

**Town of Auburn
Conservation Commission
September 2, 2014**

Members Present: Chuck Joy (chair), Alan Villeneuve, Peg Donovan, Jeff Porter, Ed Fehrenbach, and Stephanie Hanson

Others Present: Lisa Kinzel, Bill Scott (Maine Drilling & Blasting), John Capasso (M,D&B), Cindy Balcius (Stonyridge Environmental), Doug McGuire (Dubay group) and Vern Gardner (Horizon Associates)

Meeting opened at 7:05 p.m.

Appraisal for Proposed Conservation Easement (Vern Gardner)

Alan Villeneuve mentioned that Mr. Gardner was present as the appraiser to be hired to perform a restricted appraisal for an easement (the property owners could not attend) presently being considered by the Commission. The budget estimate for this was approximately \$1,800, Mr. Gardner can meet this estimate.

Alan Villeneuve - Motion to move forward with appraisal

Alan Villeneuve - Second

All in favor, motion passes

Alan Villeneuve asked if Mr. Gardner would present a document with the market and nonmarket values

Vern Gardner replied, yes, there will be two values unaffected and affected the difference between the two is the loss in developmental rights.

Peg Donovan asked about a date for completion, she thought a couple of a months seemed a little vague. Alan Villeneuve asked if an okay time frame was sixty days. Vern Gardner thought sixty days was fine, two months from today should be okay. Alan Villeneuve said the land owner should be able to meet almost any time and he would get Mr. Gardner in touch with them.

Mr. Gardner asked if there was anything to be pulled out, if he would establish it, or would the Commission. He wondered would the Commission know if the pulled out land would be one parcel of four acres or two parcels of two acres.

Alan Villeneuve noted that the land owner lives there so that parcel will be pulled, and the area as a whole is big enough that if the parcel is two or four acres it doesn't matter, and yes the Commission will know what is pulled out. He also asked that Mr. Gardner have the homeowner walk the property with him so that the landowner could relay directly what he is thinking.

Maine, Drilling & Blasting (Bill Scott, John Capasso, and Cindy Balcius of Stonyridge Environmental, Doug McGuire of the Dubay group)

Chuck Joy asked for a recap of the scenario for those not present at the last meeting.

Doug McGuire explained that the area is a development that houses explosives, there are dimensional criteria that require the explosives be housed in separate pods. There are developments on adjacent lands in adjoining towns proposed that will effect where the explosives are held. Because of the new subdivisions, the explosives will need to be moved more internally leaving just a small area to put the pad to comply with federal regulations for those types of explosives. Unfortunately this area has a wetland and a vernal pool within it. The land owner has no other options to place the explosives and still be viable on the property.

Stephanie Hanson asked if the setbacks were based upon existing structures or potential build out. Doug McGuire replied that they were some of both, they are working off where they are already constructing and where they propose to continue. Each pad needs to have less quantity, however Maine Drilling & Blasting says they cannot reduce their truck loading facility because it is the primary money maker on the site. The newest construction is the limiting what land they can use on their property. Peg Donovan wondered if they would come back for more waivers later on down the road. Doug McGuire said no, they would need to leave the town because the area would no longer be usable if there were more development around them. However, M, D & B was always aware that this could potentially happen. He noted that a good portion of the area is within the Manchester Water Works watershed.

Stephanie Hanson asked how often they need to look at area around to see if they need to move pads. Doug McGuire said constantly, Alcohol, Tobacco & Firearms can inspect at any time. He added that the setbacks are based upon the quantity in the pod, so if they reduce the amount, they can reduce the setback, the truck loader area can hold the most so that needs that biggest area. Bill Scott said they are reducing the overall capacity of the lot to make it work, but the key is the truck loading facility. John Capasso said at one point they attempted to purchase the properties in Londonderry to avoid this but this was not possible because of the cost. Alan Villeneuve if M,D & B knew what was planned for the abutting Johnston piece, expressing concern that should the Commission support the request to disturb a vernal pool and then those landowners come before the planning board in a year or so.

