton Lakes Committee applied Diquot. He said that over 6/12-6/17 testing occurred, and contaminated water was found to have spilled over from overlay district two to overlay district one. He said that 120 gallons of herbicide was applied, and thus under 218-30-D.4 more than 50 gallons were stored. He said that the appeal is under the secondary water overlay district by-law, the primary overlay district by-law and 218-30-D2.A6, the discharge of hazardous materials in a secondary water district.

Mr. Sullivan asked for a repeat of the chronological report.

Mrs. Collette said that the map was adopted in 1984 because the DEP determined that Whitney Pond was the best water resource in town (along with the W. Groton well site). She said that the maps and zoning by-laws predate the water districts but the plans have been amended to coincide with the water district maps. She said that the lines have been drawn by boundaries, etc. She said that Whitney Pond is a primary water resource district and noted that the town has spent \$300,000.00 to protect the land around the pond and \$2 million to install the well infrastructure. She said that the Pond is worthy of protection and a great natural resource. She noted that the ZBA has only heard two other water protection cases, one of which was McDonalds and the other relating to the Baptist Church. She then noted areas where there have been contamination issues, such as the Conductor Lab site and in W. Groton, at the turkey farm where the spread of droppings almost ruined the W. Groton water supply by pushing the nitrate level up. She said that the Town purchased land from Brooks Lyman to prevent the use of any fertilizer other than lyme and thus protect the water supply. She noted a one-week home occupation in which the use of TCE to clean machine parts caused pollution and thus had to be ceased. She also described some private well problems.

Mr. Cadle asked how the site was shown on the map.

Mrs. Collette said that map was updated to show the correct water overlay district.

Bob Hanneman said that as a chemist, a one-time application of Diquot will not cause a problem but multiple applications could. He said that once it settles into the sediments, many problems can ensue.

Mr. McCuin said that the toxicity is not relevant, but merely the application itself.

The Chairman said that it is not the job of the ZBA to determine toxicity levels.

Mrs. Duffy said that this has been a ZBA issue in the past.

Discussion ensued regarding ZBA purview.

Mr. Degen suggested that the work Diquot be omitted and chemical release be substituted, which is the issue. He said that Whitney Pond is not a still body of water.

Mr. Hanneman said that Diquot is considered hazardous.

Mr. Gandle asked whether when Diquot is used in farming that a single application be applied.

Discussion ensued regarding a single use vs. multiple applications.

George Barrenger,, chemist and PB member said that this is not a normal household use. He said that the chemical has a long life and there is a reservoir of herbicide to be released. He said that the half-life of the chemical Diquot is 1000 days or four years.

The Chairman asked about water going from Lost Lake into Whitney Pond.

Bob Lewis, PB, said that the only control is a boarded dam system controlled by the GLA and Grotonwood. Removal or addition of boards controls the water height.

Pictures of the dam were then submitted with the notation that during treatment, an extra board was put in to keep water height up. The Lake rose 8-10 inches on 6/15 and on 6/17 the extra board was pulled from the dam after acceptable readings were made.

Bill Eger, GLA, said that if the board was not removed then septic systems would be threatened.

Mr. Barrenger said that the 1/2 life is important only because of the persistence issues.

The Chairman said that he understood the gist to be that if something is not allowed in the primary water resource district, it should not be allowed in the secondary because the chemical will reach the primary district.

Mr. Barrenger said that the 5/31 samples were drawn between Whitney Pond and Lost Lake and were below analytical levels before the application on 6/13, which was four days before the board was pulled. The water sample taken at L.L. dam was high, with a Diquot reading of 5.3 parts/billion. He said that 20 parts/billion is acceptable for drinking water, but a reservoir of herbicide could be created that could flow into the primary water resource district, which is violation of the by-law.

Mr. Sullivan said that that is based on normal household use.

Mr. Barrenger said that the application is a professional level which cannot be purchased at the hardware store.

Of note: No testing has been done by the town since the board from the dam has been removed.

Bob Lewis said that if Whitney Pond was not connected to Lost Lake, the process would not have been appealed.

Mr. Cadle asked about the substandard septic systems.

Bob Lewis said that as an abutter he is concerned about weeds in ponds around town. He said that the town is lucky to have people interested in protecting water. He felt that this is a temporary solution and the town needs to weigh protecting a drinking water supply vs. recreation.

Laurie Moskow said that Diquot is not a harmless eight-day concentration. She said that it accumulates in sediments. She said that the board needs to rule whether Lost Lake is part of the town water supply, but noted that it is definitely part of the public water supply. She said that the intent of a water supply district is to protect all water supplies, public and private.

