

Conservation Commission Meeting  
Virtual Meeting  
November 5, 2020

Roll call was taken of members and staff present included: Peg Arguimbau, Chair, Meredith Avery, Keevin Geller, Stephen Cremer and Colin Barbera. Alan Westman and Jon Wasserman were not present. Staff present included John Thomas, Conservation Administrator and Linda Callan, Clerk

Arguimbau opened the meeting by reading Governor Baker's Executive Order of March 12, 2020. 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 started at 7:31pm

Probable speakers included: Mike Clements, Eric Dias and Chris Patrick.

**7:30 PM      Request for Determination** Route 1 and Route 95  
Vegetation Management Program - *MassDOT*

Arguimbau read aloud the public notice for this project. Mike Clements, with MASSDOT is present this evening to discuss the Vegetative Management Plan (VMP). MASSDOT intends to provide herbicide spraying along the guard rail and center median along both Route 95 and Route 1. 95% of the VMP includes mowing operations. Herbicide treatment will account for about 1% of the VMP. The intent of applying herbicide is to provide treatment along the edge of the roadway.

There have been complaints regarding the overgrowth of the area along the guard rail and center median. It is believed that at this time herbicide is the best method to use; safety of workers and cost of labor for mowing operation. Clements informed Commission members that herbicide application has not been done since 2012. The VMP for the herbicide treatment has since expired. Approval from local Conservation Commissions is required for application areas. Clements showed Commission members the no spray maps, explaining that each VMP is valid for five years. If herbicide treatment is requested, applicant must file a yearly operational plan. He further explained that MASSDOT applies a 100-foot setback from sensitive areas for application. Upon approval of the VMP, and at least 10 days prior to spraying, MASSDOT will send a notice to the SelectBoard, Board of Health and Conservation notifying when application will begin. Spraying will not occur in extremely windy conditions or when it is raining. The herbicides to be used have been approved for application in this setting.

In reviewing the no spray maps, Arguimbau had concerns at the cross section of Route 95 and Route 1 (South Main Street, cranberry bogs). Clements explained that area was not marked as the location was outside of the 100-foot setback, but he can mark as a no spray area. Clements also noted that herbicide applications within Zone 2 areas are done every other year. Arguimbau was also concerned with area at Mile Marker 19 (Old Post Road) noting that there was a brook which has not been marked on the no spray map. She is requesting for that section to be marked as no spray. Clements noted Commissions concerns and will update and revise the no spray maps and forward the updated maps to the Commission. The Negative Determination to be issued will reflect "revised plan".

There was discussion regarding the herbicide treatment to be used; Oust versus Roundup. Clements explained that both are on the MASSDOT approved herbicide list but understands the Commission's concerns. Commission can certainly include as a "condition", but this could prevent any spraying at all in the Town of Sharon. MASSDOT could also appeal as application of treatment is not under the jurisdiction of the Commission.

Arguimbau opened discussion up to comments by other staff and Commission members. Thomas noted that it is kind of a catch 22 situation. Would like an environmentally friendly treatment but not sure that even exists. Geller noted that he had no concern with Roundup being used. Arguimbau noted that we will wait to receive the revised plans and issue a Negative Determination with Conditions, such as what was discussed this evening. Arguimbau asked if there were any comments from abutters. There were none. Avery noted that she needed to abstain from the vote.

**Motion:** Hearing will be closed upon receipt of amended plans.

Cremer, Geller 4-0-1 (Motion Passes)

Avery-Abstain, Barbera-Aye, Geller-Aye, Cremer-Aye, Arguimbau-Aye

**7:40 PM      Hearing Continuance: Notice of Intent** 126 Morse Street – Lots 1 & 2  
Construction of two single family homes, Dias of Strongpoint Engineering

Informed Commission that request was sent in to combine the project from two filings into one filing. The design of the project did not change. The narrative was updated to reflect only one project and a tally of the total disturbance to the area was updated and presented.

Arguimbau noted that Commission was unable to meet for a site visit, however she was able to drive by and look at the site. She believes that the drought is impacting the stream. She also informed Commission that she heard from an abutter with concerns about possible impact development on the lot will cause.

Dias showed Commission photos of the stream including wetland markers. Dias noted that the stream only really flowed during periods of heavy rains. He has a report from prior wetland consultant (ANRAD) identifying the area as a low value target. Additional photos showed a view taken from behind the home which showed the dug channel as being dry; existing disturbances on the lot and the existing home in relation to the intermittent stream.

