

Conservation Commission Meeting
Virtual Meeting
February 16, 2023

Roll call was taken of members and staff present included: Chair, Peg Arguimbau, Vice Chair, Meredith Avery, Stephen Cremer, and Alan Westman and Keevin Geller were present. Jon Wasserman was not present. Staff present included 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 7:30 pm.

7:32 PM Public Hearing Stormwater Bylaw Rules and Regulations

The chair began the hearing by reading the public notice, no one other than Commission Members and staff were present for the hearing. Due to a clerical error in posting the zoom link on the website, members tentatively approved the language. They decided postpone the formal vote until later in the meeting in case any interested parties arrived late.

7:37 PM Discussion Item Clearing on Horizons and Wadsworth Parcels

Prior to the meeting, Philibert had sent members notice of extensive clearing that had become known to him on two parcels of land in town. Neither landowner at 7 Wadsworth Way or 27 Horizons Road were in attendance or expected at the meeting. Sundararajan "Vijay" Vijayakumar, of 7 Wadsworth Way will be present at the March 2, 2023 meeting. Hongliang "Graham" Xu, of 27 Horizons Road, will be present at the March 16, 2023 meeting.

The unpermitted work fell within Conservation Commission jurisdiction. Both lots have a deed restriction requiring no more than 8,000 sf of lawn and both owners have surpassed the limit. Arguimbau led a discussion about creating a letter to send to realtors so homeowners and prospective buyers can be properly informed about lawn size restrictions.

David Wluka who was present at the meeting for another matter, participated in the discussion, offering to distribute a letter for real estate brokers to businesses in town. He recommended drafting a letter that could be sent to homeowners living in applicable subdivisions.

Arguimbau encouraged members to drive by the properties up for discussion and evaluate from the roadway as they do not have permission to access the property currently.

7:42 PM Discussion Item *Just A Dream* donation to the library

The department in conjunction with the Sharon Friends of Conservation will be donating a copy of *Just A Dream* by Chris Van Allsburg to honor Kurt Buermann the outgoing SFOC

for over twenty years of dedicated service as president. It will be presented to him at the SFOC annual potluck.

7:44 PM Other Business Approve January 19, 2023 Meeting Minutes

Members voted to accept minutes after two corrections were requested. Colin Barbera is no longer a commission member as his term expired at the end of 2022 and Meredith Avery was not present for adjournment on January 19, 2023.

Motion: To accept January 19, 2023 meeting minutes as amended

Cremer moved

Geller seconded

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

4-0-1 Motion Passed

**7:46 PM Continued Public Hearing NOI DEP# SE280-0648 61 Eisenhower Drive
Yury Deych**

Arguimbau opened the hearing by inviting Scott Goddard of Goddard Consulting to address members. Goddard was present on behalf of the applicant, Yury Deych, who was not present. He offered background as to his expertise in the field and explained that Tim McGuire who had previously appeared before the commission on this matter on behalf of Diamond Builders no longer worked at Goddard Consulting. It was also noted that Attorney Adam Brodsky who had previously addressed the commission with Tim McGuire was also not in attendance. Goddard also stated that this client Demitry Deych of Diamond Builders was not present at the meeting.

Continuing, Goddard informed members that to his understanding, all issues previously associated with the property located at 61 Eisenhower Drive had been resolved. He stated that the new information presented to the commission, including an amended site plan identifying what he described as critical flag locations (R7-R14), should be considered separately from any prior work done on site.

Goddard noted that there is a ditch on the rear of the lot with manipulated hydrology and described the parcel as a “remnant lot,” part of an older subdivision. He also noted said lot received an OOC previously that allowed for a single family home to be built and that the plan had been similar to what is before the commission currently.

The plan before the commission includes new construction of a single family home and a modified wetland line. A portion of the work would need to take place in the 50 foot buffer zone. It is Goddard’s point of view that because the buffer is mostly rocks, the commission should look favorably on granting the requested variance.

Arguimbau agreed that the new plan identifies at 50 ft and 100 ft line correctly. She stated that the town bylaw does not allow for new construction in the 100 ft buffer. Goddard

reminded Arguimbau that the Conservation Commission had previously approved construction of a single family home on the property.

Arguimbau noted that was the Conservation Commission had previously decided was appealed to DEP and then DEP issued a Superseding Order of Conditions which has since expired. The commission is considering the proposal as a new filing. She also told Goddard that there are still some violation issues needing to be addressed.

