

**Town of Auburn
Conservation Commission
March 6, 2018**

Members present: Jeff Porter-Chairman, Peg Donovan, Vice Chair, Ed Fehrenbach, Member, Richard Burnham, Alternate.

Absent: Diana Heaton, Member. Stephanie Hanson, Alternate.

Others present: Alan Villeneuve was present but was on the agenda for discussion.

Mr. Porter called the meeting to order at 7:05 p.m. and asked the Board members to introduce themselves. Mr. Porter then moved on to the first discussion.

NEW BUSINESS

**Tom Sokoloski
On Behalf of Ara Tamzarian
12 Tanglewood Drive, Tax Map 4, Lot 19
Discuss Site Restoration of Disturbed Area**

Mr. Sokoloski began his presentation by talking about a project that is basically nearly complete. The subdivision was approved back in 2005 and this is the last lot in the subdivision on Tanglewood Drive that is cleared and a portion was used for stump storage as the development was built out. Mr. Sokoloski explained that Mrs. Rouleau-Cote, the Building Inspector went out and going through the site noticed the stumps and contacted Mr. Tamzarian and informed him that they needed to be removed. Mr. Tamzarian went out and removed most of them and Mrs. Rouleau-Cote asked them to clean it up better than that. Mr. Sokoloski went on to talk about the restoration plan that they have developed and passed out copies to each of the Board members for review. At this time, the Board reviewed the proposed restoration plan. Mr. Porter explained to the Board members that this plan has been before the Planning Board and stated that the Planning Board did not have any issues but asked Mr. Sokoloski to come before this Board with the plan just to keep the Cons Com updated. Mr. Sokoloski explained what they were proposing to do with reclaiming the area and placing placards indicating the wetland buffer. Mr. Sokoloski went on to say that, they plan to plant vegetation that would be good for wildlife in the area for birds and deer to forage on and they propose to seed the ground which would take place within the growing season supposedly in May.

Mr. Sokoloski stated that, Mr. Tamzarian does have a buyer for the lot at this time and that the Planning Board did not have a problem with this plan that they are proposing

but that Mr. Porter suggested that they come before the Cons Com tonight. Mr. Burnham asked if this would be a house lot. Mr. Sokoloski said yes and that the house would be placed further back on the lot. Mrs. Donovan believed this was quite an improvement and that the proposed restoration plan was a good one. All the Board members were in agreement that the proposed restoration plan was a great improvement than what was there now.

At this time, Mr. Porter thanked Mr. Sokoloski for coming before the Board to inform the Cons Com what would be proposed for a restoration plan. Mr. Sokoloski also thanked the Board members for their support and exited the meeting.

David Lefevre, Esquire
On Behalf of Kristin & Mark Travassos
405 Wilson Crossing Road, Tax Map 2, Lot 4
Discuss Wetland Buffer

Attorney Lefevre presented on behalf of Mr. and Mrs. Travassos and began by pointing out that they had an application pending with the Zoning Board of Adjustment. Attorney Lefevre explained that they have an appeal pending that says they don't need a Variance and the other one says that even if they do need a Variance that they are asking the Board for one. Attorney Lefevre stated that the Zoning Ordinance indicates that if they need a Variance that the Conservation Commission must submit a comment to the ZBA and that is why they are before the Cons Com tonight. Mr. Porter asked Attorney Lefevre if they had any plans. Attorney Lefevre stated that the plans were submitted with the application for ZBA and should be given to them by the Zoning Board. At this time, Ms. Royce did have the application with her for the Board to review and is usually submitted to the Cons Com by the applicant. Mr. Porter explained that the Board would review the plans and come up with questions that the Board may have and best guidance and the like. Mr. Porter indicated that, one of the questions that they had with discussions with his client was that, to what extent were they looking at the encroachment because it is a Level One wetland. Mr. Porter went on to say that, the Board is very concerned with Level One wetlands and the disturbance within that area that the Board indicated that there was a possibility for disturbance but that they would not entertain the stump removal and believed that this was what they intended to do. Mr. Porter again reiterated that this was not something that they were in favor of having done from the towns perspective. Mr. Porter pointed out that Cohas Brook runs through there and that it is a live stream and is very sensitive and they are not looking to change their stance with Level One wetlands as they are looking to preserve the character and they do this with both Planning and Zoning with the town. Mr. Porter stated that they would look to work with the owners in the house positioning for the solar installation. Mr. Porter asked Attorney Lefevre what the disturbance would be and what are they looking to do. Attorney Lefevre commented that he believed it was important to

