

**Rochester Conservation Commission
March 7, 2017**

Present: Michael Conway, Chairman
John Teal, Vice Chairman
Daniel Gagne
Christine Post
Maggie Payne, Associate Member

Absent: Rosemary Smith
Kevin Cassidy
Laurene Gerrior

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

The meeting was held at the Rochester Council on Aging Meeting Room, 67 Dexter Lane. Chairman Conway called the meeting to order at 7:05 p.m. and announced that the meeting was being audio recorded. ORCTV did not show up to video record the meeting.

Public Meeting

A Request for Determination of Applicability filed by the Rochester Park Commission for work proposed at the Dexter Lane Recreational Area, Rochester, MA 02770, designated as Lot 17 on Assessor's Map 6. The Rochester Park Commission proposes to construct a 15' x 60' batting cage in the grassed area north of the existing Babe Ruth field at the Dexter Lane Recreational Area. Sod will be excavated and replaced with gravel and stone dust; six posts will be installed as support for the batting cage. Proposed work is within the 100 foot Buffer Zone of a Bordering Vegetated Wetland. The property owner of record is the Town of Rochester, One Constitution Way, Rochester, MA 02770.

Documents submitted: RDA Application and GIS Aerial Plan of Dexter Lane Recreational Area.

David Hughes, Rochester Park Commission chairman, was present at the public meeting and explained that the Park Commission proposes to construct a 15' x 60' batting cage in the existing grassed area to the rear of the existing Babe Ruth field.

Agent Farinon summarized that construction of the batting cage will be limited to removal of sod, replacing with gravel and stone dust, then installing six posts for the 15' X 60' batting cage. She stated that in her opinion the work can be done without any adverse impacts to the bordering vegetated wetlands, which are approximately 60 feet to the east. She recommended issuance of a Negative Determination of Applicability with the stipulation that that hay bales be installed along the wood line closest to the area of construction activity.

A motion to accept Agent Farinon's recommendation was made by Vice Chairman Teal and seconded by Member Post. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

A Request for Determination of Applicability filed by Peter F. & Michele L. Frey for property located at 11 Briarwood Lane, Rochester, MA 02770, designated as Lot 19 on Assessor's Map 26. The applicant proposes construction of a new access driveway within the easement from the adjacent property to an existing parking area adjacent to the cottage on Snipatuit Pond. Proposed work will involve earthwork, grading and removal of one tree within 35 feet of Snipatuit Pond. Erosion control measures will be implemented.

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Documents submitted: RDA Application and Partial Plan of 11 Briarwood Lane, Rochester.

Property owners and applicants Peter F. and Michele L. Frey were present at the public meeting.

Mr. Frey explained that he is requesting to construct a new access driveway from the adjacent property to his existing parking area for his cottage on Snipatuit Pond. Mr. Frey accesses the cottage via a driveway and easement on the adjacent property which is owned by Mr. Welch. Mr. Welch discovered that a portion of the existing driveway was not within the easement, and reconstructed the driveway within the easement. Mr. and Mrs. Frey are requesting to tie the new driveway into their existing parking area, which will involve work within the 100 foot Buffer Zone to Snipatuit Pond. Proposed work will involve earthwork, grading and removal of one tree within 75 feet of Snipatuit Pond. Mr. Frey noted that the application erroneously stated the tree was 35 feet from Snipatuit Pond.

Agent Farinon summarized that she has inspected the site and a portion of the driveway on the Welch property was relocated to be within the easement shown on the site plan. The Frey's are seeking approval to connect from the newly constructed driveway to their cottage parking area. Since there is an established vegetated buffer and parking area between the area of proposed work and the adjacent wetlands, erosion control barriers are not required. Agent Farinon recommended the issuance of a Negative Determination of Applicability.

A motion to accept Agent Farinon's recommendation was made by Member Gagne and seconded by Vice Chairman Teal. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

(Continued from February 21, 2017) 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. The following work has been completed: clearing and grubbing for roadway and drainage; rough grading and installation of gravel for the road; and installation of drainage systems (90% complete).

Documents submitted: Request for Certificate of Compliance, Letter from Bracken Engineering stating work has been completed in substantial compliance with the Order of Conditions, Interim As-built plan.

Don Bracken of Bracken Engineering was in attendance and explained that at the Commission's request, he submitted an Interim As-built plan showing existing elevations and invert elevations of drainage structures. Member Gagne confirmed that the plan looks adequate this time.

