

**Town of Auburn
Conservation Commission
Public Hearing
February 2, 2016**

Members present: Jeff Porter-Chairman, Alan Villeneuve, Peg Donovan, Ed Fehrenbach, Diana Heaton, Stephanie Hanson & Richard Burnham, Alternates.

Others present: Eric Mitchell, Rob Starace & David Bronson

Mr. Porter opened the meeting at 7:00 p.m.

PUBLIC HEARING

**Eric Mitchell
On Behalf of Rob Starace
Anderson Way, Tax Map 5, Lot 19
Wetland Level Reduction**

Mr. Mitchell passed out copies of a letter from Stantec dated January 14, 2016 as well as a copy of the wetland evaluation from TES Environmental Consultants, LLC. At this time, Mr. Mitchell began his presentation to the Board members by pointing out the location of the area that they believe should be reclassified as a Level Two wetland. Mr. Mitchell stated that through the course of the summer that the owner did not see any water at all. Mr. Mitchell indicated that the applicant also paid for an independent review from Stantec of which Stantec concurred with Mr. Sokoloski's findings that using the New Hampshire methodology that was used for the original study and as it is written in the zoning to use. Mr. Mitchell pointed out the location and reiterated that with the findings that this area should be reclassified as a Level Two and therefore should be reduced to a 75 foot wetland buffer.

Mr. Mitchell stated that they have gone before the Planning Board and that the Planning Board believed that this would require a public hearing of which they are planning to do and would try to schedule it for the first meeting in March and that they also wanted to obtain the input of the commission and would take any questions or comments at this time.

Mr. Porter stated that they have already seen the report from the soil scientist for the original plan and that they weren't looking to change that area to a Level One classification but that the contiguous area from a Level Two to a Level One should be treated as a Level One. They understand that the soil science said it was a Level Two and they understand the science behind it but they tend to err on the side of caution by

saying that anything that is contiguous needs to be treated with a higher value and that was their stance all along. Mr. Porter just wanted to get that clarified and on the record. Mr. Mitchell commented on the question that the Board raised on connectivity and something being hydraulically connected to another wetland that he understands that if you have a wetland system that water continues to flow from one part of it upstream down through the system that continues to flow and ends up going to a larger source being protected. Mr. Mitchell further add that there are instances where, and believes this is one of them, where it may be hydraulically connected that although they are connected does not necessarily mean that it must be a Level One. Mr. Mitchell also gave an example of a vernal pool where there is no outlet and with no outlet doesn't mean it should not have a higher priority and in this case particular case just because they're connected doesn't mean it isn't different. Mr. Mitchell talked about the study that was done for the Town of Auburn back in 2009. Mr. Mitchell stated that, just because it's connected doesn't mean that it's the same level as what is downstream. Mr. Mitchell further explained the reasons behind the report findings. Discussion ensued with regard to the setbacks and reasons behind the setbacks. In conclusion, Mr. Mitchell stated that he could understand the preference to have a 125 foot setback to all the wetlands or anything that is connection but they have used the ordinance and they have looked at it and the study that was done was done over a year ago and relooked at last summer and reviewed by Stantec and the concurrence was that it should be a Level Two.

Mr. Porter stated that the soil was one piece and that the environmental aspect and how the overall function of the wetlands because there were other factors with what determines the valuation of a wetland and not necessarily only water. Like habitat, what's living there and how it actually functions and these are the things that they tend to err on the side of caution. Mr. Porter further explained the Conservation Commission's position with regard to reductions in setbacks. Mr. Porter pointed out that when they originally walked the property that it was wet and when they walked the property this summer it was not wet. Mr. Porter believed it was an intermittent stream and that it was not only about wetlands but about the environmental factors that go into a wetland. Mr. Mitchell understood and pointed out the reason why he used the drainage class of very poorly drained and poorly drained as an example and understood the Board's concerns and that there is also an ordinance and based on the study that was done and they used the methodology in the study that was done and with that believes that it should be a Level Two. Mr. Mitchell further pointed out on the plan that they plan to put a windrow along an area so that no water from Lot #3 will go into the wetlands. Mr. Mitchell also explained the protection areas by plant trees and installing fencepost along the wetland setback on Lot #3 as well as Lot #4 and a portion of Lot #8.