Avery stated for the record that although the applicant appealed to DEP, there was no formal appeal under the bylaw to Superior Court. There was no SOC issued under the local bylaw at the time. Arguimbau continued saying that when the SOC was issued no work had been started, which is an option on the form. Avery asked if the commission had ever approved new construction within the 50 foot buffer. Arguimbau answered that it had not.

Goddard reviewed Section 7A of the bylaws and asked what additional information the members would like to help them make a decision.

Westman asked Goddard to put the plan back up on the computer and discuss why the house cannot be pulled outside the 50 ft buffer. Goddard explained that the requirements to install the septic system with a setback from the street affected the house orientation. One option being considered was to design the house on a slab instead of constructing a basement which would move the house closer to the street by 10 ft.

Arguimbau reminded Goddard that the 50 ft no touch comes into play on an already existing home on an already existing lot. In this case it would be new construction which would designate 100 ft as a buffer zone and resource area.

Avery stated that she doesn't feel the invasive species management plan seems like an appropriate compensation for allowing new construction within the 100 ft buffer. Her audio was unstable.

Geller recounted commission history: never in his tenure had a project come before the commission proposing 25% of the house in the 50 ft buffer.

Cremer agreed with members' sentiments.

Goddard brought up site conditions for discussion, arguing that the lack of substantial vegetation there currently should be taken into account when members evaluate best practices for protecting resource areas. Avery stated in the zoom chat that there is nothing in the bylaw or WPA that varies the level of protection due to site conditions.

Geller asked if Goddard brought up the question of site specific conditions because he was not in agreement with the wetland delineation. Goddard said his initial review of the property had a much lower wetland line. He would like the commission to make note of the conservative delineation on the plan when reviewing the variance request.

Goddard asked for a continuance to the March 16th meeting and invited members to evaluate the site on foot with the house location staked out. Members agreed to a continuance and the chair reminded Goddard of open meeting law regulations regarding a majority of commission members discussing matters in person outside of a public hearing.

Motion: To continue the hearing for DEP# SE 280-0648 to Thursday, March 16th at 7:45 PM.

Cremer moved

Avery seconded

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

3-0-1 Motion Passed

8:30 PM Public Hearing RDA 2R & 4R General Edwards Highway, Warehouse

Arguimbau began the hearing by reading a public notice. David Wluka was accompanied by David Johnson from Norwood Engineering. The applicants had come before the commission previously to discuss the best course of action to move forward with a proposal for construction on the lot located at 2R & 4R General Edwards Highway.

The commission issued an Order of Conditions to the applicants for a proposed plan for building a hotel and parking area on site. The proposed plan has changed to include a retail warehouse with office space instead. Johnson described the similarities in scope of the projects. Before the formal hearing, at a prior meeting, the commission gave instructions to the applicants that an RDA showing the new course of action would be appropriate. The building will be constructed entirely outside of the 100 foot buffer. The new plan includes an additional 500 sf of disturbance within the 100 foot buffer, but no construction.

As members discussed the storm water management plans triggered by the initial OOC, they decided to reverse their recommendation for an RDA filing. They were supportive of the plans showing proposed locations of work. It was a question about ensuring compliance with storm water management conditions. An OOC takes storm water management precautions and plans into account, an RDA does not. They concluded it would be more appropriate for the applicants submit a request for an amendment to the existing OOC with a new plan, rather an RDA.

All of the infiltration systems will be placed outside of the 100 foot buffer. The increase in impervious area relates to the larger roof area. The paved area has been cut by more than half with the retail warehouse plan when compared to the previously approved plan to build a hotel on site. A formal review of compliance with the storm water bylaw will be performed by the DPW when the project goes before the ZBA. Avery and Geller praised the applicants' cooperation.

The applicant planned to send a letter asking for a formal withdrawal of the RDA for the proposed retail warehouse and will submit the updated plan as an amendment to DEP# SE-280-0612 which will be heard on March 2, 2023.

9:06 PM Public Hearing RDA 53 Oak Hill Drive, Pool Removal

Bob Vey and Arthur Greenwald were present. Bob Vey shared his screen after the chair read the public notice opening the hearing. He described the existing 4 bedroom house with a failed septic system that is in the process of being repaired. Removal of an existing in ground pool is part of the project and as is returning the area to a lawn area. The wetlands on the property have been flagged. Avery shared her screen identifying the lot and plans associated with the project.