The Chairman said that there has been no discussion about the storage of toxic materials.

Mrs. Collette said that the storage of said materials requires a special permit and suggested further investigation into the transportation/storage of herbicides.

Mr. Degen said that the PB acknowledges the need to deal with long-term weed management, but said that he doesn't know the ramification of repeated Diquot applications. He said that town needs to determine if this is the best alternative in protecting the water supply.

Mr. McCuin said that there should be no discussion relative to the merits of the herbicide application and weed issue per se. He said that the by-law is silent regarding how Lost Lake issues might affect Whitney Pond. He said that there are no grounds for an appeal, and noted that there is no long-term storage. He said that the application is disingenuous because the boards have already been removed from the dam.

An abutter noted that the boards are used to regulate summer vs. winter water flow. He said that Grotonwood works with the Lake area residents and the water department. The Lake is drawn on Columbus Day.

Mr. Ricciardelli said that many wells have been polluted by various means and the town has helped homeowners. He said that household chemicals are worse than Diquot, but noted that a lake drawdown is a better solution without the long-term ramifications. He said that the PB should help.

The Chairman asked the BOS for findings.

Mr. McCuin said that no final decision has been reached and noted that the herbicide application is but one tool and the BOS wants to reserve the right of use any tool. He said that this was a spurious zoning appeal.

The Chairman asked about the current status of further herbicide applications.

The Groton Lakes Association said that they have a valid three-year Conservation Commission Order of Conditions, but noted that nothing further is currently planned.

Bill Eger, Lakes Association, submitted a statement into the record.

Mr. Cadle said that part of the definition of hazardous materials is hazardous waste and he wondered if this applies.

Mr. Eger said that it is not waste and the herbicide was not dumped because it was applied legally.

Mr. Degen said that although it might not be hazardous waste, it certainly is a hazardous material.

Mr. Eger agreed.

Groton Lakes Association said that according to DEP a legal pesticide application is not hazardous waste. When the boards were removed the level was at 5.3, which is acceptable for drinking water standards.

Mr. Gandle noted that he is not a scientist and asked whether this is a hazardous material.

The Chairman noted that the Board has three clauses to deal with and opened up the hearing for comments from the audience, asking for comments to be brief and related to zoning.

Diane, an abutter, said that she spoke to the EPA regarding Diquot. Diquot has a 1/2 life of 48 hours, ten days in water and 160 days in sediment. She said that at the dam there were no traceable amounts after ten days. She said that Diquot is used to kill fungus on salmon. She said that it is restricted because of overuse in agriculture and most findings are not related to sporadic applications to the lake.

The Chairman suggested retesting Whitney Pond.

Mr. Orcott, Water Department, said that a sample will be taken tomorrow and the results will be available in three weeks or so.

Discussion ensued regarding whether there should be a schedule of water testing.

Mr. Orcott said that in an effort to keep various boards and departments happy, there has been discussion about additional testing. He said that there is a baseline analysis but no samples have been taken after the boards have been removed.

John Deisman, GLA, said that there was a reading of 5 parts/billion when the boards were removed.

Mr. Orcott said that the boards needed to be removed to avoid a "witches' brew". He noted that there will be a test at Whitney Pond tomorrow.

Mr. McCuin said that the appeal should be rejected without an EPA water level reading.

Mrs. Collette said that septic systems have been addressed by limiting levels to 110 galls/day per 100 square feet of dwelling, which protects both primary and secondary water districts. She said that some of the readings have shown detectable levels and noted that if Whitney Well gets saturated with Diquot it would be a crisis. She said that there are other physical solutions to the weed problem which should be addressed.

Beth Montgomery, abutter and Con. Com. assistant, asked why the Con. Com. decision was not appealed by the PB.

Rena Swezey asked for a letter from Town Counsel to be read into the record, which the Chairman then did.

The Building Inspector said that his decision was based on what is allowed in a secondary water district. He said that the by-law is silent on how to handle situations whereby the secondary flows into the primary. He said this is neither a principal use nor a storage situation, but just a temporary application. He said that he does not usually use Town Counsel but felt it necessary in this situation.

Mr. Degen said that he does not always agree with the BI or Town Counsel. He said that this qualifies as storage because the Diquot will remain in the sediment.

Mrs. Duffy noted that a lot of pollution occurs from lawn fertilizer and felt that there is some validity to the storage issue in the sediment. She said that she was worried about the safety of the town's best aquifer.