Ms. Heaton asked what he was able to do with a 75 foot setback that he would not be able to do with a 125 foot setback. Mr. Mitchell answered by saying that it would be an extra 50 feet of useable property goes a long way and it would give the lot more area. Ms. Heaton asked if it was preventing the lot from being buildable. Mr. Mitchell said that the lots are still buildable but by giving them 50 more feet would make it more useable and would hopefully prevent the owners from going to the Zoning Board.

Mr. Fehrenbach could not remember the whole deal but that they all knew it was a Level Two but could not remember the whole discussion. Mr. Porter pointed out that because it was contiguous and that it has value in terms of the functioning stream and although it is intermittent and because it was a contiguous area and going from a Level Two to a Level One and with this in mind should be treated as a Level One. One of concerns with changing the classification was the potential for changing the number of lots and in speaking with Mr. Mitchell and Mr. Starace that this was not the case. They are still concerned with just using the soil science would be setting a precedence that they do not want. Mrs. Hanson agreed and that her main issue is not necessarily with the report and the methodology results but the fact that you look at the site and could draw a line across a lot of small pieces of wetlands and probably have it not meet the Level One criteria because you would be treating it as a small piece and not the whole system itself and believes it would be a dangerous precedence to set for future projects. Mrs. Hanson had a question with regard to receiving approval for the road being already in for how many square feet of fill. Mr. Mitchell indicated that the total impact was 4,275 square feet. Mrs. Hanson asked if there was any mitigation done for that. Mr. Mitchell stated no because it was less than 10,000 square feet. Mrs. Hanson stated that this was another issue that she has that they are not getting any mitigation out of something that was already approved for a wetland fill. Mr. Mitchell added that there was no formal mitigation but they have created additional wetlands and set aside conservation land but from the standpoint of the lots and the layouts and the setbacks that they do have is a mitigating effect and whether it mitigates the actual filling of that but the size of the lots and what is left over do provide benefits to the rest of the wetland system. Mr. Villeneuve commented that he did not understand how putting in homes mitigates disturbing a wetland. Mr. Mitchell reiterated that the size of the lots and the amount of contiguous areas that are with buffers is mitigated as opposed to using them and most of that is because of the regulations.

Ms. Heaton pointed out that the road goes over a section of a Level One wetland and touches upon a Level Two wetland and through another Level Two and talked about conserving what is there and did not see a compelling reason to reduce the setback from 125 feet to 100 feet which she believes was discussed.

Mrs. Donovan also agreed that it was setting a dangerous precedence and believed it was all connected. Mr. Porter talked about Easements and best practices and that protection is still their charter and understood that it was a grid and that they could take a look at a vote.

Mr. Porter asked if there was any more discussion. Mr. Villeneuve wanted to point out to Mr. Mitchell that he was coming before the Board to get something for somebody else's use because he did not need this reduction in order to get the lot but how to make it more saleable. Mr. Mitchell pointed out that the Level Two wetland hits three (3) lots that would be affected. Mr. Starace wanted to correct the fact that its 100 feet on one side and the rest would be 75 feet. Mr. Mitchell reiterated the fact that Tom Sokoloski and Stantec agree that it should be a Level Two and with a Level Two that the setback

should be 75 feet. In conclusion, Mr. Mitchell believed they meet the ordinance and that is why they are before the Conservation Commission.

Mr. Porter asked if there was any more discussion. Mr. Cote commented that he wanted to caution the Board with saying that it was setting a dangerous precedent because the dangerous precedent that can be set is subjectivity instead of objectivity when looking at these wetlands. Mr. Cote further stated that we have an ordinance and that there are definition for wetlands and when we start saying that it's really a Level Two but we want it treated like a Level One because it's contiguous because a lot of wetlands are contiguous. Discussion ensued with regard to reductions in the wetlands. Mr. Porter commented that they are not looking to set precedence but are looking for best practices for the functions and that they advise and assume that they will be heard. If they go by the book for every piece of land in town then the functional value for what they consider the wetland use could be wildly interpreted and sliced and diced from science and throwing all the overreaching functionality of what the wetlands are. They are looking at valuation of what a wetland is. Mr. Porter explained that in August it was wet and dried up and that you stick a rod in the ground and the soil says it's a Level Two and it's a functional stream and it changes. Mr. Cote talked about scoured channels and said a stream has scoured channels that carry sediment and that a flow through a wetland is not a stream. Mr. Cote did not believe it met the definition of a stream. Discussion ensued with regard to streams.

