

Rochester Conservation Commission
March 6, 2018

Present: Daniel Gagne, Vice Chairman
Maggie Payne (*arrived at 7:07 p.m.*)
Chris Post
Laurene Gerrior
Christopher Gerrior

Absent: Michael Conway, Chairman
Rosemary Smith

Jessica Brodeur, Recording Secretary
Laurell Farinon, Conservation Agent

The meeting was held in the Rochester Town Hall Meeting Room. Vice Chairman Gagne called the meeting to order at 7:01 p.m. and announced that the meeting was being televised.

Public Meeting

A Request for Certificate of Compliance was submitted by Derek A. Maksy of 44 Clear Pond Road, Lakeville, MA 02347 for property located at 357 Neck Road designated as Lot 20 on Assessors' Map 26. An Amended Order of Conditions was issued to James J. Welch & Marguerite Zandrowicz on September 7, 2012 under DEP SE 272-0490 allowing for the installation of a new septic system for the existing cottage and future house with new septic tank and dosing tank within the Buffer Zone of Snipatuit Pond; installation of a new well within the Buffer Zone of Snipatuit Pond; and replacement of the existing sun porch with a new deck and renovations to the remaining cottage.

Documents Submitted: *Letter from Charon Associates, Inc (submitted on 2/28/18); WPA Form 8A - Request for Certificate of Compliance (submitted 2/28/28); Plan of Site, proposed house & 'as built' of upgrade of subsurface sewage disposal prepared for James J. Welch 357 Neck Road, Rochester, MA; Plan of Site & New Residence prepared for Derek Maksy 357 Neck Road Rochester, Mass; Plan of Foundation 'As-Built' prepared for Derek Maksy 357 Neck Road Rochester, Mass*

Property owner Derek Maksy of 44 Clear Pond Road, Lakeville, MA 02347 stated that when he first purchased the property, he spoke with Agent Farinon about moving the proposed dwelling further away from the 100-foot Buffer Zone. Mr. Maksy explained that he renovated the interior of the cottage and painted the exterior, however never constructed the sun porch and new deck. He reported that he planted grass seed for stabilization and removed wood debris. Member Laurene Gerrior confirmed with Mr. Maksy that the home was outside of the buffer zone and that he was planning on keeping the cottage.

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Agent Farinon summarized that the Request for Certificate of Compliance was for an Order of Conditions that was most recently amended in 2012. The original Order of Conditions was issued to James Welch and Marguerite Zandrowicz for work related to the septic system, grading, and a portion of the dwelling (at the time). Agent Farinon continued that since Mr. Maksy has moved the dwelling outside of the 100-foot Buffer Zone, an Amended Order of Conditions was issued because they proposed to do some improvements to the small cottage adjacent to the pond. Agent Farinon explained that the proposed improvements included work on a porch that was not completed, as well as a deck. Agent Farinon drew the Commission's attention to the letter from Charon Associates, Inc. dated February 28, 2018 stating that work has been completed in substantial compliance with the plan. She then mentioned that there was a Request for Determination of Applicability filed for removal of a fallen tree on the bank of Snipatuit Pond: approval was granted and work completed prior to Mr. Maksy's purchase of the property. Agent Farinon distributed photographs of the property and explained that very little new work was completed by Mr. Maksy within the Commission's jurisdiction.

Vice Chairman Gagne asked if Mr. Maksy had any intentions of removing the cottage porch in the future. Mr. Maksy stated no, they just wanted to keep it the way it was.

(Member Payne arrived at 7:07 p.m.)

Member Laurene Gerrior asked if the proposed dwelling was already built; Mr. Maksy confirmed that it was.

Agent Farinon recommended that the Commission issue a Certificate of Compliance to Derek A. Maksy for DEP File Number SE272-0490. Member Laurene Gerrior made a motion to accept this recommendation, which was seconded by Member Post. **The motion passed by a vote of 4 in favor, 0 opposed, 1 abstained (4-0-1).**

(Continued from February 20, 2018) A Request for Determination of Applicability filed by Willow Creek Builders, LLC, 3 Belcher Street, Plainville, MA 02762 for property located at 157 Forbes Road, Rochester, MA 02770, designated as Lot 42 on Assessor's Map 19A.

