

**Town of Auburn
Conservation Commission
Public Hearing
May 2, 2017**

Members present: Jeff Porter-Chairman; Peg Donovan, Vice Chair; Diana Heaton & Members. Richard Burnham, Alternate.

Absent: Alan Villeneuve and Ed Fehrenbach, Members. Stephanie Hanson, Alternate.

Others present: Eric Mitchell and Doug Dinnsen.

Mr. Porter called the meeting to order at 7:04 p.m. and introduced the Board members to everyone present. Mr. Porter informed everyone that there was a light agenda tonight and moved on to approve the minutes of April 4th.

MINUTES

April 4, 2017 MEETING

Ms. Heaton moved to accept the minutes of April 4, 2017 as written, Ms. Donovan seconded the motion. A vote was taken; all were in favor, and the motion passed.

NEW BUSINESS

Mr. Porter moved on to the first thing on the agenda which was Jay Nixon. At this time, Mr. Mitchell suggested that the Board members take up the other applicant first and Mr. Porter asked Mr. Dinnsen to begin his presentation.

Doug Dinnsen

21 Hawthorne Drive, Tax Map 5, Lot 69-7

Discuss Temporary Construction Access

Mr. Dinnsen began by introducing himself to the Board members and stated that he resided at 21 Hawthorne Drive. Mr. Dinnsen went on to say that he was requesting a re-evaluation/re-characterization of a wetland based on a wetland report done by Mr. Sokoloski of TES Environmental Consultants, LLC. Mr. Dinnsen indicated that he had forwarded the report to Ms. Royce. Mr. Porter stated that he did receive it today. Mr. Dinnsen did have handouts for the Board to review and stated that there were four (4) assessments done by two (2) wetland scientists and the conclusion was that it was not a potential vernal pool although it was flagged as one before due to not enough data in the past. Based on that re-evaluation of that he would like to reclassify it and the reason he would like to do that is so that he can get a cement truck and he needs to go

on the side of the leachfield. Mrs. Donovan pointed out to Mr. Dinnsen that they cannot reclassify land. Mr. Dinnsen stated that what he is asking to do since it was not considered a vernal pool is to change the setback. Mr. Porter indicated that they would not do that but what they would do is look at the report and make their assessment of it. In terms of setbacks, it would actually go through the Zoning Board of Adjustment. Mr. Dinnsen understood and said that the Conservation Commission was the first step and now there was another step. Mr. Porter informed Mr. Dinnsen that they were an advisory board and did not have any powers but they look at wetlands and they look at the reports and would either support or not support this type of finding to the Zoning Board or the Planning Board. At this time, Mr. Porter believed that Mr. Dinnsen would have to talk to the Zoning Board with regard to the setbacks because the information that he provided that they would look at it favorably. Mr. Porter believed that Mr. Dinnsen still had work with the Zoning Board in terms of getting that reclassified and it may even be because it is temporary to get the work done that you may just have to have a plan to fill in, get the truck in and take it out and redo the grading. Mr. Porter pointed out that he did not see any other classification other than it not being a vernal pool and whether or not he was looking to classify it differently and that would be a matter of Planning Board or Zoning Board. Mr. Dinnsen asked how it was classified now. Mr. Porter believed it could be a vernal pool but be a Level Two. Mrs. Donovan believed it should say on the plot plan. Ms. Heaton stated that if it was a vernal pool that it should be a Level One. Discussion ensued with regard to the setbacks being 125 feet from a Level One. Mr. Porter indicated that if it was no longer classified as a vernal pool and it's a Level Two it would be 75 feet.