Cindy Balcius of Stonyridge Environmental spoke about the propose wetland impact of 7300 sq. ft. to a vernal pool, noting they met right away with federal entities. According to her, from the state's aspect this is a minor impact since it is under 25,000 sq. ft. However, there is also a buffer impact of 40,000 sq. ft. They say some of the area will be re-vegetated to help the buffer reestablish 8,400 sq. ft. and ?? sq. ft. at two other locations???

Cindy Balcius went out to identify the productivity of the vernal pool and document the egg masses. In order to be considered a vernal pool one needs to see wood frog, spotted salamanders and fairy shrimp. The wetland will then be considered as a Tier 1, 2, or 3 based on egg mass number and vegetation surrounding. These were characterized as tier 3 based on the lower egg mass numbers found using the procedure of someone from Maine. She found several other areas that were considered non vernal based upon hydrology- dried up extra quick could not sustain egg masses. Federal guy – Mark Current of the EPA looked at the conservation piece of the property (10.85 acres) on site as a mitigation – noted an area Manchester Water Work area that could form a bit of a corridor because it connects to the open space portion of a subdivision in Londonderry.

Cindy Balcius mentioned that she had referenced the GRANITE site to look for possible adjacent easement areas, Alan Villeneuve reminded her that anything she took off the

GRANITE site should be taken with a grain of salt, particularly because MWW has no restriction on their parcels yet all the land is listed as protected however, there is nothing in perpetuity on any of their parcels, Alan Villeneuve added that since the parcel they were proposing an easement on is in Auburn, our regulations would not go away, so most of the property (they would like to put an easement on) around the wetland would remain as is, because it is within 125' of that wetland, hence the proposal to protect it is moot since it will not be used anyway.

Cindy Balcius said roughly 49% of the parcel is directly wet and X acres are upland. It is a tier one wetland. Alan Villeneuve again noted that the wetland is something that is not essentially going to be developed anyway and is fairly protected by our regulations, while M, D & B is seeking the support of the Conservation Commission to do something they have never supported before, adding that if I am going to support setting a precedent on something we have never done before you might also want to offer something that can't be developed to begin with.

Chuck Joy said the question right now is location of the mitigation, which Alan Villeneuve countered with "I do not think we should lose sight of what is at stake here, whatever we do here will be tossed back at us at the next circumstance. I do not think that is enough to deter other people from doing this to future vernal pools". John Capasso said this is a 10:1 ratio of mitigation which Stephanie Hanson countered with "you are not comparing apples to apples, you cannot compare wetland to upland". Cindy Balcius said, the functions and values of the system we want to conserve outweighs the vernal pools this area is an integral part of the entire system.

McGuire said should recognize the hardship of this particular application he thought that the Commission would not be setting a precedent because other applicants would need to have a very specific hardships to impact a vernal pool. Alan Villeneuve said he had specifically asked them to come back with something other than this piece or a fee in lieu of, and he also suggested an easement for the entire piece when M, D & B leaves the parcel. Cindy Balcius said she has had some success with recreating vernal pools with some instances. Given the low impact and low productivity it could work here.

Peg Donovan asked, if the Commission came up with a list of three or four possible mitigations, could they work with that? Cindy Balcius said yes. Chuck Joy asked for the total vernal pool and buffer impact and then their mitigation footage.

Alan Villeneuve said "this is a Pandora's box", to which Chuck Joy said "I am with you, we understand the hardship and the safety issue from the AFT standpoint, on the other hand, we want to be reasonable but not foolish and realistic for what comes next."

Cindy Balcius said she could submit some stuff at the beginning of next week, they want to move onto ZBA and need to have the application in Friday, because as soon as someone shows up and starts living in a house, Maine Drilling and Blasting will need to move the stuff. Alan Villeneuve suggested Conservation meet again before the ZBA meeting. Doug McQuire said he did not think they would be able to meet the deadline for the September ZBA meeting, he thought it was today but would check to see if it is this Friday. John Capossa said "we are running up against a production nightmare if we cannot get a resolution prior to the subdivision putting up a house."

