

Conservation Commission Meeting
Virtual Meeting
December 1, 2022

Roll call was taken of members and staff present included: Chair, Peg Arguimbau, Vice Chair, Meredith Avery, Stephen Cremer, and Alan Westman were present. Colin Barbera, Jon Wasserman, and Keevin Geller were not present. Staff present included Josh Philibert, Conservation Administrator and Jana Katz, Conservation Secretary.

Arguimbau opened the meeting by reading Governor Baker's Executive Order of March 12, 2020. As of June 15, 2022 the measure was extended in An Act Extending Certain COVID-19 Measures Adopted during the State of Emergency, allowing by Governor Baker to continue to permitting virtual public meetings until March 31, 2023. Per guidance from the State, Arguimbau noted that all votes would be taken by roll call. She then reviewed the ground rules for the meeting.

The remote meeting was called to order at 7:33 pm.

7:34 PM	Public Hearing	COC DEP# SE280-0587 1200 General Edwards Hgwy 1200 Sharon, LLC
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Philibert shared his screen showing the as-built plan and aerial imagery, informing members there were no concerns with the project and recommended issuing a Certificate of Compliance.

Motion: To close the hearing and issue a Certificate of Compliance for DEP# SE280-0587 for a project located at 1200 General Edwards Highway

Avery moved

Westman seconded

Avery – Aye, Westman – Aye, Cremer – Aye, Arguimbau – Aye

4-0-0 Motion Passed

7:36 PM	Continued Public Hearing	NOI DEP# SE280-0648 61 Eisenhower Drive Yury Deych
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Attorney Adam Brodsky was present on behalf of the applicant asking for an continuation to the January 5, 2023 meeting. There will be a revised site plan ready for the January 5th meeting. The civil engineer working on the project took a new job and has been completing the existing work in what Brodsky described as an “unreasonably delayed” manner, stating he and his clients share concerns about timeliness.

Motion: To continue the hearing for DEP# SE280-0648 for a project located at 61 Eisenhower Drive.
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Cremer moved

Avery seconded

Avery – Aye, Westman – Aye, Cremer – Aye, Arguimbau – Aye 4-0-0 Motion Passed
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7:39 PM	Discussion Item	Enforcement Update: 61 Eisenhower Drive
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Attorney Adam Brodsky and Tim McGuire were present on behalf of the property owners.

Philibert began the discussion by sharing his screen to show photos taken in 2008 by Greg Meister. He identified a ditch referenced in the cease and desist letter sent on May 19, 2008 to the then property owner, Thomas Altieri, for “cutting of vegetation in the wetland buffer zone” and “ditching through a BVW.” Philibert noted that although the cease and desist letter references the ditching, the enforcement order only discusses a restoration plan. The ditch was never filled. Philibert recommended that the commission mandate that the ditch should be filled in if the enforcement order (issued in 2011) is to be addressed. Philibert pointed out that the site has always been described as having a wetland present. Philibert also stated that the ditch, fill, clearing of a wetland and clearing of a buffer were all done within the 100 foot buffer zone, according to what is visible in the photos.

Avery and Philibert discussed the failed restoration effort. After 2 years, 75% of the efforts were not successful, although the site never stopped being a wetland. It was just that the restoration failed. Avery mentioned that the commission had previously discussed a requirement to restore the wetland, presumably as an enforcement action. Philibert noted the restoration plan was to make up for the disturbance of the wetland with a planting plan. There was no grading involved in it.

Avery questioned whether the matter at hand was to see that the restoration plan that the enforcement action based on the disturbance get completed, or to decipher what had been disturbed in the first place? Philibert clarified that the restoration plan was a planting plan. Until the fill is removed it will be unclear whether or not that fill goes into the wetland. Avery noted that there was no organic soil in the restoration area which was part of the problem.

Brodsky entered the discussion, suggesting this be addressed at a future meeting when they will provide the commission with the requested soil data and DEP data sheets. It is Brodsky’s position that his client has nothing to do with the 2008 Cease and Desist letter or the 2011 Enforcement Order as his client purchased the property two years ago.

Brodsky stated that the Cease and Desist letter refers to ditching but not filling. He stated Altieri addressed the violations after litigation with the town. Part of the agreement was to file an NOI with the Conservation Commission to address the violations and any proposed project to build a single family home on the site. The commission denied the NOI. Altieri appealed to DEP, DEP issued a SOOC.

Arguimbau steered the discussion to the commission’s present concerns. Under DEP’s guidance, the commission prefers to separate the issue of the current NOI that Brodsky’s

clients are filing with the commission and the violations that have occurred on site. Arguimbau believes a set wetland line and buffer zone will be needed in order to assess the damage to the site.