Arguimbau asked if Dias could show a plan which correlates the pictures of the stream with what the applicant is proposing to do. Dias showed Commission members a plan which showed the existing conditions, including the existing home as well as the proposed plan. Dias explained that the existing home is approximately 90 feet to the stream. The proposed new home will be approximately 85 to 86 feet from the stream. The biggest disturbance to the area will be from the driveway. The project has been filed with Natural Heritage which approved the project on condition that a turtle habitat plan was filed.

A Conservation Restriction on the property will run along the limit of the work (or where unable to follow line of work, will match the 50-foot buffer).

Arguimbau asked Dias if they have received approval for the shared driveway. Dias explained that no approval has yet to be granted. He has spoken with the Town Engineer

and will need to appear before the ZBA as a variance (due to hydrology) will be required. Applicant believed that it was best to go to the Conservation Commission first.

Work on Lot 2 will be outside of the buffer, however the reserve area for septic is located within the one hundred-foot setback of the intermittent stream. Dias explained that due to constraints of the lot as well as other regulations which must be met, they are unable to move the septic reserve. To meet BOH regulations, the septic reserve must meet a 125-foot setback from the home. Additionally, if the BOH denies the project, Dias will need to come back to Conservation. Dias explained that if he can get the support of the Conservation Commission, it will help to pave the way for hearings with the ZBA and BOH. At this time Dias explained he is waiting for an amended number for the project. As noted earlier, the project for lot #2 was asked to be rescinded as project was being rolled into one project.

Dias realizes this is a tight project on a sensitive area. He showed Commission members a chart noting the buffer zone disturbances. This chart is included in the NOI filing.

Arguimbau asked if there were any questions or comments on the proposed project.

Thomas asked for Dias to speak about the variance request and how granting the variance would be a benefit to the public.

Dias explained they were asking for three variances:

- Placement of septic reserve within 100-foot buffer
- Allow portion of driveway and portion of home within 100-foot buffer
- Work within 75-foot buffer.

Proposed project will keep the existing driveway in place. In this sense the project can be considered an unlimited project. Dias told the Commission that several projects have been looked at for this site including putting in apartments, townhouses and a three lot subdivision. After review, it was determined that putting in only two homes would be best suited for this site. These two homes would add to the housing inventory of the town. Major relief being asked for is driven by the intermittent stream. This project meets state requirements for building, however it does not meet the Conservation bylaw. Does not believe there is a public detriment in this project.

- Conservation Restriction (CR): The idea of providing the Commission with a CR is to give the Commission the ability to enforce and stop potential homeowner encroachment into the buffer zone. Arguimbau asked for additional permanent markers where the property curves, and not just at the corners. Lot #1 will have two CR's and Lot #2 will have one CR. CR's should be labeled and include metes and bounds.
- The lots abut Borderland State Park

Dias stated that the project will provide two additional housing units in Town. The project is primarily requesting variance relief from the man-made local jurisdictional intermittent stream.

Arguimbau asked if there were any other questions.

Cremer inquired about the proposed patios. Dias explained that the patio for the home on Lot #1 will be at ground level. The patio for Lot #2 will be on stilts. Question was asked if the patios on both homes could be moved outside of the buffer.

A Commission member asked why the proposed home on lot #1 could not be moved outside of the buffer. Dias explained that if home were moved out of the buffer, that it would essentially be moved into the buffer on the other side.

This year has been significant with respect to drought conditions and in making determination on the intermittent stream. Avery said should not discount the stream in the future, especially with regards to the Blanding turtles. Understand that intermittent stream is considered not high value, but conditions do change and she is concerned about impact to the area with the building of two homes on this site.

It was noted that there is a 100 foot no disturb buffer for all new construction.

**Conservation Commission Recommendations/Conditions**

- It was recommended that Dias try to see if can move the house out of buffer entirely, or even a bit more. He should also look into reconfiguring the deck patios.
- Arguimbau explained that once orders are completed, they should reference conditional approval from ZBA and Board of Health and any other boards.

Hearing to be continued to November 19<sup>th</sup>.