Mrs. Donovan asked Mr. Dinnsen how long he has been in the house. Mr. Dinnsen stated four (4) years. Mrs. Donovan stated that she has had a conversation with another wetland scientist that over time because the animals have not found this area and that if you wait over time it would be created. Ms. Heaton asked Mr. Dinnsen when he had the survey done. Mr. Dinnsen stated April 28th. Ms. Heaton explained that we still low in the total precipitation and that there was an unusually ongoing dry period now and thankfully it has come up over the last month or so from where it was when we were in a drought. Ms. Heaton further explained that over time, when you don't have enough water in an area that you would have different characteristics from what you would have if you had continuous average levels of precipitation. Mr. Dinnsen pointed out that in one of the assessments that it was during a time where the water level was higher than average water fall.

Mr. Porter asked Mr. Dinnsen if he was looking for the temporary construction access correct. Mr. Dinnsen said, ideally that he would like to make it permanent but that he could get by with temporary and that he would need to cut trees because they are right on the edge of the setback. Mr. Dinnsen showed the Board members on the plan the area. Mr. Burnham asked Mr. Dinnsen what exactly he was looking to do. Mr. Dinnsen stated that his wife had medical issues about a year and a half ago and due to some genetic conditions her doctor said that the only way she could avoid another episode is to exercise on a regular basis. Mr. Dinnsen went on to say that, due to some health issues that she cannot leave the house conveniently as she has not left the house the

entire year and the only exercise she can do is swim so if he cannot get her to a pool he would like to get a pool to her so what he would like to do is get one of those pool treadmills which needs a six (6) inch slab foundation and it needs to be enclosed which means an addition onto the existing house. With that in mind, Mr. Dinnsen informed the Board members that he would need a lot of cement so he needs the ability to get a cement truck back there. Mr. Burnham commented that he could pump concrete pretty far and explained that it was not cheap but it could be done. Mr. Dinnsen said that this whole thing is very expensive and as a result that would be a very undesirable solution. Discussion ensued with regard to getting an excavator back there.

Mr. Porter asked Mr. Dinnsen to show the Board where the temporary driveway that he was looking to do on the plan. Mr. Dinnsen pointed out that it would go along the dotted line and then over his lawn. Mr. Porter was unsure if it was 50 feet from the vernal pool currently and did not believe that was possible. Mr. Dinnsen said yes but that he would like to make it 35 feet and believed that wetland was very small and that his understanding from talking to a surveyor about this that, in Derry today, based on this information that he believes that they would flag at a 35 foot setback. Mr. Porter and the other Board members informed Mr. Dinnsen that they do not do Derry Regulations. Mr. Dinnsen believed that a lot of towns follow Derry Regulations. Mr. Porter and Mrs. Donovan stated that the Town of Auburn does not follow the Town of Derry. Mrs. Donovan informed Mr. Dinnsen that the state was proposing a state wide setback of 100 feet which is the most recent proposal. Mr. Porter stated that the Board tends to look at it more aggressively because we are all on wells and they tend to work with builders to really preserve the wetland areas as much as possible. For a Level One they want to stay out of the buffer for 125 feet, which is kind of interesting when we are looking at 50 feet and Mr. Dinnsen want to go on the inside of that but understood what he was trying to do and that a temporary driveway to allow for construction is totally plausible. Mr. Porter added that what they would like to do is talk to Mr. Dinnsen about what plans he has to recover the area once it is done. The disturbance area in there they understand what he is trying to do and that is something they could work with him on providing he has a viable plan to recover it at the end to bring it back to its natural state. Mr. Dinnsen asked the Board members if it was their recommendation that it needed to be a temporary thing. Mr. Porter said yes. Mr. Dinnsen stated that it could work but that his preference would be to do whatever he would do to just leave it which would be leveling out some dirt and cutting down some trees. Mr. Dinnsen went on to say that, the tree part obviously was less temporary. Mr. Porter indicated that the trees were a less concern than doing a permanent driveway. Discussion ensued with regard to putting in a temporary driveway and not recovering what was previously there. Mr. Porter commented that putting in a temporary access to be able to go in and put the cement in was okay but wanted to talk about restoring it after the fact. Mr. Porter also pointed out to Mr. Dinnsen that if he had to take down trees to not remove the stumps. Mr. Dinnsen explained that once the excavation is done utilizing the temporary driveway that he would like the equipment to leave and that Mrs. Rouleau-Cote also recommended gravel but that he would like to leave it and if he could get a recommendation that he just do it with dirt that he would then just leave it as dirt and would just need to put grass over it when he was done.