Brodsky disagreed. It is his opinion that no violation still exists. He cited the Norton v. Pena case and the findings that a wetland violation has a three year statute of limitations. An outstanding violation would be liable for three years from the date when the new owner took title. As the original owner addressed the enforcement order, Brodsky believes his clients are not liable. He stated that his clients would appeal any enforcement order the commission tried to enforce.

Philibert clarified that there are two separate violations: clearing and filling.

Brodsky questioned whether there was fill in the wetland and acknowledged there was clearly activity in the buffer zone. He also questioned whether the language in the bylaw in 2008 addressed activity in the buffer zone.

Avery asked for clarification on the procedure if a restoration area fails. Philibert noted that the commission has a choice to issue a COC or rescind the Enforcement Order. Avery and Arguimbau discussed if Meister would have had to visit the site and confirm that property owners completed what was asked of them. Arguimbau did not recall any site visits other than the one with Gary Makuch from DEP to issue the COC.

Brodsky reentered the discussion stating his clients have new information, data sheets showing a majority of wetland vegetation in the area currently. He questioned what the state of the land was in 2014, three years after 2011, when the 75% success rate of the planting plan should have been evaluated. McGuire agreed with Brodsky.

Arguimbau stated the matter would be put on the agenda for the January 5, 2023 meeting with no formal action taken at the December 1, 2022 meeting. Avery said she is looking forward to reviewing the Enforcement Order and SOOC before the next meeting.

8:11 PM	Discussion Item	Ashcroft Road Parcel
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Brian Striar and Arguimbau discussed a parcel abutting conservation land near the end of Ashcroft Road that Striar would like to donate to the town. Upon passage at the Conservation Commission's meeting, the matter will go before the Select Board. The transfer could be completed before the end of the calendar year. Striar is working with the town on related legal matters.

Motion: To accept the donation of the 4+/- acre parcel, labeled R Ashcroft Rd on the town GIS maps, owned by the Subon Company, on the condition that any and all outstanding legal requirements have been resolved to the satisfaction of the Town prior to the acceptance. All efforts will be made to have the donation received by December 31, 2022.

Westman moved

Cremer seconded
Avery – Aye, Westman – Aye, Cremer – Aye, Arguimbau – Aye
4-0-0 Motion Passed

8:19 PM Discussion Item Stormwater Permit Forms

Philibert updated members on the status of the Stormwater regulations and permit forms. Two forms and two separate checklists will need to be created before members vote on the rules and regulations. Jeff Rose has agreed to help build an online form which should be completed before the formal vote on rules and regulations' language. Avery praised the fillable format and Cremer asked Philibert about any anticipated hearings. Nothing was scheduled or on the department's radar that would go before the commission before the end of 2022.

8:23 PM Discussion Item Boat Ramp Improvements

Philibert reported to members that a resident secured \$100,000 with the assistance of State Senator Paul Feeney for boat ramp improvements. Peter O'Cain is looking into costs associated with potential improvements. Any proposed plans may need to come before the commission if there is work within the buffer. O'Cain has met with GZA about installing a pre-cast slab at the end of the boat ramp in the water.

8:28 PM Discussion Item Lake Update

Philibert reported to members that after recent rainfall, the lake is at 9.6 which is within the appropriate range (9.5-9.8) for this time of year.

Also discussed was if the LMAC had come to any conclusions about the source of e. coli (whether from geese droppings or septic structures). Philibert answered Cremer that further data will be collected in the spring. He also mentioned that the Rec Department is considering closing the Community Center beach for swimming in 2023. Philibert has concerns that the public will perceive the closure means the lake is permanently tainted. It is actually just a budgetary concern as the Rec Department considers how many people will be needed to adequately staff the facilities for the coming summer.

8:28 PM Discussion Item Conservation Administrator Update

Philibert and Arguimbau discussed the cranberry bogs' proposed costs for restoring it to a natural bog and lack of funding. Eric Ford from DER had sent Philibert detailed information about costs at various stages in the process. Construction monitoring and other types of costs associated with the project were not reflected in the data. Members will be updated as any new information comes in.

Avery asked Philibert about the Great Cedar Swamp. Philibert informed members that SNEP and DER will be contributing monies for the project. Plans also include pursuing grant money.

8:31 PM Other Business October & November 3rd Meeting Minutes

Arguimbau and Cremer requested amendments to the October 6, 2022 meeting minutes.

Motion: To accept the October 6, 2022 meeting minutes as amended.

Cremer moved

Avery seconded

Avery – Aye, Westman – Aye, Cremer – Aye, Arguimbau – Aye

4-0-0 Motion Passed

Motion: To accept the November 3, 2022 meeting minutes.

Westman moved

Cremer seconded

Avery – Abstain, Cremer – Aye, Westman – Aye, Arguimbau – Aye

3-0-1 Motion Passed

8:42 PM Adjourn

Motion: To adjourn

Cremer moved

Avery seconded

Avery – Aye, Westman – Aye, Cremer – Aye, Arguimbau – Aye

4-0-0 Motion Passed