The Board reviewed the report from TES and in it was labeled as a scoured stream channel. Mr. Porter said that there is some valuation and that they have walked the area and going from a Level Two to a Level One is functioning as a stream that is the headwaters going into Cohas. In looking at the impact of development they are trying to be cognizant of all of that. Mr. Porter indicated that they would like to look at these on a case by case basis.

Mr. Starace asked the Board members why they always say No and treat it on a case by case basis and that the fact that he has done what the Board has asked him and that Stantec is in agreement that it should be a Level Two so why not agree that it was a Level Two as well and that two professionals agree what is out there. Mrs. Hanson commented that Mr. Mitchell has been before the Board several times and have not always said No. Mr. Porter explained that they look at it from a science perspective and they look at it from a planning perspective and they understand if they are too restrictive that chances are they will be before the Zoning Board. Mr. Villeneuve further pointed out that the Board already agreed to reduce the wetland setback to 100 feet for Lot #3 and Lot #4 from the center of the scoured channel and not the edge of the scoured channel. The Board all agreed that they had approved this.

Mr. Starace added that the Board asked that Stantec look at it and he did and that this was asked of at a Planning Board meeting. Mr. Starace further added that if there was any water in there that he would not be before the Board today but that from May to mid- December there was no water but feels that he is losing valuable land on valuable lots. Mr. Villeneuve stated to Mr. Starace that he was already granted relief from 125 to

100 feet. Further discussion ensued with regard to the plans. Mr. Starace added that Peter Schauer went out there first and then Tom Sokoloski took over and that Stantec has been out there and that everyone is in agreement that this wetland in discussion is a Level Two and that with a Level Two wetland that the buffer should be 75 feet. Mr. Starace also informed the Board that he is also agreeing to put a berm to keep any runoff from that lot that does head to the wetland. Mr. Mitchell wanted to clarify that the plans that have been approved have always been 100 feet from the edge of wet and what they are proposing is 75 feet from the edge of wet and not from the middle.

Mr. Burnham commented that this was really complicated and that he has not walked the property but understands both sides of it and from being at the Planning Board meetings that he believes which way the Planning Board will be going. Mr. Porter indicated that it was a plan change so they have to go before the Board again. Mr. Porter stated that they are trying to come up with the best planning possible. They are trying to do the best thing for the town by preserving and making some good use of the area and coming up with some functional ideas.

Mr. Villeneuve made a motion to support the reduction of the wetland buffer that crosses the road at Station 10+90 to 75 feet, Mrs. Donovan seconded the motion. A vote was taken; Mr. Fehrenbach was in favor, and Ms. Heaton, Mr. Villeneuve, Mrs. Donovan opposed. The motion did not pass with 3 opposed and 1 in favor.

Mr. Starace asked the Board what value does the Board place on Stantec's opinion. Mr. Porter stated that Mr. Tatem did not do the evaluation. Mrs. Donovan added that the Board was not disputing their evaluation but what we're saying is that we do not support making that buffer smaller because it affects the Level One that is next to it. Mrs. Donovan also stated that they respect Stantec's opinion and that Mr. Starace was right that they were called in to do the evaluation and regardless of what Stantec says it's a contiguous area and that was what was concerning the Board. Mr. Porter stated that they value it holistically looking at how this thing should be worked. What they are trying to do and what they've done in the past is you look at it as a functional perspective, Level Two to a Level One has value and that is why they want it preserved as a Level One. They are trying to err on the side of caution.

At this time, Mr. Porter stated that there was a motion to accept of 1 to 3 and thanked Mr. Mitchell and Mr. Starace. Mr. Porter added that this is what they wanted was to meet with you and discuss this further.

**David Bronson
82 Nathaniel Way, Tax Map 5, Lot 104-9
To Allow a Shed within a Level One
Wetland buffer**

Mr. Bronson started by saying that he was before the Board to discuss the location of his shed and informed the Board that he was not told that there was a wetland on his property. Mr. Bronson asked if the well needed to be 75 feet from the wetland. The Board informed Mr. Bronson that the well did not need to be 75 feet. Mr. Bronson suggested to the Board that they schedule a site walk of the property to see the proposed location of the shed. Mr. Bronson also showed a photo showing the stone wall which is further than where he proposes the shed location. Mr. Porter noted that the area was already cleared. Mr. Bronson stated that this was the only feasible place on the property other than putting it in the front yard. The Board discussed a time and date to complete the site walk. The Board decided on Saturday, February 13th at 7:00 a.m.