recognize that what they were proposing is a permitted use and asked the Board members if they understood that. Mr. Porter indicated that the disturbance they are looking for in the Town of Auburn was not considered a permitted use. Attorney Lefevre asked the Board members if they had a copy of the Zoning Ordinance. Ms. Royce presented Mr. Porter with a copy of the Zoning Ordinance. Attorney Lefevre believed that in his opinion after reviewing the Zoning Ordinance for the Town of Auburn that he did not believe they needed relief from the ZBA at all. Attorney Lefevre indicated that the Zoning Ordinance was something that was adopted by the voters and pointed out the permitted uses within the WWPA under Section 5.05 and if you look at the definition section for "Permitted Use" which says "A use of lots and/or structures that are specifically allowed by this Ordinance without a special exception or a variance." Attorney Lefevre went on to say that if you look at the permitted uses and what his client is trying to do is considered a permitted use which does not require a variance for "Production, cultivation, growing, and harvesting of any fruit, vegetable, floricultural or horticultural crops, except turf grasses, conducted in accordance with Best Management Wetlands Practices for Agriculture." Attorney Lefevre went on to talk about what the permitted uses are that his client can engage in within 50-feet of the 125-foot wetland buffer. Mr. Porter pointed out that the buffer was 125-feet and that there was no exception to that unless they go for a Variance. Attorney Lefevre reiterated what he said above about the production of crops etc... and not within 75-feet of the adjacent wetland. Attorney Lefevre went on to say that, within the WWPA the ordinance has within the permitted uses Agricultural uses but not within 75-feet of the edge of wet. Attorney Lefevre talked about wildlife habitat and conservation trails etc... using Best Management Practices do they have to go to the ZBA – NO. Attorney Lefevre informed the Board that, if his client wanted to engage in any one of those uses listed that they don't need a Variance. Mrs. Donovan commented that, those permitted uses are if the land is already prepared for that and this land is not already prepared for that. Attorney Lefevre then mentioned cutting down trees and clearing the land and went down to permitted uses referring to "Accessory Structures" that do not require clearing, excavation, filling or grading for the installation or placement of the accessory structures. Attorney Lefevre stated that it says that in this section but if you go back up to agricultural uses, it does not say "which does not require clearing, excavation, filling or grading..." and believed that somewhere along the line someone tried to add to this ordinance a requirement that his client can't do what the ordinance says it can. Attorney Lefevre also added that, if they wanted to cut some trees down that they could do that with a Minor Conditional Use Permit the Planning Board. Mr. Porter explained that the Cons Com did not have a problem with cutting some trees but that the problem they had was with the stumping because they cannot disturb the soil. Discussion ensued with regard to the agricultural use for gardening.

Mr. Fehrenbach asked Attorney Lefevre if what his client was looking to do was to be able to disturb 50 feet in the wetland buffer leaving 75 feet not touched. Attorney Lefevre added that they have a little over 11 acres and that they are only able to utilize

under an acre and his clients are interested in eating healthy and want to put in a garden to grow vegetables for themselves.

Attorney Lefevre pointed out that they were before the Cons Com tonight because if someone says that they do need a Variance then they will ask for one too but that they don't believe they need a Variance for a permitted use and that they would be Appealing the decision that they don't need one at all. Attorney Lefevre believed if they needed anything at all it would be a Minor Conditional Use Permit. Attorney Lefevre pointed out that the Town of Auburn's Zoning Ordinance states that, prior to holding a hearing on the request for a Variance that the Zoning Board of Adjustment shall require that the Variance Application and materials submitted in support be reviewed by the Conservation Commission.