Chuck Joy have about 59,000 sq. ft. impact combined of buffer and vernal pool. Of which 7,500

sq. ft. is vernal pool, he then asked, what is left for buffer after impacts? Cindy Balcius said they are roughly into the buffer by 20' at one end and then 15' at the other.

Chuck Joy said in this instance they are an established business, with a hardship, and safety concern, plus they are regulated by federal government, and impacted by another town, this is a completely unique situation which is not the same for someone who just wants to put a road through a vernal pool. When we move beyond your particular setting, someone will want to run through a wetland, they will put aside extra acres of wetland and still put houses in the upland.

Cindy Blacius, yes that is why you have to provide a buffer around the resource to protect it, only a certain percent can actually be the wetland.

Stephanie Hanson said "we first need to list what are the circumstances that are even bringing us to consider mitigation for a vernal pool when our regulations do not allow it, so we do not have ten other people coming here asking to impact a vernal pool when they do not have those criteria."

Jeff Porter so do you suggest if you meet all the criteria, which are in this circumstance an established business, with a hardship, and safety concern, plus they are regulated by federal government, and impacted by another town, then you can mitigate in this way. Alan Villeneuve in my estimate, the three things to consider are replication, money for other projects and land set aside, with replication the biggest to consider, are you considering this, I would want replication whenever possible. Jeff Porter providing they are successful. Alan Villeneuve I would suggest that in order to consider supporting, this, we should get #1 replication in some ratio, #2 a conservation easement, and then #3, money for an easement. Chuck Joy said he was against fee in lieu of, because he thinks it is the most corruptible, rather was in favor of mitigation or replication. Alan Villeneuve, I would want to hear and understand why not replicating on this site is the way to go. Cindy Balcius said the EPA man was not clear on that but what if we could combine, extend the vernal pool on one side, look at replicating a portion of the vernal pool, she thought they could get in without too much impact, she said she could move a wetland, take a natural seed bank and move it.

Alan Villeneuve went to map and asked about extending their red line along the lowlands instead of up over the hill, and potentially paying for expenses for an easement Conservation is working on, that way they would be creating, conserving and paying for something. Jeff Port said he liked the way Alan was moving this, entrance criteria though is huge. Chuck Joy said he would like no more than 20% wetland in the mitigation, they propose 50%, and we need to get more upland than wetland.

Cindy Balcius did number crunching came up with 69:42 upland to wetland – proposed easement is 10.85 acres. Upland buffer 472,928 sq ft. (69.6%), wetland 206, 813 sq. ft. (30.4%) ratio 63:1 (472,928:7,500). Cindy Balcius said in the upper corner there is a pretty good area between two knolls that offers an opportunity to drag the vernal pool out. 1:1 impact for extending/creating the vernal pool area. They would need to discuss an easement holder, she suggests the town hold the easement. Alan Villeneuve said the town frowns on those but this might work in this situation, Chuck Joy agreed, adding that whatever is agreed to here just because a unique and special situation does not mean precedent isn't set. Peg Donovan if set criteria to even get to this discussion I think we are okay. Alan Villeneuve not sure there is a specific ratio we want to even tie ourselves to. Jeff Porter will be setting a standard for what the mitigating factors are.

Peg Donovan –Motion to set the parameters in order to consider mitigation of impact to a vernal pool, must be the minimum of the following: an existing business in Auburn, regulated by a federal organization, impacted by another jurisdiction, property owner or town, and have a public safety issue. Mitigation will be based upon a ratio of 63:1 upland to wetland, wetland needs to be no more 30% and replication must be at a minimum 1:1.

Ed Fehrenbach –second

Peg Donovan withdraws the motion

Jeff Porter – second

Ed Fehrenbach - Motion to consider this vernal pool impact based upon the fact that this is an existing business in Auburn, regulated by a federal organization, impacted by another jurisdiction, property owner or town, with a public safety issue.