The applicant proposes the installation of a new private well and the construction of a dwelling near the 100-foot Buffer Zone of an isolated vegetated wetland. The only activity within the 100-foot Buffer Zone will be grading; there will be no work in the 25-foot No Disturb Zone. Erosion Control measures will be implemented. The applicant's representative is Stephen E. Meltzer, Esq., Edgewood Development Company, LLC, 3 Belcher Street, Plainville, MA 02762. The property owner of record is Connet Woods, LLC, 3 Belcher Street, Plainville, MA 02762.

Documents Submitted: *WPA Form 1, Exhibit A (Connet Woods Plotting sheet 2 of 62 (reduced copy)), Exhibit B (Subdivision Plan Sheet 46 of 62 (reduced copy with Lot 42 Highlighted)), Exhibit C (Lot 42 Building Permit Plan (highlighted)), Exhibit C-1 (Lot 42 Building Permit Plan (grading area highlighted)), Exhibit C-2 (Lot 42 Building Permit Plan (showing No Disturb Zone)), Exhibit D (ANRAD Sheet 9 (highlighted)), Exhibit E (Photo of Existing grade)*

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Stephen E. Meltzer, Esq. of Edgewood Development Company, LLC was present and introduced project owner Gerry Lorusso, and wetland scientist Briscoe Lang, of Pare Corporation. Mr. Meltzer explained that as a follow up to the site visit that was conducted on March 4th, they are submitting a revised plan with significantly less grading and proposed work within the Commission's jurisdiction. The proposed dwelling has been moved between 50 and 60 feet to the northwest, and revised and extended the location of proposed erosion control barriers. Mr. Meltzer stated he believes they made a significant difference in reducing any impact on the protected resource areas, both by extending erosion control barriers and moving the proposed dwelling. Mr. Meltzer stated he hopes that the Commission will approve the Request for Determination of Applicability with the specific conditions that they will strictly adhere to what is in their plan and that they will put the erosion control measures in place before they do any work. Mr. Meltzer acknowledged that Agent Farinon will inspect the erosion controls prior to any work being done.

Vice Chairman Gagne noted that the plan detail shows a mulch sock backed by a construction fence, and not the silt fence previously discussed. Mr. Meltzer responded that it should specify "silt fence" and that this was an error that they will correct.

Member Christopher Gerrior asked if everything on the inside of the silt fence will be seeded with grass. Mr. Lang commented that the proposed work is all within what is now the current tree line – there is no proposal to go outside of what has already been cleared.

Agent Farinon summarized that the Commission did a site visit on April 4, 2018, and the Commission noted the steep slope and questioned the plan for slope stabilization and erosion control. Agent Farinon commented that this is a significantly revised plan for the better, because they have pulled the house more towards the road and outside of the buffer zone. Proposed grading has been significantly reduced so they're not impacting the existing stabilized slope adjacent to the adjacent isolated vegetated wetland. Agent Farinon recommended that the Commission issue a negative Determination of Applicability referencing the submitted site plan with the stipulation that a silt fence back the mulch filled silt sock, and that the installed erosion control barriers be inspected by the Commission prior to any construction activity. Member Christopher Gerrior made a motion to accept this recommendation, which was seconded by Member Laurene Gerrior. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

***(Continued from February 20, 2018)* A Request for Extension Permit that was made by Edgewood Development Company, LLC, 3 Belcher Street, Plainville, MA 02762 for property located on King's Highway, Assessor's Map 17, Lots 6, 57, & 58, requesting a three (3) year extension to the previously issued Order of Conditions under DEP SE #272-0483 which will expire on March 22, 2018. The Commission granted approval of a new bituminous concrete manufacturing facility on a 5+ acre site off King's Highway. Regulated activity is limited to construction of portions of infiltration basins within the 100-foot Buffer Zone to an irrigation pond and a cranberry bog. The project was subject to a prolonged appeal of the Rochester Planning Board decision which has recently been favorably disposed.**

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Documents Submitted: *Plans titled “King’s Highway Bituminous Concrete Facility”, Petition Pursuant to 301 CMR 11.04*

Member Chris Post recused herself from this agenda item.

Stephen E. Meltzer, Esq. of Edgewood Development Company, LLC was present and introduced project owner Gerry Lorusso and wetland scientist Briscoe Lang of Pare Corporation.