Attorney Lefevre talked about his clients removing stumps to plant a garden because this is what they want to do. Mrs. Donovan stated that part of the Conservation Commission's mission is to protect land forever and their big concern is not what they want to do with the land today but what's going to happen in 75 years or so with further owners. Mr. Porter added that, one of the biggest challenges they have within the Town of Auburn is that it's predominantly wet. Mr. Porter went on to say that, when they establish the buffers through our ordinances and it goes through Planning Board for waivers and Zoning Board for Variances or exceptions which degrades the character of the land as well as the buffer areas so when someone comes before this Board for their opinion, the Board tries to come up with possible solutions and there may be encroachment into the buffer if there is no avenue for remediation. This is where the Board comes up with ideas to come up with the best plan. Mr. Porter explained that, when the Board spoke with his clients the first time, the Board suggested to get the house in first and then figure a way to delineate the garden after that and what they had hoped for was the opportunity to talk about the plans and how they could get it to work, not only for the buffer but to get them a nice space possible for the garden without encroaching into the buffer. Mr. Porter stated that, this is how they would have like to proceed with this and have the opportunity to work with his client to see if they could work all of that in and feels that right now it's going to the legal end of things. Attorney Lefevre talked about when the town tells a property owner that they can't use their land without a Variance is the trigger to lawyer up. His obligation is to create a record and the fact that you cannot deprive people of all use of their land and understands that the town is trying to protect the wet areas. Attorney Lefevre again pointed out that it was 11.5 acres and that they are talking about utilizing essentially less than one acre that is going to encroach within the buffer that is allowed under the Town of Auburn's Zoning Ordinance. Attorney Lefevre went on to talk about utilizing more than an acre of the property to sustain his client's family with growing of crops and his client doesn't get that if you include the house, leach field and well area and went on to talk about a small piece in the back. Attorney Lefevre further added that by telling his client that you can

use your land for farming but you cannot remove the stumps then it was kind of a non-starter because how can you utilize the land if you can't remove the stumps.

Attorney Lefevre indicated that he had walked the property with his client and pointed out that you can see the stone walls and that it was pasture a long time ago and that there were not a lot of big trees in the area and that they are not interested in going into the wetlands because all they want to do is put some gardens in the area.

Mr. Burnham echoed what Mrs. Donovan said earlier that they were not necessarily concerned with his client but future owners. Mr. Porter added that they were interested in protecting the land and the buffer because once it's disturbed it can morph into something greater. Attorney Lefevre believed that the Board was concerned about his client that wanted to do something that was permitted and that the Board is concerned about something that somebody in the future is going to do. Mr. Porter wanted to stress to Attorney Lefevre and his client that, what they would hope would happen is to have an open discussion to determine the best layout of the plans so they can work to minimize the whole structure. Mr. Porter stated that, the Board was here to protect the buffer and if they were going to support a reduction in the buffer they want to make sure that it is well heard and well worked out and it will be supported. If Attorney Lefevre wanted the Board to vote on it now that they could vote on it and see how it goes and then carry it forward to the Zoning Board.

Attorney Lefevre stated that his client would like to move forward and they are not concerned with the building because they have a building permit for the house and they are before the Board tonight to hear what the Board has to say. Attorney Lefevre also added that, they were meeting with the ZBA on Tuesday, March 27th and they have two (2) issues and one they don't think they need a Variance and if they do need a Variance then they meet the criteria for one so if the Conservation Commission has any comments to make. Mr. Porter stated that, what he would recommend from the Cons Com perspective is they are going to talk to the ZBA and go forward with the plan and what he would recommend is to have an open discussion with the Cons Com with what the plans are to minimize the impact and if they can work through that then they would probably have the support from the Cons Com perspective and still go through the ZBA with a Variance process and it might be able to come back with maybe 25-feet but that is what they would like to happen.

At this time, Mrs. Travassos explained that they would actually need a half an acre a person so that for their family of 4 they would need two acres. Mrs. Travassos went through the building envelope that is less than an acre itself. The Board reviewed the plans and noted that the property was very wet and that it abuts the Cohas Brook.