**Motion:** to continue hearing to November 19 at 7:40pm

Avery, Cremer 5-0-1 (Motion Passes)

Avery-Aye, Barbera-Aye; Geller – Aye, Cremer- Aye, Arguimbau-Aye

**7:50 P.M. -** Salvation Army/Camp Wonderland – Kevin Hylen – Trees near Sucker Brook

Kevin Hylen is present this evening to discuss trees that came down along Sucker Brook. Several weeks ago a windstorm swept through which took down a line of trees along Sucker Brook. A picture of the trees which came down was shown to Commission. Hylen was concerned for the creek bed and phoned Paul Spender to cut down the trees. There was concern to get back, as much as possible, to the natural setup of the area. Currently, the flow of Sucker Brook is low. Spender returned and further cutback the trees to where they are now. The thought is to keep the stumps in place in hopes that the added weight and compression will help to bring the bed back in place.

Hylen asked Spender to call Conservation to let them know what had happened.

Arguimbau expressed concern with the fish habitat. Without shade from the row of trees, the water may become too warm. Perhaps Wonderland might consider putting in some sort of shrubs to provide shade. Not sure if this would make a difference, and perhaps a conversation with Mass Wildlife might be helpful. Arguimbau understands the water temperature is important to the suckerfish. Thomas will also look into as well. There is concern with smaller saplings growing along the edge of the bank, and that with heavy water flow, they may come down. Perhaps this should be revisited in late March early April. Will see how things progress during the winter.

Avery mentioned that the area looked undercut and that perhaps it would make sense to put mesh or geo-tech in so when high spring flows come in the area is protected and more of the bank is not lost. Will also provide an opportunity for the bank to become more stabilized. Hylen agreed and will look into. He would love to save the creek and make it once again stable.

**8:00 P.M. - Rattlesnake Hill – Koene Van Dijk & Chris Patrick – Mountain Bike Trails**  
Confusion by Van Dijk as to why he was present this evening. He thought it was to discuss trail maintenance. He assured Commission it was not his group marking the trails, and is present this evening to discuss trail maintenance and the process.

Van Dijk showed Commissioners a map of Rattlesnake Hill which showed various trails. The last time he was before the Commission, there was concern if work to be performed would be on private property. Van Dijk said that the closest any work to private property would be approximately 200 feet. As mentioned prior, he would like to connect the existing usable trail to a less used trail and make a loop trail. No power tools would be used. Hand tools such as clippers or shears would be used to trim back branches and such and open up the trail to the way it once was. He would like to make the trail safe. His goal is to make a usable multiuse trail to be enjoyed by both mountain bikers and hikers.

Chris Patrick also spoke; he has been active in this area for decades. Over the years he has worked with Borderland State Park trail maintenance, putting in bridges and other maintenance work. Patrick is an Associate Conservation Commissioner in the Town of Easton. He has been on the Commission since 2011. He has been advocating for years to put in trails. His approach to trail advocacy is focused on appropriate use. If trails are set up and marked well, then typically they will attract the type of use the trail is marked for. Often, when he hears of abuse of land, he believes that is an indication of an opportunity to not only affix better markings, but to better maintain the trails. Patrick has been involved in building lots of trails in the Town of Easton and is familiar with permitting and with appropriate construction and design for different types of trails. He met Van Dijk about a year ago. Patrick hiked Rattlesnake Hill many years ago, and back then the trail Van Dijk is talking about was much wider. It is Patrick's belief that a nice loop trail can be created in the area Van Dijk is talking about and that it will also help the trail traffic flow better.

Arguimbau asked about the intent of the trail... Mountain biking or hiking. Patrick spoke about some of the various trails located on Rattlesnake Hill. The main trail goes to the top and there is a lot of double track. Higher up is the Elson Cross Land trail which he believes is not good for mountain biking. Lower down, on the trail Van Dijk would like to loop, Patrick believes would be a great multiuse trail, for both hiking and mountain biking.

Arguimbau thought perhaps Van Dijk could connect with Kurt Buermann of the Friends of Conservation. Van Dijk explained that he has already spoken with Buermann, that he went with him to take photos of the area and Buermann and the Friends of Conservation support the usability of improving the trail.

Thomas agreed that a joint effort on this project would be good. He has also reached out to Shaun Provencher, DCR to perhaps come up with a game plan and what is envisioned for a trail system at Rattlesnake Hill.

Patrick suggested that the trail is ripe for improvements; there are a number of areas which get wet. He has some ideas for mitigation, whether putting in boardwalks or a trail reroute. He informed the Commission that knowing that a need exists, there are trail grants currently available which are due February 15<sup>th</sup>. If the Commission were to begin the grant writing process now, there is probably enough time to put in for a trail grant.

