

**Rochester Conservation Commission
April 17, 2018**

Present: Michael Conway, Chairman
Daniel Gagne, Vice Chairman
Christopher Gerrior
Laurene Gerrior

Absent: Maggie Payne
Chris Post
Rosemary Smith

Jessica Brodeur, Recording Secretary
Laurell Farinon, Conservation Agent

The meeting was held in the Rochester Town Hall Meeting Room. Chairman Conway called the meeting to order at 7:02 p.m. and announced that the meeting was being televised.

Public Meeting

(Continued from March 6, 2018) A Request for Extension Permit 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.

Chairman Conway informed the applicant that the Commission did not have a voting quorum to open the hearing. The applicant agreed to continue until May 1, 2018.

A motion was made by Vice Chairman Gagne to continue this agenda item to May 1, 2018, which was seconded by Member Christopher Gerrior. Chairman Conway abstained from voting. **The motion passed by a vote of 3 in favor, 0 opposed, 1 abstained (3-0-1).**

Public Hearing

A Request for an Amended Order of Conditions (DEP SE #272-0545) was made by the Marion Department of Public Works, 50 Benson Brook Road, Marion, MA 02738 for property located off Mary's Pond Road, Rochester, MA 02770, designated as Lot 30 on Assessor's Map 30. The Marion Department of Public Works requests an Amended Order of Conditions allowing for after-the-fact approval of placement of Well MP-1 four feet west of the original design location. The applicant also requests approval of temporary disturbance of 150 square feet of vegetated wetland in order to gain access to Well MP-2. The revised access path does not require tree cutting: wetland mats will be used for ground stability. The property owner of record is the Town of Marion, 2 Spring Street, Marion, MA 02738. The applicant's representative is Jon Gregory, Tata & Howard Inc., 67 Forest Street, Marlborough, MA 01752.

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Meghan Davis of Tata & Howard was present on behalf of the Marion Water Department and was accompanied by Jonathan Henry, Superintendent of the Marion Department of Public Works. Ms. Davis stated that they would like to propose a temporary access path to the east of Well MP-1 to allow the transportation of equipment necessary for work being done on the back well. She informed the Commission that this would require 150 square feet of temporary wetland alteration – no tree cutting will necessary but trimming of vegetation is required. She also noted that wetlands mats will be utilized. Ms. Davis referenced the plans and stated the revised hay bale and silt fence line will be extended out to the other side of the cross-hatched area on the plan.

Ms. Davis reminded the Commission that an alternative was discussed at the site visit on April 14th to construct a permanent access roadway at the same location of the proposed temporary access path. She also mentioned that the Commission had suggested wetland mitigation at the front portion of the site which has become vegetated with a stand of Phragmites. Ms. Davis stated that while they understand the benefits of the permanent access roadway, the Town of Marion has not had time to review and approve funding for this proposal. Ms. Davis requested that Commission consider approval of the temporary access for now so they can complete the well installation. They will revisit the permanent access and wetland restoration as part of phase 2 of the project.

Chairman Conway asked how long it will take to secure the funding so that the Town of Marion can obtain a permit to install the permanent roadway instead of the temporary access. Mr. Henry replied not long, however, the Town of Marion Selectmen's meeting was being held at the same time as the Conservation Commission meeting so they have not had the chance to discuss the project.

Vice Chairman Gagne inquired when the Town of Marion would bring Phase 2 before the Commission. Ms. Davis stated that Phase 2 was included in the original Notice of Intent and the construction would be done in the summer. Agent Farinon recommended approving the Request for Amended Order of Conditions with the stipulation that a new Notice of Intent be filed to construct the permanent access.

Vice Chairman Gagne inquired about the time frame in which the Town of Marion would come back before the Commission with the Notice of Intent for the permanent access path. Ms. Davis stated potentially by the May 1st meeting but definitely by the May 15th meeting. Agent Farinon suggested the special condition state within 60 days to give some leeway.

Vice Chairman Gagne voiced his concerns regarding the wetland mats and construction vehicles getting stuck. Mr. Henry suggested that they could use cribbing to avoid vehicles getting stuck.