Mr. Fehrenbach talked about cutting trees and not stumping and people who hay their land and may hay right up to the wet and you're not supposed to fertilize it at all. A brief

discussion ensued with regard to hay fields and not using fertilizer. Attorney Lefevre agreed with what Mr. Fehrenbach was saying. Mr. Fehrenbach did not believe that they needed a Variance but was the only Board member that believed they did not need a Variance to do what they were proposing to do.

Attorney Lefevre indicated that they did not have a garden plan at this time because they were unsure of where they were going to place the different crops. Attorney Lefevre talked about a possible stump dump on the property as there was a depression in the land in an area at the edge of the building envelope. Mrs. Travassos talked about cool crops and different types of vegetables that require different types of land. Mr. Fehrenbach talked about Best Management Practices within the wetland buffer and websites to check out.

In conclusion, Attorney Lefevre again pointed out that he did not believe that a Variance was necessary and did not believe that a Minor Conditional Use Permit was necessary and that if he left here tonight with a recommendation from the Cons Com that they did not even need a Variance that would be great. Attorney Lefevre also stated that they do not have a garden plan and they don't expect to have one anytime soon.

Mrs. Travassos apologized to the Board about hiring an attorney and making them think that this was how they wanted things but that was not their intention. Mrs. Travassos added that they were advised by their wetland scientist to hire an attorney because once they go before the ZBA and get denied for a Variance that, that was it, they were done. Mrs. Travassos talked about the first time they were before the Board to discuss their plan and believed that the Board were against giving them the 50-feet into the wetland buffer and didn't know what to do because they need about a half an acre each and did not believe they needed a Variance.

Mr. Porter informed Mrs. Travassos and Attorney Lefevre that our town counsel has gotten involved with this application as well and looking at the Zoning Ordinance noted that what they were proposing to do was not a permitted use and it is a Variance and we will have the discussion to try to minimize the impact. Mr. Porter stated that their recommendation will be their recommendation and suggested that they go before the ZBA and go with their plan and his concern is the impact to the buffer and they will have the discussion at the ZBA hearing. Attorney Lefevre also stated that he had spoken with Attorney Bennett and that Attorney Bennett explained that, although it was a permitted use and that although permitted uses were allowed without a Variance that, the fact that it references Best Management Practices means that, they cannot engage in the permitted use if it requires cutting trees and removing stumps. Attorney Lefevre did not believe that was what the ordinance says and that's why he is here to build a record and if the Cons Com says to the ZBA, we've reviewed it and here's what we think. Mr. Porter also pointed out to Attorney Lefevre what Attorney Bennett had said that he has spoken with DES with regard to Best Management Practices and that Best

Management Practices does not apply to the creation of new agricultural. Attorney Lefevre indicated that he and the Cons Com were not a part of that conversation and believed that he could have that same conversation with that same person and walk away with a much different opinion. Mrs. Travassos stated that it didn't matter because that's not what it says in the ordinance. Attorney Lefevre again did not believe they needed a Variance and if they go before the ZBA and the ZBA says they don't need a Variance then they're done. Attorney Lefevre also mentioned if he were to go before a judge and the judge would look at what the ordinance says and is not going to call DES because he's not going to care what DES has to say because he's going to read the ordinance and see that it's a permitted use. Mr. Fehrenbach agreed with Attorney Lefevre that they did not need a Variance because agricultural use was a permitted use. Mr. Porter explained that it was for existing agricultural use and not for creating new agricultural use. Mrs. Travassos commented that it doesn't say that. Attorney Lefevre stated that if it was already agriculture then they would not even be before the Board.