Dr. Eger said that they have not looked at the use of chemicals lightly and he suggested that hazardous materials have no relevance to zoning.

The Building Inspector said that the PB asked for an opinion rather than actual enforcement.

Mr. Cadle felt the ZBA could offer no relief because the herbicide has already been applied and no cease and desist was issued by the BI.

Mr. Degen said that the BOS needs to stop any further applications without a study being performed and Con. Com. input. He said that the PB would withdraw the appeal if guaranteed a study as to the best effect. He said that a draw down would better and asked about the possibility of a copper sulphate application.

The Chairman said that this is much more than a zoning issue and felt that there needed to be a larger discussion.

Mr. Lewis said that the only way to stop the process is to appeal.

Mrs. Duffy said that the Board is still left not knowing its jurisdiction.

Mr. Lewis said that the PB believes that a zoning violation has occurred.

Mrs. Collette reminded the Board that at the bottom of the Building Inspector's letter is a notation that the applicant has a right to appeal his decision.

The Building Inspector said that he did not let anyone apply the herbicide.

The Chairman said that it is complicated because this was not a result of an action by the Building Inspector.

Mr. Degen said that the OB was unanimous in its dislike of the Building Inspector's decision, but stressed that they did not seek counsel to get a court ordered stop.

Garret Boles said that the rules need to be followed. He said that the Con. Com. decision should have been appealed.

Mr. Lewis said that in 1984 the PB brought the water protection act into being.

Mr. Cadle said that this gives the PB the right to appeal.

Mr. McCuin said that if the Board rules in favor of the PB than it is like rezoning Lost Lake.

Mr. Cadle said that it is a small zoning issue here. He said that the health issues are very important but not ZBA jurisdiction, but rather for the BOS or Con. Com. to decide.

Dr. Horowitz said that the PB would withdraw the appeal if the BOS would agree to cease any further applications

until there is a town wide discussion revisiting the issue.

Mr. McCuin said that the BOS are not willing to cease.

Paula Martin asked what authority the Groton Lakes Association has to enter into this type of deal.

The Chairman said that that issue is not relevant.

Mr. Clemens, PB and Con. Com. member, said that he is in favor of the application as a Con. Com. member but also supports the possibility that a zoning violation may have occurred and needs to be pursued.

The Board moved, seconded and voted unanimously to close the public hearing.

Discussion ensued regarding whether this could be construed as a household use, and why the Lake cannot be drawn down instead. Mr. Sullivan said that because of the board removal, use in a primary resource district can be made.

The Chairman said that the primary and secondary districts are interrelated but still separate.

Mr. Gandle said that it is a secondary water resource district.

Mr. Sullivan said that when the boards are pulled out, the districts merge.

Mr. Gandle said that there are no overflow by-laws.

Mr. Sullivan said that by removing the boards, it makes an application to a primary district. He noted that #6 refers to discharge and principal use.

The Building Inspector said that principal use is related to business use in a water district.

Discussion ensued regarding whether any discharge has occurred or whether the application is business related.

Mr. Sullivan said that dealing with drinking water is serious and he felt that the lack of testing could be construed as mismanagement.

Mr. Gandle said that because it is a secondary district, there is no purview.

Mr. Sullivan said that the only violation is the dam board removal. He said that the Board cannot prevent the herbicide application.

The Chairman said that then it is up to the Con. Com. under their order of conditions. He said that board removal is part of lake management and could be added into the order.

Discussion ensued regarding dam management. Further discussion ensued regarding what recourse would be available if the Board votes to uphold appeal.

Mr. Sullivan reiterated that the removal of the boards in the dam is a zoning violation after the application of Diquot.

The Chairman said that nothing was directly applied to a primary water district. He said that some travel is inevitable and was expected.

Discussion ensued how to handle the situation.

Mr. Sullivan asked about the possibility of heavy rain after the application and possible ramification.

Mr. Orcott said that the lake was drawn down and the board added to the dam before the application. He said that it

rained and the lake went up. He said that there were readings of 20 parts/billion at the town beach five days after the application. He said that at the dam it was 5-6 parts/billion. He said that the lake could not have been drawn down further but noted that it was an acceptable cushion. He said that the lake was below drinking water standards before the board was pulled.

Discussion ensued regarding the separation of district.

The Board moved to uphold the Zoning Enforcements Decision as set forth in the May 24th memorandum and as supported by the memo from Town Counsel.

The vote was three for and two against.

The meeting adjourned 11:50 pm.