Mr. Burnham added that the fact that Mr. Dinnsen would be going into the setback which they do not like seeing it turn into a lawn and would prefer it that once he was done that he would leave it be and that's why you can cut the tree but not remove the stumps because the tree would regenerate if left alone. Discussion ensued with regard to building a temporary access and then reclaiming it back to what it was prior to construction.

Mr. Porter asked Mr. Dinnsen about going over the berm and wanted to know what the topography was like in the front in order to go through that area. In reviewing the topography of the property, Mr. Dinnsen explained that it sloped down a bit, Mrs. Donovan did not believe it was much of a slope. Mr. Porter asked Mr. Dinnsen how much disturbance and how much material would he be adding to get the truck through and informed Mr. Dinnsen that he probably did not want soft soils. Mr. Dinnsen stated that Mrs. Rouleau-Cote had said the same thing and believed that he should put gravel down. Discussion ensued with what type of soils and gravel to use and why gravel over soil as it would take only one rain storm and then soil would not be useful.

In conclusion, Mr. Dinnsen believed that the Board was recommending a temporary access. Mr. Porter said definitely temporary access and if the driveway was able to be done without any additional fill or grading in that area so if he was able to get a truck in there and would just have to clear a few trees then the temporary access would be fine and allow it to revegetate. However, if in the event you have to create a pseudo road for the truck to come through then it would be his recommendation and pointed out to Mr. Dinnsen that it was only his recommendation is to get it temporary and then spend his time to replant it and allow it to revegetate. Ms. Heaton stated that she would agree with that but there has to be a limit as to how much further into that buffer can be gone. Mr. Porter talked about the Board either recommending or not recommending a temporary access/driveway. Ms. Heaton believed that the Board needed to know exactly how much they would need to go into the buffer before they could decide the amount of impact and suggested that he talk to the excavator and cement truck and figure out what the minimum amount of space they would need to get those in there before they could make a recommendation.

Mr. Porter asked Mr. Dinnsen how soon he was looking to do this. Mr. Dinnsen said June and was confident that if they did 10 feet of space that it would be more than enough because he believed that the cement truck itself was about 10 feet and that he had some space already so if he could get allowed 10 feet to mess with that he would use less than that for sure. Mrs. Donovan did not see a problem with that especially if he was going to allow it to go back after. Ms. Heaton also agreed and reiterated that, as long as it was returned to its original state that it was in would be fine. Ms. Heaton further added that, it would be okay as long as there was no further disturbance beyond the 10 feet and as long as there was no stumping and no cutting of trees or removal of vegetation that she would be okay with recommending that.

At this time, Mr. Porter stated that he would entertain a motion of recommendation.

Ms. Heaton made a motion to support temporary access in the buffer to be no more than 10 feet to take it no closer than 40 feet to the edge of the wetlands only for the duration of the project and that there is to be no disturbance within the 40 feet and at the close of the project that it undergo restoration to be returned to its natural state for Tax Map 5, Lot 69-7, Mrs. Donovan seconded the motion. A vote was taken; all were in favor, and the motion passed.

Mr. Porter informed the Board members and Mr. Dinnsen that he would send a note to Mrs. Rouleau-Cote, Building Inspector informing her of the Boards support with the temporary access.

At this time, Mr. Porter stated to Mr. Dinnsen that he was good to go and that he would contact both Mrs. Rouleau-Cote and Ms. Royce tomorrow. Mr. Dinnsen asked the Board what his next step would be and if it would be to contact Mrs. Rouleau-Cote. Mr. Porter reiterated what he stated above that he would drop a note to Mrs. Rouleau-Cote that the Board supported it with restrictions in terms of restoration because they want to see it temporary.