Arguimbau mentioned the boy scouts and how they have been helpful over the years. Patrick mentioned that he was thinking bigger. There are hundreds of thousands of dollars available for trail connections, including a complete trail plan with signage.

Arguimbau believes this is a lot to consider. Perhaps put together a small group to look into. In the meantime, perhaps Thomas, Buermann and Van Dijk can begin to look into and to set up a date to meet. Arguimbau will follow up with Thomas.

Thomas asked about collaboratively finishing up the loop on the trail. Arguimbau agreed that it made sense. Asked Commission if they would authorize now or perhaps wait until a meeting was held. It was decided to wait until the first meeting was held to discuss trails at Rattlesnake Hill.

**8:10 P.M. - 3 Capen Hill – Valentia Akyol – Violation  
Compliance Issues within the Buffer Zone**

Arguimbau explained that Akyol, was previously before the Commission regarding putting in a stone wall and that a Negative Determination was granted. Thomas explained that there may have been some miscommunication. He showed a photo of the retaining wall which the Commission permitted. His concern however was that only the retaining wall was permitted by the Commission. Additional work within the Commissions jurisdiction and within 100 feet of the wetlands is still occurring. Thomas believes that at this point an after the fact NOI is necessary and the additional work should be re-submitted for approval.

Arguimbau asked Akyol if the work currently being done was planned when she was before the Commission a month ago. Akyol explained she spoke with building and other officials and was never informed she needed any permits. Arguimbau explained that the work currently being done was within 100 feet of the wetlands, and that this work falls under the jurisdiction of the Conservation Commission and this additional work, beyond the retaining wall the Commission previously permitted should have also been permitted and that rather than an RDA filing, a Notice of Intent should have been filed which would have included specifics of impacts to the area due to changes on the property.

Arguimbau understands situation Akoyl is in, but explained that the work she would like to do must be permitted. Arguimbau is not saying the work can't happen, but there is a process which was not followed and the reason why she is being asked to file an after action filing. The Commission needs details and more specifics of what Akoyl is planning.

Akyol explained that she would like to complete the project before winter sets in and it snows. Railings are needed for the stairs. They are unsafe and unusable at this time. The building inspector came to inspect what has been done. He mentioned that if walls were thirty inches in height, then no railing was needed. The wall is at thirty inches. Her contractor will do what the building inspector requests to be done. She would like to put in the railings as she believes they are needed. She will not be removing any trees or clearing

grass area. No concrete will be put in. Blocks are being used. She would like to complete this project.

Arguimbau again stated her understanding of Akyol's concerns, but noted that there needed to be balance. Akyol is in violation and a filing should have occurred prior to any work being done. This did not happen, so an after action filing must be submitted prior to any more work being done. Arguimbau understands safety concerns and is fine with the railings being put in, but all work from the house to the road and within the one-hundred-foot buffer must have a filing.

Arguimbau noted that the issue at hand is that had Akyol filed prior to any work being done, the project might be quite different than it is now. However, there was no filing and we must now move forward with what is there.

Arguimbau explained that Akyol needs to discuss the areas which have been disturbed (the area inside the purple line of the photos which was shown). Further, Akyol must explain to the Commission what exactly was done and the materials used so that the project can be brought into compliance with the bylaw and regulations.

Akyol asked if would be OK for her to put down pavers for her patio. Arguimbau explained that because there is no plan to look at the Commission can't answer that question. Arguimbau reiterated that Akyol needs to provide the Commission with a plan of exactly what she has and is planning to do for work within the buffer.

Thomas showed a photo of the new design and the egress area near the septic system. He is not sure of the regulations from the BOH, but explained to Akyol that as long as there is a plastic insert, within that area it is fine to either remain as grass or she can put in pavers.

Thomas further explained that any current work, or proposed work to be done in the front of the home must come before the Commission with a filing so that the Commission can determine what work is allowable.

Akyol asked if she needed to hire someone or if the Commission would accept a hand drawn rendering of the project. Arguimbau explained that someone does not to be hired, however the drawing must contain measurements to the wetland resource areas. Specifics of the project must also be included in the plans.

Avery reiterated what has been said regarding plans of the work which has been done, and which will be done. The Commission needs a full scale drawing of what is being planned on the property and the plan needs to include distance and measurements to the wetland resource areas.

Akyol mentioned that when she spoke with Davis (BOH) he did not mention any restrictions for putting in a driveway.