Arthur Greenwald, the homeowner asked for the pool removal before the septic work is done. The pool, pool apron, and fence will be removed. Access will utilize the existing driveway. The approximate distance from the wetland to the fence is about 35 feet. Arguimbau discussed identifying the buffer zone limits for when the area is returned to lawn. No depositing of wetlands in the town of Sharon. Cremer asked about water removal before the pool is taken out.

All fill will be removed off site. Cremer asked about current water, it will be pumped to wash pit before work begins and the rest will likely be pumped to the upper corner of the rear of the lot far from the wetlands. The wash pit is near the fence line, on the street side of the shed. The removal will utilize the existing system; there will be no drainage over land. Vey explained that the last little bit of water will need to be pumped out over land and they will make every effort to keep the water away from the wetlands.

Arguimbau asked if members would like to request any type of conditions that identify the wetlands. Members decided against adding conditions regarding marking the wetlands on the property but chose to include specific conditions about fill removal and pool emptying methods. All fill taken off site, nothing deposited in Sharon wetlands. Water will be pumped to the wash pit before work begins. The residue will be pumped into the wash pit which is located near the fence line. No drainage will occur over land.

Motion: To close the hearing and issue a Negative Determination with conditions identified in the minutes regarding

Geller moved

Cremer seconded

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

5-0-0 Motion Passed

**9:16 PM Public Hearing RCOC DEP#SE-280-0366 2 Aztec Way
Justin DiPietro/Kertzman and Weill, LLP**

Arguimbau began the hearing by updating members that Philibert has inspected the site and all work was done per plan. Westman made a motion to close the hearing and issue a Certificate of Compliance for DEP# SE-280-0366 for a project located at 2 Aztec Way.

Motion: To close the hearing and issue a Certificate of Compliance for DEP# SE-280-0366.

Geller moved

Cremer seconded

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

5-0-0 Motion Passed

9:17 PM Discussion Item Enforcement Update: 61 Eisenhower Drive

The chair informed members they would wait to take up this Discussion Item until Philibert was present.

9:18 PM Discussion Item 24 Paul Revere Road – Grading Not to Plan

Arguimbau began the discussion in Philibert's absence, she clarified for the meeting that members have seen photos of the lot and there is a need for substantial remediation to address what has been done on site at 24 Paul Revere Road.

Jeff Zilberman and Simon Brook were present and updated members as to the status of the work being done at 24 Paul Revere Road to build a single family home. The frame is complete and they are currently finishing up work on the HVAC, plumbing, and septic. Brook presented first assuring members that every effort has been made to ensure work was done per plan but the site proved to be more challenging than anticipated.

Staying out of the wetland was a priority. During the site work, there were four separate ledges that the excavator hit in a small area. Philibert visited the site multiple times. Brook believes he extended over the buffer by about 4 feet and is unsure what is needed to make good on this site. They did build a border to prevent materials from entering the wetland and are hopeful the commission will consider this an improvement to the site.

Brook shared his screen to illustrate the site. Over the course of two weeks, \$10,000 was spent to implement measures to protect the wetland. They tried to remove rock and fill the lot as much as possible. A border around the septic work area went into the buffer which caused concern for Philibert. Brook noted the size of the lot as part of the challenge. Some of the silt sock was damaged during excavation so it was replaced. The grading stayed the same to prevent excess and runoff from going into the wetlands.

He put the plan up on the screen showing the four feet of work exceeding boundaries per plan. Arguimbau interjected, asking why they were not aware of the site's challenges before the work began. She informed them that they were out of compliance with the orders and it was unclear if what is there can stay there while bringing the project into compliance.

Brook noted that this was the first time he has had to come before the commission on a project. Brook noted 95% of the rocks needed to be removed for building a leech field. Their contractor suggested they leave some rocks on site to hold up the grade.

Arguimbau asked for clarification as to whether the site contractor had knowledge of the OOC. Zilberman acknowledged that the contractor was aware of the conditions and Brook was on site daily as well. Brook informed members that prior to beginning construction, a test excavation was performed and the parties believed they would be able to move forward per plan.

Arguimbau said she believed remediation was necessary. She discussed the lot size with Brook and Zilberman as the audio cut out. She noted there are photos showing how far beyond the limit of work per plan has occurred. Zilberman asked for guidance, as most of the work is finished. They are hopeful there is a way to create a small backyard and bring the lot into compliance.