Jeff Porter -Second

Jeff Porter, Ed Fehrenbach, Peg Donovan, Stephanie Hanson - Yea

Alan Villeneuve - Nay

Motion passes

Peg Donovan - Motion to accept the proposal by Maine Drilling & Blasting that, the conservation to impact will be 63:1, wetland will be no more 30% and vernal pool extension will be at a minimum 1:1.

Second – Jeff Porter

Alan Villeneuve said “if going to hold an easement need to have a discussion of how that easement will be monitored and who will pay for that monitoring, not fair to not include that in the proposal. As we set this there will be wiggles of this throughout. Say they are impacting this one vernal pool and they are going to extend it, could see another vernal pool issue where they will say we are just going to extend ours, therefore should have at least a 3:1 replication/extension instead of just a 1:1. For those reasons I am going to vote no. Because doing extension argument for trade off but also need tradeoff for other buffer impacts around the pool that are affected. Suggesting a 3:1 replication ratio because they do not know what will survive and that is a way to help offset. I do not think what is being proposed as mitigation is enough.”

Stephanie Hanson, asked about the area being moved, what are they going to do with that?

Bill Scott said it would have truck parking, and they were going to leave the pole barn. They will still have capacity there it will just be smaller. Stephanie Hanson, asked if there is any area that can be restored and what is the proximity to the vernal pools. Alan Villeneuve said “the impacts are new areas, I think a bigger slice of the easement on the bottom is appropriate and they need to pay for the easement and the monitoring, it should not cost the town any money to do this they should extend \$10,000 or so towards easement closing costs.”

Cindy Balcius agreed that a stewardship fee of \$10,000, saying that the piece as presented was sufficient to counter direct impacts to vernal pool and buffers. Alan Villeneuve said “the Commission was trying to set the bar so that others that come after you see a three pronged approach to reaching this goal, I see tremendous value in protecting the areas”

Alan Villeneuve - Motion to table above motion.

Jeff -Porter - Second

All in favor, motion passes, motion tabled

Alan Villeneuve - Motion that based upon unique circumstances and conditions some of which include federal regulation and public safety the Conservation Commission supports the proposed mitigation which includes replicating the disturbed vernal pool , a conservation easement on a scale of 63:1 minimum with only 30% wetland, and a contribution of up to \$10,000 for easement closing costs.

Ed Fehrenbach - Second

No further discussion, all in favor, motion passes.

Peg Donovan - Motion to withdraw her previous motion

Ed Fehrenbach –Second

All in favor, passes, motion withdrawn.

Cindy Balcius will put together the intent of the easement and the specifics of it for the next time. Will use the DES draft language and all can review and discuss it.

Lisa Kinzel – 381 Chester Road

Twenty eight square foot play area created in a buffer that was already reduced.

Chuck Joy started by saying that according to Auburn regulations, the homeowner in this case is not even supposed to mow that area, adding that the Commission knew this was going to be a problem because the buffer was ahead of the stone wall, that they did not support this, a level 1 wetland with a buffer reduced down to 75' but the ZBA approved it anyway. Chuck Joy went on, that he felt the Commission really should go look at it, this is not entirely permeable anymore, and it is a 28' by 28' structure, with wood around it. Alan Villeneuve suggested that this has no more impact than what has already occurred. Chuck Joy disagreed, stating this area has no growth, at least grass has a buffer capacity, and this negates any buffer whatsoever. Lisa Kinzel said that underneath the mulch, is filter cloth. Jeff Porter aid the landscape fabric it does not allow the water to filter all the way. Alan Villeneuve said that when a homeowner does this, it sort of green lights him/her to do things in other areas you are not supposed to things in. Chuck Joy added that he felt it was a huge area in an already reduced buffer, now they are down to about fifty feet.

Alan Villeneuve - Motion to support installation of play area as presented.