Mr. Dinnsen thanked the Board members and exited the meeting.

Eric Mitchell

**On behalf of Jay Nixon/TMT Real Estate Development, LLC
792 C Londonderry Turnpike, Tax Map 1, Lot 19-C
Discuss Potential Site Plan Amendment/Review**

Mr. Porter informed Mr. Mitchell that they were aware of the project because it was before the Conservation Commission last month. Mr. Mitchell began by saying that the property is located on the bypass and that he had a meeting with Mr. Nixon last Thursday night and the person that wants to use this building to put in an a storage facility and an office for his scaffolding business. Mr. Mitchell informed the Board that he would tell them what he knew because he was new at this project. The Board members indicated that there was somebody else before the Board last time. Mr. Mitchell stated that the owner of the scaffolding company has been involved and so has one of the employees of Jay Nixon of which he was surprised they were not present tonight because they were the ones that arranged the meeting. Mr. Mitchell stated that they have gone before the Zoning Board to obtain a variance for the use and they were granted. His understanding was that there was a minor site plan application that was submitted before the Planning Board that has been tabled until the meeting in May. Mr. Mitchell believed that the reason that it was tabled was to go before the Conservation Commission to get input. Mr. Mitchell stated that was where he was as far as the planning part.

Mr. Mitchell went on to say that, from a historical standpoint, this plan was done back in 2005 but the site plan for the building out front has been there for a while and the other building where Mr. Nixon's office was located and the other building had been there and

the other building was a proposed building. The site plan that was originally approved back in 2004 showed a building for the same kind of buildings and these were all existing at the time. There was a variance granted in 2004 within days after the original approval which reduced the wetland setback from 75 feet to between 50 feet and 35 feet but was unsure but thought it could be for the building in the back. Mr. Porter believed it was for the building in the back because there was a 75 foot setback for the building that they are looking at now. Mr. Porter could not recall the gentlemen's name that presented last time and informed Mr. Mitchell that he was looking to reduce it to 50 feet but that he did not have a plan and the Board said get a plan and chances are no because they have already been granted the exception to the buffer reduction already that had expired. Mr. Mitchell believed the reduction was for the building in the back and could not find where it applied to the other buildings. Mr. Mitchell pointed out the 75 foot wetland setback shown on the plan for the Board to review. A brief discussion ensued with the plan.

Mr. Mitchell moved on to talk about the proposed building that they are proposing to store scaffolding there and they are looking to also do more storage in the convertible land. Mr. Mitchell went on to talk about the approved plan that was approved in 2008 for the condominium plan and that he also did some work with the building in the front when it was going for the change of use. Mr. Mitchell pointed out that since this lot was made up of condominium units that there were no lot lines so that the setbacks are to the rear of the property. Mr. Mitchell pointed out the location that they are proposing to utilize for the scaffolding company. Mr. Mitchell further pointed out that they still have to meet setbacks from wetlands and what Mr. Nixon would like to do is park his trucks along the road and this person would like to have more room to work if he could. Mr. Mitchell stated that there was a detention pond and, showed the location to the Board members, that was proposed on the original site plan and that there is a pipe that is in this area. Mr. Mitchell commented that there was an area that was disturbed and part of it was in the original site plan. Mr. Mitchell talked more about the area that was disturbed. Mr. Mitchell indicated that Mr. Nixon has done a better job at cleaning it up but that it was still messy. Mr. Mitchell explained to the Board members that it has all been opened up all the way up to the lot line.