Agent Farinon summarized that the proposed three lot subdivision was partially constructed and the Order of Conditions expired: a new Notice of Intent to complete the work has been filed and is presently being reviewed by the Commission. The site has been inspected and erosion control barriers re-installed correctly at the request of the Commission. The submitted Interim As-built plan shows the invert elevations of drainage structures and earthwork and grading to date. Agent Farinon recommended the issuance of a Certification of Compliance for DEP SE 272-457. A motion to accept Agent Farinon's recommendation was made by Member Post and seconded by Member Gagne. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

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Public Hearing

DEP SE 272-0532 (Continued from February 21, 2017) 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.

Documents submitted: Notice of Intent Application, "Hartley Mills" Definitive Subdivision of Land Plans, Sheets 1-4, last revised February 28, 2017, Supporting Drainage Calculations.

Don Bracken of Bracken Engineering explained that the Commission's requested revisions were made to the plans: addition of the 25-Foot No Disturb Zone, as-built invert elevations of the storm water collection system, and additional erosion control barriers at the roadway entrance.

Agent Farinon commented that the requested additions have been made to the site plans, and recommended that the project be approved and that the Commission issue a positive Order of Conditions.

A motion to accept Agent Farinon's recommendation was made by Vice Chairman Teal and seconded by Member Post. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

A Request for an Amended Order of Conditions (DEP File # SE272-0515) was made by Decas Cranberry Co., Inc. for property located at 109 Neck Road and designated as Assessor's Map 40, Lot 3. The original Order of Conditions allowed for the construction of a tailwater pond to serve approximately 80-acres of existing cranberry bogs. The Rochester Conservation Commission issued a Notice of Violation on January 27, 2017 ordering Decas Cranberry to cease and desist construction activity because the 9-acre pond has been over excavated by eight feet. Decas Cranberry requests an Amended Order of Conditions to complete the following work: spread remaining soil piles back in the excavation, final grade the bottom and side slopes, perform an as built survey of the excavated area, turn the dewatering pumps off, prepare an as-built plan of the excavated area, and determine the volume of material that has been removed. The property owner of record is Decas Cranberry Co., Inc., 4 Old Forge Drive, Carver, MA 02330. The applicant's representative is Brian R. Grady, G.A.F. Engineering, Inc., 266 Main Street, Wareham, MA 02571.

Brian Grady of G.A.F. Engineering and Scott Hannula of Oiva Hannula & Sons, Inc. were present. Rochester Town Counsel Blair Bailey was also in attendance.

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Agent Farinon reported that the public hearing for the Request for Amended Order of Conditions (DEP File #SE272-015) could not be formally opened because abutters have not been notified by certified mail in accordance with the Wetlands Protection Act Regulations. Agent Farinon explained that the applicant is responsible for notifying abutters by certified mail. She explained that as a courtesy she sent the public hearing notice to abutters by regular mail, but Town Counsel informed her that it was not sufficient to open the public hearing.

Town Counsel Blair Bailey informed the Commission that although the public hearing could not be opened, discussion related to the project could commence in the public meeting because the Commission issued a Notice of Violation on January 27, 2017. The Commission cannot act on the Request for Amended Order of Conditions until a future meeting when abutters are notified by certified mail.

Mr. Grady explained that a Request for Amended Order of Conditions and an as-built plan were previously submitted to the Commission. He said it was determined that Decas Cranberry was allowed to remove 249,000 yards as per the Soil Board permit, but the actual volume removed was 332,000 actual yards. A letter from Ryco Excavating Contractor indicated that 296,555 yards were removed from the site, and a letter from Oiva Hannula & Sons, Inc. stated that 35,530 yards were removed for and used for bog renovation on site. Mr. Grady displayed an aerial view plan of the site and reported that water elevations were taken on Long Pond, Snipatuit Pond, a wetland in the southern portion of the bog complex, and Snow's Pond. He stated that Snow's Pond is typically two feet higher than Snipatuit Pond, and because Snow's Pond is a ground water pond that is higher in elevation on the landscape it is slower in recovering from the drought. Mr. Grady summarized that Snow's Pond is in this condition because of the recent drought; not because of what Decas is doing. Mr. Grady said that Decas proposes to bulldoze back the excavated piles back in the hole pushing the slopes down to a 34 elevation.

Gary Florindo of 333 County Road and Rochester Soil Board Chairman wanted everyone present to know that the Soil Board is concerned. He stated that the approved plan should have been followed and feels that when you dig below gravel and sand, water will travel underground. He said that the material left over should be put back and that it is too dangerous to bring in material from other sites. In order to bring back the tailwater pond to a 38 elevation, he suggested pushing back the material that is left and expanding another acre or two to bring it up to elevation 38. He said that he feels that this is the cause for Snow's Pond being down, and that the only solution is to bring up the tailwater pond to elevation 38 and shut the pumps off.