Mr. Meltzer provided a brief description of the site which is off of Kings Highway near the Route 28 intersection, just beyond the existing Rochester Bituminous plant. He explained that it is a wooded 5 acre lot adjacent to neighboring cranberry bogs and reservoir. Mr. Meltzer referenced plan set page 3 of 10 which illustrates existing site topography which slopes to the rear. Mr. Meltzer motioned to the buffer zone on the plan, as well as the man-made irrigation pond for a cranberry bogging operation. He also pointed to another cranberry bog on the right side. Mr. Meltzer drew the Commission’s attention to page 4 of 10 where they propose a facility that will take up much of the property outside of the buffer zones. There will be work proposed within the 100-foot Buffer Zone of wetland resource areas.

Mr. Meltzer explained a Notice of Intent was filed in late 2010: there was a significant peer review process which both Mr. Lang and Agent Farinon were involved with. Mr. Meltzer stated that in March of 2011, an Order of Conditions was issued by the Commission and seven years have gone by due to an appeal of the Planning Board decision to the Zoning Board of Appeals. Mr. Meltzer explained they went through that appeal successfully and in the beginning of 2012 it was then appealed to the Land Court. He stated that it went through a full trial at the Land Court, and successfully survived that appeal as well. Mr. Meltzer stated that the decision from the Land Court was further appealed to the Massachusetts Appeals Court. He explained they went through briefing and arguing, and ultimately in 2017 the Massachusetts Appeals Court upheld the Land Court decision which upheld the Zoning Board of Appeals decision, which upheld the original Planning Board Decision.

Mr. Meltzer reminded the board that the permit was issued on March 22, 2011 and would have originally expired on March 22, 2014, but because of the Permit Extension Act, it was extended 4 additional years and now expires on March 22, 2018. Mr. Meltzer stated that they received the final approval on the plans from the Planning Board in December of 2017 and in January they filed for this extension of the Order of Conditions. Mr. Meltzer stated they believe it is appropriate to issue an extension because they could not start the project so they could not have finished the work during the period extended by the statute. Mr. Meltzer reminded the Commission that conditions at the site, and off the site, which pertain to the protected resource areas, have not changed. Mr. Meltzer provided the Commission with five historical aerial photos dating back to May of 2010 that do not indicate any significant differences.

Member Laurene Gerrior stated that she was on the committee when the project started and asked if the five acres includes the cranberry bogs. Mr. Meltzer stated that the cranberry bogs are not part of the project site as they do not own them. Member Laurene Gerrior then asked if the house lots in front of the property are still owned by private residents. Mr. Meltzer stated they have not bought those house lots.

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Vice Chairman Gagne agreed with Mr. Meltzer that the aerials don't show much of a change, but he would like the Commission to walk the site.

Attorney Ben O'Grady of Lawson & Weitzen, LLP explained that he represents a group of citizens in Rochester who have filed a petition with MEPA to request that this project undergo MEPA review. Mr. O'Grady reported that a letter that was sent prior to the last Conservation Commission meeting that detailed who the petitioners are and concerns with the site. Mr. O'Grady then referenced an email that was sent by a professional wetland scientist on March 6, 2018. Agent Farinon interjected that the letter was not on letterhead and arrived via e-mail at 4:15 p.m. Vice Chairman Gagne stated that he would like the Commission to have an opportunity to review the letter before discussing it at a meeting.

Mr. O'Grady stated that their concern is that the Notice of Intent is over seven years old and the Order of Conditions is approaching seven years old. Mr. O'Grady stated that ordinarily both the Order of Conditions and a Resource Area Determination are only valid for three years because wetlands can change over time, or conditions in the area (whether there are other intervening projects that have been approved since then) can impact the area. Mr. O'Grady stated that this may mean that the Order of Conditions (that was once adequate) is no longer adequate to protect the wetlands via the Wetlands Protection Act or the Wetlands Bylaw. Mr. O'Grady explained that this was an Order of Conditions that was issued by a Commission existing of largely different members and is based on conditions that may have changed with time. Mr. O'Grady also stated that Edgewood Development Company, LLC is proposing to construct and operate an industrial facility in what is currently a wooded area. Mr. O'Grady further stated that the town's Wetland Bylaw authorizes the Commission to consider not only the development, but the impacts that developing the property could have on the surrounding wetlands, as well as daily operations going forward once the project was actually implemented. Mr. O'Grady also stated that this is an asphalt bituminous facility that is very close to wetlands. Mr. O'Grady referenced the original Order of Conditions that authorized work to go up to 5-feet from the buffer zone. In Mr. O'Grady's opinion, given the changes in the surrounding area, and given what is proposed, the old Order of Conditions is not adequate to protect the wetlands interests. Mr. O'Grady stated that the Commission should not "rubber stamp" the project, and requested that a new Notice of Intent be filed and the Commission adequately review the project and issue a new Order of Conditions. He requested that the Wetlands Protection Act interests be protected through a thorough review.