Mr. Mitchell did not know what Mr. Seraikas who did the re-mapping for Mr. Nixon recently and asked the Board what occurred. The Board members stated that Mr. Seraikas was before the Board at the last meeting back in April. Mr. Mitchell was unsure what was required by the Conservation Commission and was not sure what the Planning Board was looking at. Mr. Mitchell stated that they are looking at expanding Lot #C and that they were looking at expanding this area as well. It is his perception that with an area and showed the area on the plan that everyone wanted to be done with it and get out there and clean it up and do what they need to do with it. Mr. Mitchell believed they could get it cleaned up.

Mr. Porter talked about what was discussed at the last Conservation Commission meeting was that an area shown on the plan where nothing has been done and agreed that it has been a mess and believed that any reduction that has not been used has

since lapsed. Mr. Porter did not believe they could restore it to a 125 foot wetland buffer because that would deem it totally useless with the convertible lands perspective but would be very hard pressed to say that they would not look to reduce it beyond 75 feet. In his opinion, and Mr. Porter did say that he had not walked it but only wanted someone to show the Board a plan and to show them a restoration plan and to show them what the actual plan will look like and then they can have some actual discussions. Mr. Porter believed that they needed some better plans together and then talk about it but if he's store trucks there and you're on top of wetlands and you have leaks then where's the mitigation. Mr. Porter also talked about the disturbance and that nothing has been done about cleaning it up which has been about 10 years.

In conclusion, Mr. Porter explained to Mr. Mitchell that if Mr. Nixon wants to develop this area then develop it, come up with a plan and execute the plan and follow the regulations. His recommendation to Mr. Nixon is to come up with a good plan. Mrs. Donovan stated that they asked that last month too. Mr. Porter indicated that this is the second time that there is another engineer before the Board and all they are asking for is to come up with a good plan to present before the Board. Mr. Mitchell basically answered by saying that they could come back before the Board in a month from now to show you something because he did not know if anything was ever done or not.

Mrs. Donovan asked didn't they go before the Planning Board last week. Mr. Mitchell stated that they were before the Planning Board with a minor site plan application which was continued until the first meeting in June. Mrs. Donovan believed that there was quite the discussion at the Planning Board but did not have the minutes in front of her but recalled that there was quite the discussion. Mr. Mitchell did say that he had not seen the Planning Board minutes but understood that there was a lot of discussion like can this use be here, what about the setbacks and what about all kinds of things such as can that work if you don't meet the setbacks and what about impervious or green space. Mr. Mitchell explained the condominium use and there were no lot lines and that the total open space was for the entire site and the total impervious was the entire site. The setbacks are to the exterior because it's different because it was a condominium. Mr. Mitchell understood that there were still a lot of things that needed to be answered but did not know because he had not seen the minutes yet but wanted to go before this Board to see what the Commission had to say about it. Mr. Mitchell did not know what the owner's expectations were in terms of using the additional area and how much he wants to use. Mr. Mitchell believed the area needed to be cleaned up and if the Commission says 75 feet and if something needs to be reclaimed within the 75 feet because it's gravel and all that then that would be something that he would talk to Mr. Nixon about. Things need to be cleaned up especially if something is going to be reapproved. Ms. Heaton mentioned some mitigation since there was storing of trucks.

Mr. Burnham mentioned a discussion about putting up a fence at the 75 foot marker. Mr. Porter mentioned that there was some talk about going to the ZBA to seek a reduction to 50 feet and he basically got shut down because he did not have a plan.

Mr. Porter believed that they needed to look at this as a holistic perspective and see what has been granted, what can't change and it really comes back to getting a plan together. Mr. Burnham stated he did not walk the site but did drive down on the site and noted that there was a lot of activity going on. Mr. Burnham also added that they were well past what would be the 75 foot mark and even the 50 foot mark because they are already using that space in excess even if they agreed at the 75 feet they are already past that now and it's already with staging equipment. Mr. Burnham pointed out that the scaffolding company that was supposed to be moving in has already moved in. Mrs. Donovan believed that, that has been her impression that any time there has been any kind of request or a regulation suggested to be followed that he has gone his own pathway. Mr. Burnham agreed that it needs to be fixed because it was a mess out there. Mr. Burnham believed if Mr. Nixon actually wanted to do something like Mr. Mitchell has been saying that he could support that because if you go there it needs to be fixed. Mr. Burnham went on to say that if they look at past history of Mr. Nixon not abiding by the rules and regulations then he was not for it because he did not believe they should extend bad behavior. Mr. Mitchell talked about the review of the road and since then a few buildings have been resided and it looks a little better but with all the approvals that nothing has been done very quickly and somethings have perhaps gone backwards before even considered to go forward. Mr. Mitchell talked about getting it done this time. Mr. Rolfe added that they have been before the ZBA, the Planning Board and the Conservation Commission.

