

**Rochester Conservation Commission
February 7, 2017**

Present: Michael Conway, Chairman
John Teal, Vice Chairman
Kevin Cassidy
Laurene Gerrior
Daniel Gagne
Maggie Payne, Associate Member

Absent: Rosemary Smith
Christine Post

Margaret Gonneville, Board Administrator
Laurell J. Farinon, Conservation Agent

Chairman Conway called the meeting to order at 7:00 p.m. at the Town Hall Meeting Room and announced that the meeting was being televised.

Public Hearing

DEP SE 272-0533

A Notice of Intent filed by Andrew J. Laboa for property located at 180 New Bedford Road, Rochester, MA 02770, designated as Lot 1A on Assessor's Map 2. The applicant requests approval for the construction of a 1,348 s.f. house addition/garage with associated site work within the 100-foot Buffer Zone to a Bordering Vegetated Wetland (BVW). The closest point of proposed work to the BVW is 55 feet. Erosion controls measures will be implemented. The property owner of record is Andrew Laboa, 180 New Bedford Road, Rochester, MA 02770. The applicant's representative is Michael Pimentel, JC Engineering, Inc., 2854 Cranberry Highway, East Wareham, MA 02538.

Michael Pimentel of JC Engineering presented that the property has a single family dwelling with a bordering vegetated wetland on the east side of the property. The applicant proposes the construction of a 1,348 s.f. addition/garage to the home. The applicant also wishes to remove a small concrete pad and extend proposed hay bales to the street. Mr. Pimentel stated that the entrance to the garage is in the back with no proposed improvements to the dirt driveway. Member Cassidy requested that they should stockpile any construction material outside of the 100 foot Buffer Zone.

Agent Farinon recommended the issuance of a positive Order of Conditions with the stipulation that the applicant be allowed to remove the concrete pad, hay bale barriers be extended to New Bedford Road along the edge of wetlands, materials be stockpiled outside of the 100 Buffer Zone, and the Conservation Commission contacted to review erosion control barriers on the site before any construction activity.

A motion to accept Agent Farinon's recommendation was made by Member Cassidy and seconded by Member Gerrior. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

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DEP SE 272-0532 (CONTINUED until February 21, 2017 as per request by applicant's representative)

A Notice of Intent filed by Gary M. Mills of 74 Snipatuit Road, Rochester, MA 02770 for property located at Old Mill Way & Hartley Road, Rochester, MA 02770, designated as Parcels 27, 27A, 27B & 28 on Assessor's Map 37. The applicant proposes to complete construction of a subdivision road which was originally reviewed and approved in 2008 per Order of Conditions DEP SE 272-457. Construction started in 2009, but was never completed and the above referenced Order of Conditions has since expired. The applicant proposes installation of drainage outfalls, completion of roadway construction, final grading, landscaping, and completion of driveway with added drainage systems within the 100 foot Buffer Zone of Hartley Mills Pond and the associated bordering vegetated wetlands. Siltation controls measures will be implemented.

Per the applicant's representative's written request, the public hearing was continued until February 21, 2017.

Public Meeting

A Request for Determination of Applicability filed by the Town of Rochester Highway Department for various locations along High Street, Rochester, MA 02770. The applicant proposes to replace existing deteriorated concrete guardrail posts with new guardrail. Siltation control measures will be implemented. The property owner of record is the Town of Rochester Highway Department, 200 Ryder Road, Rochester, MA 02770.

Highway Surveyor Jeff Eldridge and Lori Benoit of Stantec Consulting Services Inc. were present at the public meeting. Mr. Eldridge explained that the Rochester Highway Department has received a federal grant for safety improvements including the replacement of existing outdated and deteriorated concrete guardrail posts at various locations on High Street. Ms. Benoit stated modern guardrails will be installed in order to meet current Federal highway safety standards, and that the proposed project will take place along roadway shoulders within the public right-of-way. Portions of proposed work will occur within a Riverfront area, the 100-foot Buffer Zone of a Bordering Vegetated Wetland, and the 25-foot No Disturb Zone. Erosion control measures will be implemented.