Ed Fehrenbach –Second

Alan Villeneuve said the issue is that really 28 sq. ft. is too big to be in an already reduced buffer. Chuck Joy added that even before built house had to go back on the buffer to build a deck, so now they are in the buffer, he added Lisa Kinzel should look at her neighbors, and see how their grass goes right to the placards, while hers go beyond them. Alan Villeneuve said he thought there could be less impact to which Chuck Joy said I am not for this as presented, it is too large an impact.

Jeff Porter, Ed Fehrenbach, Alan Villeneuve, Peg Donovan, Stephanie Hanson - Oppose Motion does not pass

Jeff Porter proposed the play area be smaller adding that, this was discussed with the builder and the people that put the plans together and it was made very clear to them what the

expectations were for getting a reduced buffer and that did not get relayed to this landowner. Alan Villeneuve said that for me this is about the size of the impact in a reduced buffer that should not have been impacted to begin with. If there were a smaller area in this reduced buffer area, and plantings then perhaps. Peg Donovan, thought the homeowner should reestablish some other plantings in the buffer to help it grow back and create a boundary.

Chuck Joy requested that Mrs. Kinzel come back with a proposal that compromises what you want and we suggest. He added the Commission should do a site walk because there is no buffer and to get an accurate sense of what is going on they need to see it. Alan Villeneuve suggested a 6:30 p.m. site walk tomorrow.

Minutes of last meeting

Motion to approve the minutes of the last meeting – Peg Donovan

Second – Jeff Porter

All in favor, Motion passes

Proposed wording changes for zoning regulations

Chuck Joy presented the following as changes to the zoning regulations for discussion and consideration:

~ Property lines within a clustered development will be located outside of all wetland setbacks.

This comes from our repeated calls and site walks due because of buffer violations in cluster developments. It would encourage developers (Article 7.01 (5)) "To stimulate innovative approaches to land and community development."

As evident by recent calls and visits to - Willow CT, Steam Mill RD, Chester Turnpike, etc.

~ There should be a minimum width for connection corridors within cluster developments for Open Spaces to be considered contiguous.

Right now developers are coming in with designated Open Space isolated by roads or culverts, and frequently just a small connecting path or strip. Open Space should be considered contiguous only if the connection corridors are 300' wide or the minimum require wetland setback, whichever is greater.

NH DES suggests (2.3 Habitat Protection) Page 195-300' minimum buffer width for habitat connectivity, 400' around existing vernal pools, 200' around deer wintering areas. Page 196-Layout of development minimizes stream & wetland crossing by roadways & driveways. Maintain 300' vegetated buffer on either side of a stream crossing.

~ Discuss Cluster setbacks and minimum requirements with the planning board.

We have been given many reasons why clusters should be allowed without the required setbacks. Most recently, we were told that the regulations are antiquated. I believe that they should be changed or followed, and that most of the push-back is due to the cluster

development of smaller, more challenging properties. Not the original intent of the regulation.

NH DES Suggests (1.4 Conservation Subdivision) Page 44- To require that a minimum of 50 percent of "buildable" area of the parcel and 80 percent of the "non-buildable" area be conserved as part of a conservation subdivision. NH DES suggests (2.3 Habitat Protection) Page 193- Requiring site-specific habitat assessment.

~ **Require open space easements to be held by a third-party** or establish a stipend for future restoration. Open Space should not be deeded to the Town of Auburn.

(NHDES - "fees to cover stewardship")

Alan Villeneuve really liked property lines outside of wetland setbacks. Discussion about the last four clusters and this issue. Chuck Joy does not think a cluster subdivision should be allowed in R1 to avoid everyone getting a one acre lot they cannot use then asking for exceptions and waivers later. Jeff Porter thought this should be extended out to grid developments as well, a buffer is a buffer. Alan Villeneuve noted that often in "cluster" developments there is finagling with the open space, for example they include grass in the internal part of the cul de sac as the part of the green space which is ridiculous, he encouraged member to attend a planning board meeting to discuss these points.

Motion to adjourn – Alan Villeneuve
Second – Jeff Porter

Meeting closes at 10:10 p.m.