David Grime of 343 Neck Road asked what the difference is between finished elevation 34 and 38, and Mr. Grady replied that he does not think it makes a difference.

Gifford Lawrence of 31 Neck Road suggested that a vein that feeds Snow's Pond may have been hit. He wants the tailwater pond brought up higher and expanded out.

Norene Hartley of 102 Bradford Lane asked if they had possibly dug into an impervious layer and Mr. Grady replied that there is no evidence of an impervious layer.

David Watling of Cushman Road and Rochester Herring Inspector stated that he agreed with Gary Florindo. He requested that the tailwater pond not be filled with pond water because of the fish.

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Fred Underhill of 570 North Avenue, Rochester Water Commissioner and member of the Mattapoisett River Valley Water Supply Protection Advisory Committee (MRVWSPAC) read a letter from the MRVWSPAC requesting that the bottom of the tailwater pond be restored to elevation 38 as per the permit application. The MRVWSPAC is concerned with the impact of dewatering on groundwater, surface water bodies and wetlands in the area. MRVWSPAC is requesting that the work be completed and the dewatering system shut down as soon as possible.

Andrew Daniel spoke on behalf of his grandmother Carol Lawrence, who owns property on Snow's Pond. Mr. Daniel stated he would like to see an outside specialist look at the project, and that the cost for the specialist should be the responsibility of Decas Cranberry Company.

Melanie Sherman-Morse of 71 Jason's Lane stated that she has never seen Snow's Pond like this and it should be fixed.

Albert Weigel of 296 Hartley Road stated that Mary's Pond is also down about 26 inches and is also spring fed.

Bob Lawrence of 15 Lawrence Way stated that over the years he has seen Snow's Pond this low, if not lower, and he believes that restoration to elevation 38 is a good idea.

Mr. Grady stated that it would take two weeks to complete the project after the public hearing is opened on March 21st.

Agent Farinon thanked the abutters for their comments. She said that she knows that Snow's Pond is special to many people and that every comment is helpful and will be considered by the Conservation Commission. She reported that she has spoken to Massachusetts DEP Wetlands Director Lealdon Langley, hydrogeologist Kermit Studley, and Jim McLaughlin of the DEP Water Management Act Section for input on the project. She stated the Mr. Hannula had informed her of the evaluation right away when she asked for it and the Commission immediately issued Decas Cranberry Company a cease & desist and Notice of Violation. Agent Farinon recommended that the Commission vote to hire a hydrogeologist to conduct a peer review and recommended that the Conservation Commission request a \$10,000 peer review consulting fee from Decas Cranberry Company. Town Counsel Blair Bailey confirmed that the Conservation Commission could make the request that evening in a public meeting. Agent Farinon informed the Commission that the fee would also include monitoring.

A motion to hire a hydrogeologist and request a \$10,000 consulting fee from Decas Cranberry Company was made by Member Gagne and seconded by Vice Chairman Teal. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

Chairman Conway announced that the public hearing on the Request for Amended Order of Conditions will be held on Tuesday, March 21st at 7:00 p.m. at the Council on Aging.

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Commission Business

For Signature

Minutes

A motion to approve the minutes of February 21, 2017 was made by Member Gagne and seconded by Vice Chairman Teal. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

Voucher(s)

The following vouchers were approved for payment: Pitney Bowes / Portion of Postage and Ink for the Postage Meter: \$33.01; W.B. Mason / Office Supplies: \$24.08; BayNet Web Services / Monthly Hosting Fee (April, May, June 2017): \$60.00; and Maggie Payne / Mileage Reimbursement for MACC Conference: \$45.24.

New Business

Review and Approve Updated 2016 Annual Report

A motion to accept the updated 2016 Annual Report as written was made by Member Gagne and seconded by Member Post. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

Future Meetings and Site Visits

Commission members discussed their availability for upcoming meetings and site visits. All members present will be available for the next meeting on Tuesday, March 21, 2017 except for Member Smith and Vice Chairman Teal. There will be no site visits on Saturday, March 18, 2017. The next meeting on Tuesday, March 21, 2017 will be held in the Rochester Council on Aging Meeting Room at 67 Dexter Lane.

Adjournment

The meeting adjourned at 8:30 p.m. on a motion made by Member Gagne and seconded by Member Post. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained. (4-0-0)**

Margaret Gonneville, Board Administrator

Michael Conway, Chairman