Agent Farinon recommended the issuance of a Negative Determination of Applicability. A motion to accept Agent Farinon's recommendation was made by Vice Chairman Teal and seconded by Member Gagne. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

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Notice of Violation Issued to Decas Cranberry Company, Inc. for property at 109 Neck Road, Proposed Tailwater Recovery Pond/Reservoir, DEP SE 272-0515, Property designated as Lot 3 on Assessors' Map 40.

Brian Grady of G.A.F. Engineering and Scott Hannula of Decas Cranberry Company were present at the public meeting.

Mr. Grady reported that he met with the Conservation Commission for a site visit on Saturday, February 4, 2017, and that Decas had provided information regarding the volume of material removed from the project site. Ryco Inc., excavating contractor, removed approximately 296,555 yards of material: the Rochester Soil Board permit allowed for 249,000 yards. He stated that taking into consideration material expansion of 10-15%; they removed about 7% in volume over what was permitted. He said that approximately 35,000 yards was used on site for the bog improvement projects. He stated that in hindsight they should have come in before the Conservation Commission and the Soil Board. He summarized that they are 8 feet lower than permitted on the plan, removed approximately 7% more material than allowed, and utilized some material on site for rehab of the 20 acres of cranberry bog.

Member Gagne asked exactly how much material was removed, and Mr. Grady responded that he could not answer that question without an as-built, which he stated is not safe to be done at this time. Agent Farinon reported that Town Counsel recommended that vehicle trip logs be requested, but that does not exclude doing an as-built.

Member Gerrior said that the letters detailing the estimated yardage removed does not add up mathematically, and it appears that more material has been removed. Mr. Grady responded that they could submit data in a letter form with a summary for the Commission. Member Gagne said that will not give the Commission the actual number of what was removed, and noted that there are alternative methods of survey that can be used to gain the information requested. Agent Farinon agreed with Member Gagne.

Member Gagne insisted that it will not tell the actual number and that the Commission needs to know how much was taken out. Mr. Grady stated that letter and additional information can be provided.

Agent Farinon summarized that a Notice of Violation was issued and sent by certified mail on January 27, 2017. She said that Mr. Hannula said that he would have the elevation surveyed after her inspection on January 17, 2017. On January 20, 2017, Mr. Hannula called Agent Farinon and informed her that the lowest elevation was at 30 which is 8 feet below the permitted elevation of 38. She said she gave him a verbal cease and desist. She stated that the only true way to get the exact volume removed is to have an as-built plan done. Since a Certificate of Compliance cannot be issued because the project is in violation, she also requested that Decas apply for an Amended Order of Conditions. She reminded Commission members and the applicants about the concern and interest by abutters and the Mattapoissett River Valley Water Supply Protection Advisory Committee during the NOI process about impacts to the underlying aquifer.

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Member Gerrior suggested that a hydrologic study of underlying aquifer of the whole area should be done. She said that Snow's Pond is a real worry since it is about 3 ½ feet down.

Agent Farinon stated that during the Notice of Intent public hearing process for this project there were concerns expressed from the Mattapoissett River Valley Water Supply Protection Advisory Committee, the Herring Inspector, the Water Commission, and abutters about impacts to the underlying aquifer: they were all assured by Decas of no adverse impacts, and now we do not know the answer to that. She said that a hydrologic study will be needed to determine if there is an impact.

Chairman Conway stated that since they exceeded the permitted depth of the pond by 8 feet, what assurances the Commission has that they will not exceed further since no one was paying attention to what is going on.

Mr. Hannula stated that they were not paying attention as much as they should have to the depth. He said that the blame rests on his shoulders since he is the General Manager. He said that it is not a hap-hazard project and it was his fault that the grade was not checked throughout the project. He said that his assurances going forward is that they are very close to the end of the project and that nothing will leave the site. He said that there are about 25,000 to 30,000 yards left unexcavated in piles in the hole. They plan to take the piles out, finish the hole, take the slopes out, and putting it on the site. He stated it was gravel all the way through.

Bruce Taylor of 376 Mendell Road and member of the Soil Board asked about the elevation of the piles in the hole. Mr. Hannula replied they would be elevated to 38.

Abutter Richard Charon of 323 Neck Road stated that he shares Member Gerrior's concern about the volume figures not being accounted for.

Agent Farinon recommended that the Conservation Commission request that Decas submit a Request for an Amended Order of Conditions to include the work that has been done in excess of the permit issued and that the request be accompanied by an as-built plan by Friday, February 17, 2017 for the March 7, 2017 public hearing. Mr. Grady stated that they will do what they can by that day. Mr. Hannula stated that all work has ceased until the Amended Order of Conditions is approved.