Avery shared photos Philibert had taken of the land. Arguimbau read Philibert's notes. The work is 20 ft closer to the wetland than planned at the southeast corner. There is a terrace effect present on which should be a grading effect.

Zilberman informed members that the silt sock was initially damaged and then replaced. Arguimbau recalled it was also initially installed incorrectly before it was damaged and then replaced. The audio cut out. Brook told Arguimbau that they had tried to do their best work.

Arguimbau expressed concern about the photos showing fill on site. Zilberman acknowledged that they accidentally ended up grading the site where the original cesspool was located after the site contractor removed the cesspool. The resulting grade was not built per plan as it has less of an elevation difference than it was supposed to have. Large boulders in the photos holding up the ground seemed logical, according to Zilberman. Arguimbau reminded him that the plan was slope to grade, there were no boulders at all in the original plan. Zilberman agreed and said he would be willing to remove the boulders.

Geller suggested using a rock hammer to break up the rock boulders quickly on site and make them into one and two man stones. Brook said they already spent over \$10,000 to remove rock on site and their specialist was already done with the work and off site. They believed the rock wall was a preventative measure.

Arguimbau suggested a site visit so members can see the lot. She was glad to hear Zilberman brought up removal of stone as an option as they continue to explore how to bring this lot into compliance. Avery agreed that a site walk would be helpful to evaluate the excess material.

Members will visit the site before the next meeting scheduled for March 2, 2023. No more work will take place until then. The Cease and Desist order is still in place.

9:42 PM Discussion Item Lake Mgmt – CPC Grant Proposal & Geese Mgmt

Laura Russell and Debbie Tatro from LMAC were present to discuss the CPC Grant Proposal and Geese Management plans ahead of a vote planned for the March 2nd meeting.

The CPC grant is for preserving Lake Massapoag as a community resource and to apply for funding for long term action plans including weed removal and containment testing for E. coli. The CPC has unanimously approved the proposal which will now go before the Finance Committee and then Town Meeting. Russell and Tatro are hopeful they will gain Conservation Commission support as well; over 60% of the budget will be related to invasive species management and 19% will be fore water sampling testing and equipment. With its approval, the CPC requested that in the future, funding for these measures be taken to the town directly and incorporated into the town budget.

Arguimbau informed the meeting that a formal would be taken on March 2nd.

Russell also informed members about a recently submitted application on Geese Addling to MA Division of Fisheries and Wildlife. Previously, this tactic of geese addling had been implemented in the lagoon near the community center. With the mild winter, there is a presence of 50-60 resident geese. Population control is an issue because the increase in resident geese is crowding out other species like mallards. Geese excrement is also a public health concern.

Arguimbau instructed Russell to notify the town administrator and the Select Board that they would be applying on behalf of town owned, town leased, and conservation properties.

Avery noted that the commission would not have a formal need to approve the activity as it does not come within Conservation Commission jurisdiction. She praised the LMAC's work on the matter. Russell noted the benefit of the commission's willingness to support this humane attempt at population management.

Geller asked for more specifics about the process. Russell explained that the human applicators would coat eggs with corn oil to prevent development. Eggs are not removed from the nest because that would cause the geese to lay more eggs. Finding the eggs is the difficult part of the process which is time sensitive. New nests in New Jersey have already been found. The permit would allow for addling of the Canada goose eggs in Massachusetts from March 1st through June 30th.

9:54 PM Discussion Item Conservation Administrator & Lake Update

Arguimbau and Avery discussed what Avery had informed members, she has a student interested in supporting water quality testing at the lake. She will reach out to Philibert to discuss a student who obtained a grant to perform water quality testing on Lake Massapoag.

9:55 PM Public Hearing Stormwater Bylaw Rules and Regulations

Members took a formal vote on the Stormwater Bylaw Rules and Regulations as drafted for this date, February 16, 2023.

Motion: To accept the language of the Stormwater Bylaw Rules and Regulations as of February 16, 2023.

Avery moved

Westman seconded

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

5-0-0 Motion Passed

9:58 PM Adjourn

Motion: To adjourn

Cremer moved

Avery seconded

Avery – Aye, Cremer – Aye, Geller – Nay, Westman – Aye, Arguimbau – Aye

3-0-1 Motion Passed