Mr. Porter concluded that further discussion should be done with some plans and thanked Mr. Mitchell for his presentation. Mr. Mitchell thanked the Board and exited the meeting.

OTHER BUSINESS

Mr. Porter moved on to a resident who was present at the meeting.

Cathleen Charest 29 Highwood Drive, Tax Map 5, Lot 9-16 Discuss

Ms. Charest introduced herself and addressed the Board by saying that she believed that Mrs. Rouleau-Cote had forwarded an e-mail to the Board members. Mr. Porter began by saying what Mrs. Rouleau-Cote had said in her e-mail was about J.P. Pest Service. Ms. Charest said yes and that her neighbor drained the pond to fill their inground pool. Mr. Porter said if they are draining it to fill their pool then it was a big deal. Ms. Charest stated that she had her property surveyed and that she had spoken with Mrs. Rouleau-Cote about putting up a fence. They did put up a fence but placed it a foot into their property so it would not be on the abutter's property. Ms. Charest talked about the pond and that about a foot of the pond is on the abutter's property and what the abutter did was take his high powered leaf blower and blew all the leaves into the

pond. Mrs. Donovan asked Ms. Charest if Mrs. Rouleau-Cote had been out there. Ms. Charest indicated that Mrs. Rouleau-Cote had gone over to talk to them. Discussion ensued with regard to the abutters.

Mrs. Donovan believed that Mrs. Rouleau-Cote was the Code Enforcement Officer and did not know what enforcement they had. Ms. Charest added that the abutter ran his lawnmower up and down in the buffer zone.

Discussion ensued with regard to spraying within the buffer zone. Mr. Porter explained to Ms. Charest that, as an advisory board that they could certainly write letters to whomever such as J.P. Pest Services with regard to spraying in the buffer and that Mrs. Rouleau-Cote is the enforcement officer who is the best avenue and if it's a civil matter then it would be the police. Mr. Porter did not know what legal recourse Ms. Charest had with the abutter but believed that it truly was a civil matter. Mrs. Donovan also agreed with Mr. Porter with regard to it being a civil matter and reiterated that they were an advisory board. Ms. Charest just wanted someone to advise him that there were fish in the pond. Again, Mr. Porter informed Ms. Charest that Mrs. Rouleau-Cote was by far the best avenue for a cease and desists and believed it was a code enforcement issue.

In conclusion, Mr. Porter suggested that Ms. Charest work with Mrs. Rouleau-Cote and that if there was anything that was needed from the Conservation Commission then they would be happy to assist. Ms. Charest understood and stated that she would contact Mrs. Rouleau-Cote. Mr. Porter also added that they could meet with the Selectmen with regard to the mention of a scanner that the abutter may have that informs them if the police are notified. Mr. Porter added that it was clearly not a planning issue or a zoning issue but was a code enforcement issue and the Selectmen because they report to the police.

At this time, Ms. Charest thanked the Board members for their time and exited the meeting.

OLD BUSINESS

None noted.

ADJOURN

Mrs. Donovan moved to adjourn the Hearing. Mr. Burnham seconded the motion. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:14 p.m.

The next Conservation Commission meeting will tentatively be held at the Town Hall, 47 Chester Road on Tuesday, June 6, 2017.