Mr. Hannula asked about the pumps that are dewatering on the site and if they could stop running them. Agent Farinon stated that the surveyors need to be able to survey the excavated area and is concerned about the stability of the dike in between if the pumps stop running. Mr. Hannula then asked if they could stop pumping once the slopes are established. Agent Farinon stated that the applicants will also be meeting with the Soil Board as well and that the Commission would not want to do anything to contradict the Soil Board; Decas will also have to dewater in order to do the survey for the as-built plan.

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Norene Hartley of 102 Bradford Lane asked that if there is any damage to Snow's Pond, is there anything that Decas can do to fix it. Chairman Conway stated that it's hypothetical since it is unknown if any damage has been done to Snow's Pond.

Member Cassidy stated that he wants Decas to continue to pumping the water for right now and that it is better to do the survey in a dewatered state.

A motion to have Decas continue to dewater was made by Member Gagne and seconded by Member Cassidy. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

Vote on Issuance of Enforcement Order to Lorraine Roy Hawkes & William Hawkes for Illegal Cutting of Bordering Vegetated Wetland and Bordering Land Subject to Flooding on Snipatuit Pond, 591 Neck Road, Map 43A, Lot 25.

Agent Farinon reported that the Conservation Commission office received a phone call from an abutter that reported cutting within wetlands on Snipatuit Pond off Neck Road: when she investigated the complaint she found a landscape crew working on property owned by Lorraine Roy Hawkes of 591 Neck Road. Agent Farinon stated that when she arrived at the property the landscape company Lawn and Order of Acushnet was just finishing up the clear-cutting a sizeable area of bordering vegetated wetland, flood plain, and bank on Snipatuit Pond. Agent Farinon distributed photographs of the site documenting the clear-cutting. Agent Farinon and the landscaper immediately tried to reach Ms. Roy Hawkes by telephone, and Agent Farinon received a call back the next day and informed her of the violation. Agent Farinon presented the draft Enforcement Order and read it to the Commission members. A restoration plan shall be filed on or before April 28, 2017 and a timetable for completion of the restoration shall be no later than June 30, 2017.

A motion to send Lorraine Roy Hawkes and William H. Hawkes the Enforcement Order as written was made by Member Cassidy and seconded by Vice Chairman Teal. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

(CONTINUED until February 21, 2017 as per request by applicant's representative)

DEP SE 272-457 (3 lot subdivision) A Request for Certificate of Compliance was submitted by Gary M. Mills for property located at Hartley Road, designated as Lots 27 & 28 on Assessor's Map 37. An Order of Conditions was issued to Southeast Realty Development, LLC on July 3, 2008 under DEP SE 272-0457 allowing for the construction of a three-lot subdivision within the Buffer Zone to Hartley Mill Pond and the associated Bordering Vegetated Wetland. The following portions of the work regulated by the referenced Order of Conditions have been completed: the clearing and grubbing for roadway and drainage; the rough grading and installation of gravel for the road; and the installation of drainage systems (90% complete). A new Notice of Intent to complete the project is being filed with this request.

Per the applicant's representative's written request, the public hearing will be continued until February 21, 2017.

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(CONTINUED until February 21, 2017 as per request by applicant's representative)
DEP SE 272-464 (Lot 1) A Request for Certificate of Compliance was submitted by Gary M. Mills for property located at Old Mill Way – Lot 1, designated as Lots 27 & 28 (portion) on Assessor's Map 37. An Order of Conditions was issued to Southeast Realty Development, LLC on December 19, 2008 under DEP SE 272-0464 allowing for the construction of a single family dwelling with paved driveway, septic system, private well, roof drains, and utilities with associated grading and revegetation within the 100 foot Buffer Zone to a Bordering Vegetated Wetland. The following portions of the work regulated by the referenced Order of Conditions have been completed: land clearing and grubbing per the attached Subsurface Disposal System Plan, "Hartley Mills" Lot 1, dated October 6, 2008, revised December 19, 2016.

Per the applicant's representative's written request, the public hearing will be continued until February 21, 2017.