Mr. Porter informed the Board members and Mr. Bronson that he would see everyone on Saturday, February 13th at 7:00 a.m.

**Minutes
January Meeting**

Ms. Heaton moved to accept the minutes of January 5, 2016 as written, Mr. Burnham seconded the motion. A vote was taken; all were in favor, the motion passed.

Planning Board Updates and Warrant Articles

Mr. Porter informed the Board that the zoning changes have been formalized and will be going before the voters. If they are adopted, then the Planning Board will be looking to change the regulations for the cluster ordinances as we have been working so hard to do. The only problem is, is that there is one proposed warrant article and one petition to abolish cluster all together. Mrs. Marzloff added that the Planning Board recommended the warrant article and did not recommend the proposed petition. Mr. Porter continued to explain that the Planning Board was working on the cluster changes and in the meantime there was a deadline that had to be met in order for the petition to be withdrawn and that had lapsed and so now we have the warrant article and petition. What we are hoping for is that the warrant article will be supported and that the petition will not. Mrs. Marzloff stated that once the deadline passed there was no way to take the petition off the ballot as they are in conflict and the worst thing that could happen is if they both pass.

Mr. Porter said that there was a lot of real good work and a lot of really good input. Mr. Porter stated that we are hoping for the best and basically that is where it's at currently. Ms. Heaton commented that she could not find it on the website. Ms. Royce stated that she would send it to Ms. Heaton via e-mail.

Mr. Porter moved on to the next discussion.

Conservation Commission Member Poll

Mr. Porter pointed out that there were three (3) members terms coming up for rehearing which are Peg Donovan, Diana Heaton and Alan Villeneuve and that you will all be asked to continue on the Conservation Commission and hope that they are all willing to continue on and that each of them should be receiving something from the town shortly.

Mr. Porter stated that this was the last of the new business and moved on to the next discussion.

Dufresne Easement Update

Mr. Porter asked Jeremy to update the Board on the Dufresne Easement. Jeremy informed the Board that the project is essentially ready to close and that they are just waiting on the two (2) mortgage subordinations. They are dating back to 1987 and 1988 and long since discharge but the discharge wasn't recorded. It's happening but is happening very slowly. Mr. Porter asked if we were in jeopardy of losing funding. Jeremy stated no and that they would be looking at closing about the second or third week in February. They have located the right person and that it was just a matter of recording the documents.

At this time, Mr. Porter stated that they did have some items to talk about in closed session and asked the Board for motion to go into closed session.

Mrs. Donovan moved to enter into non-public session pursuant to RSA 91-A 3, II (d) potential conservation easements; seconded by Ms. Heaton. A roll call vote was taken; Mr. Porter – yes, Mr. Fehrenbach – yes, Mr. Villeneuve – yes, Mrs. Donovan – yes, Mrs. Hanson – yes, Ms. Heaton – yes. The motion passed and the Board entered into non-public at 8:17 p.m.

Mr. Villeneuve moved to exit Non-Public Session; Ms. Heaton seconded the motion; A roll call vote was taken; Mr. Porter – yes, Mr. Fehrenbach – yes, Mr. Villeneuve – yes, Mrs. Donovan – yes, Mrs. Hanson – yes, Ms. Heaton – yes. The motion passed and the Board entered into non-public at 8:42 p.m.

Mr. Villeneuve moved to seal the minutes of the non-public meeting; Ms. Heaton seconded the motion; all were in favor, the motion passed unanimously and the minutes will be sealed.

Mr. Villeneuve made a motion to authorize the Chairman to sign an LOU (Letter of Understanding) between the SELT (Southeast Land Trust) and the Town of Auburn; Mrs. Donovan seconded the motion; A vote was taken, all were in favor and the motion passed.

OTHER BUSINESS

At this time, Mr. Porter informed the Board members that if they were interested that there was a workshop at Southern New Hampshire Planning Commission on February 22, 2016 at 3:00pm to 4:45pm and would forward it along to everyone.

ADJOURN

Mr. Villeneuve moved to adjourn the Hearing. Mrs. Donovan seconded the motion. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:48 p.m.

The next Conservation Commission meeting will tentatively be held at the Town Hall, 47 Chester Road on Tuesday, March 8, 2016.