Thomas said this was new information and he was not aware that a paved driveway was being proposed. He also explained to Akyol that this information must also be included on the plans submitted to the Commission. Clarifying, Thomas informed Akyol that ANY work or activity planned in front of the house MUST be included on a plan to be submitted to the Commission. If work consists of putting in a paved driveway, then this must be included on

the plan, especially if that work will be within the one-hundred-foot buffer. Permission from the Commission is needed for that work.

Callan stated given the advertisement deadline, not sure if this will be able to be put on the agenda for November 19. Most likely, the Commission will be able to review this filing at its first meeting in December.

Arguimbau explained that the work performed at the property needs to be addressed and that all of the work must come into compliance with both the Town and State regulations. Thomas will forward references of people who can assist Akyol with her project. It is not necessary to hire anyone, but if Akyol needs assistance, Thomas will provide a list of folks she could call.

Arguimbau again explained that the Commission needs all information about the project. What has been done and what is being planned. For now, no more work is allowed, except work on her septic system which is approximately 100 to 125 feet from wetland resource. Thomas will see about getting a legal notice in for Akyol to be on the November 19<sup>th</sup> agenda. She must submit \$50 for the advertisement fee.

#### **Approval of Meeting Minutes.**

**Motion:** to accept meeting minutes of October 1, 2020 as amended

Minor grammatical errors.

Arguimbau to send edits on verbiage for "Article 25"

Cremer, Geller 5-0-0 (Motion Passes)

Avery-Aye, Barbera-Aye; Geller – Aye, Cremer- Aye, Arguimbau-Aye,

#### **Other Business**

##### **Update of Regulations**

**Motion:** To accept date of November 5, 2020 as date updated regulations take effect. Any filings which come in after today are subject to the new regulation changes with the exception of 3 Capen Hill Road

Cremer, Geller (5-0-0) Motion Passes

Avery-Aye, Barbera-Aye; Geller – Aye, Cremer- Aye, Arguimbau-Aye,

**Warrant and signatures.** Arguimbau understands the process is tedious. With the election over papers which need to be signed will be back at the Town Clerk's office beginning next Monday.

Arguimbau impressed upon Commission members the importance of signing documents in a timely fashion so as projects are not accepted by default.

##### **Eversource Substation, Canton Street**

Thomas explained that Eversource is presenting a new mitigation plan for the project and asked the Commission if they believed Eversource should refile or if the Commission was comfortable with the new plan as an amendment. VHB was the contractor tasked with



performing the work. They are no longer on the project. The company taking over the project is the company (SWCA) Thomas used to work for, therefore he can't speak to the project except for presenting the new information. Ultimately, it will be up to the Commission to decide if SWCA should refile on behalf of Eversource.

Thomas showed Commission members where the initial mitigation was proposed and where the new plan proposed mitigation. The area being proposed has been moved from the front of the substation to the back of the substation. The new proposed mitigation area is much larger than what was originally proposed as well as abutting existing wetlands. None of the proposed plantings are considered invasive.

Cremer asked if there was any chance of the area flooding. As the plants are considered wetland plants, they should be OK.

Arguimbau believes the proposed area is a better for mitigation.

**Motion:** Move to accept the changes.

Avery noted she would have to abstain from the vote as she works for VHB, but wondered if she could ask a question. Arguimbau wished to err on the side of caution, so no question was asked by Avery.

Cremer, Geller 4-0-1 (Motion Passes)

Avery-Abstain, Barbera-Aye; Geller – Aye, Cremer- Aye, Arguimbau-Aye,

### **Stormwater Management Update**

Davis (Asst. Town Engineer) provided Thomas with the procedures and requirements for Stormwater management. Thomas will provide to the Commission for their review and for discussion at the next meeting. The description is pretty detailed. For the next year, funding for the work will be provided by the DPW. It will be up to the Commission to come up with a plan and budget for the following years. A scope and agreement for the work must also be developed.

### **Lake Management Update**

Barbera explained this committee only meets twice per year. The last meeting was about 8 weeks ago.

### **Lake Update**

Thomas explained that the water levels are up. He would like to start holding water in.

Next meeting is scheduled for November 19.

Agenda so far consists of the following:

- 126 Morse Street
- 117 Oak Hill Street (seasonal deck enclosure)
- 3 Capen Hill Road

**Motion** to adjourn

Cremer, Avery (5-0-0) Motion Passes

Avery-Aye, Barbera-Aye; Geller – Aye, Cremer- Aye, Arguimbau-Aye,