(CONTINUED until February 21, 2017 as per request by applicant's representative)
DEP SE 272-465 (Lot 2) A Request for Certificate of Compliance was submitted by Gary M. Mills for property located at Old Mill Way – Lot 2, designated as Lots 27 & 28 (portion) on Assessor's Map 37. An Order of Conditions was issued to Southeast Realty Development, LLC on December 5, 2008 under DEP SE 272-0465 allowing for the construction of a single family dwelling with paved driveway, septic system, private well, roof drains, and utilities with associated grading and revegetation within the 100 foot Buffer Zone to a Bordering Vegetated Wetland. The following portions of the work regulated by the referenced Order of Conditions have been completed: land clearing and grubbing per the attached Subsurface Disposal System Plan, "Hartley Mills" Lot 2, dated October 6, 2008, revised December 19, 2016.

Per the applicant's representative's written request, the public hearing will be continued until February 21, 2017.

(CONTINUED until February 21, 2017 as per request by applicant's representative)
DEP SE 272-466 (Lot 3) A Request for Certificate of Compliance was submitted by Gary M. Mills for property located at Old Mill Way – Lot 3, designated as Lots 27 & 28 (portion) on Assessor's Map 37. An Order of Conditions was issued to Southeast Realty Development, LLC on December 5, 2008 under DEP SE 272-0466 allowing for the construction of a single family dwelling with paved driveway, septic system, private well, roof drains, and utilities with associated grading and revegetation within the 100 foot Buffer Zone to a Bordering Vegetated Wetland. The following portions of the work regulated by the referenced Order of Conditions have been completed: land clearing and grubbing per the attached Subsurface Disposal System Plan, "Hartley Mills" Lot 3, dated October 6, 2008, revised December 19, 2016.

Per the applicant's representative's written request, the public hearing will be continued until February 21, 2017.

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Commission Business

For Signature

Minutes

A motion to approve the minutes of January 17, 2017 was made by Member Gagne and seconded by Member Gerrior. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

Voucher(s)

The following vouchers were approved for payment: Association of Mass. Wetland Scientists / 2017 Membership for Conservation Agent: \$45.00; Society of Wetland Scientists (SWS) / SWS 2017 Membership Renewal for Conservation Agent: \$100.00; SWS PCP / PWS Certification 2017 Maintenance Fee for Conservation Agent: \$75.00; Pitney Bowes / Postage Meter Rental Fee: \$12.00; MACC / Registration for 2017 Environmental Conference : \$480.00; and Old Colony Regional Vocational Technical High School / Printing for Explore Rochester Trail Guide / Taken from \$2,000 Makepeace Neighborhood Fund Trail Guide Account: \$1,982.75.

New Business

Future Meetings and Site Visits

Commission members discussed their availability for upcoming meetings and site visits. All members present are available for site visits on Saturday, February 18, 2017 except for Vice Chairman Teal and Member Smith. All members present will be available for the next meeting on Tuesday, February 21, 2017 except for Member Smith.

Notice of Violation for Erik Morad

Agent Farinon explained that Mr. Morad reportedly has an easement on 562 Snipatuit Road to Snipatuit Pond and thought he was allowed to cut vegetation on the property because he had an easement. Agent Farinon conducted a site visit on January 24, 2017 after receiving a complaint from the property owner, Janice A. Brodeur. The site visit revealed that only two branches had been cut within the wetland area. Agent Farinon explained in a letter and via telephone to Mr. Morad that he was not allowed to cut vegetation in an area protected by the Massachusetts Wetlands Protection Act.

Forest Cutting Plan

Agent Farinon stated that there was a Forest Cutting Plan submitted for Old Middleboro Road off of Ryder Road for 57 acres.

Plymouth County Mosquito Control Project

Agent Farinon met with 3 people from the Plymouth County Mosquito Control Project office and conducted site visits with them to view the areas proposed for work.

Pony Pasture on Mattapoisett Road

Member Gagne asked about the large stockpile on the Pony Pasture owned by the Rochester Land Trust and suggested that erosion control barriers should be installed. Agent Farinon stated that she will visit the site and contact the Land Trust.

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Adjournment

The meeting adjourned at 8:07 p.m. on a motion made by Member Cassidy and seconded by Vice Chairman Teal. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

Margaret Gonneville, Board Administrator

Michael Conway, Chairman