Mr. Burnham commented that they could cut trees but that we've always said that you cannot stump. Mr. Fehrenbach stated that you can cut 50 percent of the basal area and you have to wait for the stumps to rot out and that it takes about 17 years for the stumps to rot out. Attorney Lefevre commented that leaving a stump is like saying you can do something but you really can't do something. Mr. Burnham added that, if you had to make a legal document to cover everything that our Zoning Ordinance would be 10 inches thick and that Attorney Lefevre is reading something and coming up with his interpretation of the Zoning Ordinance. Attorney Lefevre again stated that it was a permitted use and by definition it's something that you are allowed to do. Attorney Lefevre also talked about the RSA that says you cannot restrict someone from using their land. Attorney Lefevre believed that the Board could condition their approval and stated that they couldn't go beyond 75-feet. Mr. Porter stated that the buffer is 125-feet and they are not looking at reducing it to 75-feet and if they are looking to go down to 75-feet then it would require a Variance to reduce it to 75-feet which will go with the property. Mr. Porter explained that they deal with the town's buffers and they are looking to protect the buffers for the town and not only one parcel but the towns. They do the due diligence to try and make sure that it's done appropriately to try to minimize this and that they don't set unnecessary precedence to allow for the buffers to be reduced at will. This is not what they are looking to promote. Attorney Lefevre believed that if the Board was looking to do this then they needed to change the ordinance because the ordinance is very clear. Mr. Porter believed they needed a Variance and Attorney Lefevre did not believe they needed one and that the use was permitted under the ordinance.

Mrs. Donovan further added that, they would send the ZBA their recommendation and they would go before the ZBA. A brief discussion ensued with regard to a Variance.

At this time, Mr. Porter asked the Board if they were to take a vote right now it would either be to support or to not support a reduction to 75-feet for agricultural use and would be recorded in the minutes of this meeting. Mr. Porter elevated Mr. Burnham to full voting status. The vote took place as follows:

Mr. Fehrenbach was in support

Mr. Burnham was not in support of a reduction

Mrs. Donovan was not in support of a reduction and believed they should go for a Variance

Mr. Porter was also not in support of a reduction.

In conclusion, the Conservation Commission was not in support of a reduction of the buffer by a vote of 3 against and 1 for.

The Board was not in favor of reducing the buffer for agricultural use. The Board was okay with cutting of some trees but not in favor of removing the stumps within the wetland buffer.

Attorney Lefevre thanked the Board members for their time and exited the meeting.

Alan Villeneuve

269 Rockingham Road, Tax Map 25, Lot 44

Discuss Potential Site Plan

Chris Hickey of Eric Mitchell's office presented on behalf of Mr. Villeneuve and began by explaining the location that they were looking at preparing a site plan for. The property was located at 269 Rockingham Road. Mr. Hickey explained that the building is currently 6 feet from the wetlands and that they are looking to remove the building and put up a new commercial building. Mr. Hickey understands that this would require a Variance for side, front and rear setbacks and the property is very small being only .5 acres so the next step would be to go before the Zoning Board of Adjustment. Mr. Hickey explained that the abutting property is owned by the state. They would be removing the building and the garage and they are working on the size of the building and are looking to see what relief they can get from the wetland setback. Mr. Hickey explained that the wetland area is actually runoff from the highway that is located behind the building and would like to make it further away from the wet area. Mrs. Donovan asked about the parking area. Mr. Hickey said yes, he knew that. Mr. Burnham asked what type of building it would be. Mr. Hickey stated that they would like to rent it out to a contractor who is looking for storage space/office space. The building would be about 4,000 square feet and what they were hoping is to have 10-foot setbacks from property lines to get the parking to work.

Mr. Porter asked what the slope was from Route 101. Mr. Hickey believed it was a “D” slope at least. Discussion ensued with regard to the flow of water. Mr. Hickey indicated that they would be working with a drainage plan and make the new building further away from the wet.

In conclusion, Mr. Porter believed it looked good but that he would like to see a design plan and would like to see the parking. Mr. Hickey believed it would only get better. The Board all agreed that what they were proposing looked good with what they have to work with. Mrs. Donovan believed that anything would be better than what is there now.

Mr. Hickey thanked the Board for their time and exited the meeting.

MINUTES

Mrs. Donovan moved to accept the minutes of January 9, 2018, as written, Mr. Burnham seconded the motion. A vote was taken; all were in favor, and the motion passed.

ADJOURN

Mrs. Donovan moved to adjourn the meeting. Mr. Burnham seconded the motion. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8.26 p.m.

The next Conservation Commission meeting is currently scheduled for Tuesday, April 3, 2018 at 7:00 p.m. at the Town Hall, 47 Chester Road unless otherwise noted.