Mr. Lang approached the Commission and explained that he was heavily involved in the permitting back in 2011. He reminded the Commission that there were three public hearings held that were continued twice for additional information, as well as a site visit. Mr. Lang stated they have not had the opportunity to review the letter from the professional wetland scientist, but they would like to get that letter and digest it. Mr. Lang recently visited the site and stated that the irrigation pond is a man-made wetland that is heavily managed for agricultural purposes. He stated that the other wetland, a cranberry bog offsite, is also a man-made wetland that is heavily managed for agricultural purposes. Mr. Lang surmised that the only way those would have expanded would have been if the operators had made them larger, which they did not. Mr. Lang stated that the wetlands are the same configuration and location as they were flagged in 2010. Mr. Lang also mentioned that the project, its limits, its impacts and proposed have not changed.

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Mr. Lang listed the following things have not changed since 2011: the Rochester bylaw, the Wetland Protection Act regulations, the Storm Water Management Policy, as well as conditions on the site. Mr. Lang reiterated that he would welcome the Commission to conduct a site visit. He would like a chance to review the letter from the professional wetland scientists so they can respond to that as well.

Vice Chairman Gagne questioned whether this type of facility falls under other DEP regulations as well as EPA regulations. Mr. Lorusso confirmed this and explained that they need to also get an air quality permit which has a number of standards that they must meet. Vice Chairman Gagne also asked if there were requirements for ground water testing and sampling within the facility. Mr. Meltzer replied yes and that periodic ground water testing has been made a part of the original Order of Conditions.

Vice Chairman Gagne asked Agent Farinon if, in her opinion, the wetlands have changed in the last 7 years. Agent Farinon stated she has not visited the site recently, but upon review of current aerial ortho-photography, it does not appear so. Vice Chairman Gagne asked if DEP has added any wetland mapping inside of this site. Agent Farinon responded no, not to her knowledge.

Agent Farinon reinforced that the Commission always does a thorough review and takes Requests for Extension Permits very seriously; each request is reviewed on its own merit and not “rubber stamped”. Agent Farinon referenced MACC guidance on how the Commission should review requests for extension permits and suggested procedure to be followed. Agent Farinon stated that she will provide a copy of the Order of Conditions, copies of past minutes, and reports to Commission members to better understand the history and process the Commission went through to issue that Order of Conditions. Agent Farinon explained that a thorough review was done with the initial application, and that a peer review consultant was hired to provide a technical review of the proposed stormwater collection system.

Agent Farinon suggested that due to the availability of Commission members, a site visit should be scheduled in April. Discussion ensued about member availability, and the Commission settled on meeting at Town Hall on April 14th at 9 a.m.

Vice Chairman Gagne questioned the appeal with MEPA and asked for more guidance on how that impacts the Commission and its decision. Mr. Meltzer stated it is a “Request” that MEPA exercise jurisdiction. Mr. Meltzer also stated that at this point MEPA has no jurisdiction and that the next step is that either they determine no further action is required or that an Environmental Impact Report be filed. Mr. Meltzer stated that the determination of the secretary with regard to that petition should be known by the 14th of April.

Vice Chairman Gagne asked if they would like to continue to a point before the 14th to discuss this again, or would they like to wait until the site visit is completed. Mr. Meltzer requested a continuation to April 17, 2018.

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Agent Farinon recommended to the Commission that they continue the public meeting until the Commission has the opportunity to visit the site. Member Christopher Gerrior made a motion to accept this recommendation, which was seconded by Member Payne. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

Commission Business

Permits

Commission members signed the permits issued this evening.

Minutes

A motion to approve the minutes of February 20, 2018 was made by Member Payne and seconded by Member Christopher Gerrior. **The motion passed by a vote of 4 in favor, 0 opposed, 1 abstained (4-0-1).**

Voucher(s)

The following vouchers were approved for payment: Bristol Engineering Advisors/Hydrogeological Consulting Services on the Neck Road Decas Project: \$159.52 and BayNet Web Services/Monthly Hosting Fee (April, May & June 2018): \$60.00.

Agent Farinon explained that the Bristol Engineering Advisors voucher represents the balance of the escrow account for the Decas Neck Road Project. Agent Farinon explained that they are leaving the transducer in place because Decas Cranberry does not want it removed yet and wants to make sure that the Commission is satisfied that the requirements of the Order of Conditions are met. She stated that she spoke with Scott Hannula and Decas will be requesting a Certificate of Compliance in the next few months. Member Laurene Gerrior stated she would like the Commission to schedule a site visit when the request is made.

Old Business

None

New Business

Review and vote to adopt Town of Rochester Remote Participation Policy

Agent Farinon explained that the remote participation policy is covered under the Open Meeting Law. She referenced page 10 in the packet which includes the regulations about boards being able to allow people to participate remotely. Agent Farinon shared that you cannot have anyone participate remotely in order to make a quorum. She explained that the Town of Rochester Remote Participation Policy mirrors the Open Meeting Law, and recommended that the Commission adopt the Remote Participation Policy as written. Member Christopher Gerrior made a motion to accept this recommendation, which was seconded by Member Payne. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

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Walnut Plain Cedar Swamp Land Preservation Project - (Estabrook Property) Conservation Restriction

Agent Farinon reminded the Commission that the Rochester Land Trust is looking to purchase the Estabrook Property which is 78.6 acres of land within a cedar swamp. Agent Farinon stated that the Buzzards Bay Coalition is working with RLT to secure funding. The town has already applied for and received the Buzzards Bay mini grant, and RLT has been awarded the Conservation Partnership Grant from the state: one of the stipulations of that grant is that the Conservation Commission will hold a Conservation Restriction on the property

Agent Farinon distributed the draft Conservation Restriction package to the Commission and explained that the Board of Selectmen, Board of Assessors and Town Counsel have received copies and will review the document as well. Agent Farinon stated that a representative from RLT will come to the Commission's next meeting on March 20th to discuss the CR.

Agent Farinon explained that the Conservation Restriction packet is a legal document that gets filed at the Registry of Deeds. The Estabrook property hits a lot of high points as far as areas that are protected by the state (for example: rare endangered species, wetlands, swamps, etc.). Agent Farinon mentioned prohibited acts and uses (for example: constructing buildings, tennis courts, landing strips, mining, excavating, etc.). Agent Farinon brought the Commission's attention to page 4 of 19 which contains Reserved Rights. Agent Farinon explained that this section can supersede the prior section where there is a prohibition on it. She mentioned a provision on section 7 for trails, paths, pedestrian bridges, and a parking area that RLT proposes to construct.

Agent Farinon explained to the Commission that holding a Conservation Restriction is a real responsibility because it is their job to monitor the property on an annual basis and to make sure the conditions of the CR are being met. If there is neighbor encroaching on the property, it is the Conservation Commission's job to work with RLT and ensure the standards are being met. Agent Farinon quickly went through the rest of the subsequent sections and then pointed out who would sign it (Rochester Land Trust, Conservation Commission, Board of Selectmen, and the Secretary of Environmental Affairs). Agent Farinon stated that Town Counsel will be reviewing the CR and she would like the Commission to review it as well. Vice Chairman Gagne suggested forwarding a copy of the CR to chairman Conway for his formal review.

Agent Farinon stated that when you accept the CR you need a baseline documentation report to document what the conditions are at the time of execution of the restriction as a basis of comparison in the future. Agent Farinon reported that the Buzzards Bay Coalition has committed to preparing both a survey plan and the baseline documentation report.

Agent Farinon recommended the Commission look at the CR and put it on the agenda for the March 20th meeting, where a representative from the Rochester Land Trust to this meeting.

Member Laurene Gerrior made a motion to accept this recommendation, which was seconded by Member Christopher Gerrior. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

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Future Meetings and Site Visits

Commission members discussed their availability for upcoming meetings and site visits. All attending members, with the exception of Member Laurene Gerrior, will be available for the March 20th, 2018 meeting.

Correspondence

No new correspondence.

Adjournment

The meeting adjourned at 8:19 p.m. on a motion made by Member Christopher Gerrior and seconded by Member Post. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

Jessica Brodeur, Recording Secretary

Daniel Gagne, Vice Chairman