Vice Chairman Gagne made a motion to issue an Amended Order of Conditions with the condition that the Town of Marion file a Notice of Intent within 60 days seeking permission for a permanent access roadway and any additional work on the site, Member Christopher Gerrior seconded the motion. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

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(Continued from February 6, 2018) A Request for an Amended Order of Conditions (DEP SE #272-0530) was made by Clean Energy Collective, LLC, 146 West Boylston Drive, Worcester, MA 01606 for property located at 268 Mattapoissett Road and 248 Mattapoissett Road designated as Assessor's Map 4, Lot 1, 1A and 7. The original Order of Conditions allowed for earthwork, grading and installation of ground-mounted photovoltaic solar panels within the 100-foot Buffer Zone of a bordering vegetated wetland. Clean Energy Collective, LLC requests an Amended Order of Conditions allowing changes to proposed grading and work relative to the perimeter roadway and berm. The property owners of record are Michael & Johann Forand, 268 Mattapoissett Road, Rochester, MA 02770. The applicant's representative is Evan K. Watson, P.E., Prime Engineering Inc., P.O. Box 1088, 350 Bedford Street, Lakeville, MA 02347.

Note: Vice Chairman Dan Gagne has recused himself from this discussion.

Rich Rheume of Prime Engineering was present in place of Evan Watson. Doug Carton of Clean Energy LLC also was present. Mr. Rheume presented to the Commission the plans that show the wetland line and the 25-foot no disturb zone. Mr. Rheume pointed out Devil's Rock and that they were unable to chip or blast, which required the applicant to install the panels slightly higher than they were before. Mr. Rheume explained that this resulted in a redesign and the berms needing to be constructed higher.

Chairman Conway questioned if the slope was revised from 2:1 to 3:1. Agent Farinon stated that it was changed to a 3:1 slope as per the Commission's request. Mr. Carton stated that they added erosion control blankets to the slopes as well. Chairman Conway asked if they will be working any closer to the wetlands than originally planned and Mr. Rheume replied that they are not. Member Laurene Gerrior commented that she drove by the site today and commended them on the fact that she could barely see anything as she drove by. Mr. Carton was pleased that the screening was working properly.

Agent Farinon stated that the Request for Amended Order of Conditions originally came in a few months ago but has been continued due to Planning Board issues. She confirmed that the footprint would not be changing and was pleased that they made the decision to add erosion control blankets. Agent Farinon then drew the Commission's attention to page 69 of their meeting packet which included a letter from Prime Engineering detailing plan changes since the last meeting.

Agent Farinon referred to a suggestion that Member Laurene Gerrior made at a previous meeting about selecting a seed mix to benefit native bees and wildlife habitat. Agent Farinon reported that Clean Energy has agreed to using a 50/50 pollinator mix of ERNMX-123 (Native Upland Wildlife Forage & Cover Meadow Mix) and ERNMX-157 (Honey Bee Forage Mix).

Agent Farinon recommended that the Commission approve the Request for Amended Order of Conditions under DEP File #272-0530 with the stipulation that all construction be done in accordance with the most recent revised plans.

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Member Laurene Gerrior made a motion to approve the Request for the Amended Order of Conditions with the stipulations made by Agent Farinon, which was seconded by Member Christopher Gerrior. Vice Chairman Gagne recused himself from this vote. **The motion passed by a vote of 3 in favor, 0 opposed (3-0-0).**

DEP SE # 272-0555 A Notice of Intent was filed by Robert & Nancy Barboza, 8 Walnut Street, Assonet, MA 02702 for property located on Alley Road, Rochester, MA 02770, designated as Lot 21 on Assessor's Map 15. The applicant proposes construction of a single-family dwelling, well, portion of the driveway and associated grading within the 100-foot Buffer Zone of a bordering vegetated wetland. Erosion control measures will be implemented. The property owner of record is Robert Barboza, 8 Walnut Street, Assonet, MA 02702. The applicant's representative is Brian Grady, G.A.F. Engineering Inc., 266 Main Street, Wareham, MA 02571.

Brian Grady of G.A.F. Engineering was present and explained that a portion of the rear foundation is a walk out which helps minimize the amount of fill behind the dwelling and preserves the 25-foot no touch zone. Mr. Grady stated that they do need to fill behind the garage to account for the parking of vehicles and retention that was required there. He stated that they were proposing a silt fence at the limit of work.

Agent Farinon reported that she has been unable to review the wetland delineation because it was not re-established in the field until the Friday prior to the meeting, and once the line is approved it is valid for three years. She recommended that the Commission continue the project to the next meeting to allow her enough time to review the wetland delineation. It will also provide Mr. Barboza time to revise the plan to include the raised garden and proposed tree removal work he told the Commission he wants to do.

Mr. Ernie Duval of 238 Alley Road approached the Commission with concerns about how many yards of fill material will be required and how it would affect his property. Mr. Grady replied that there is a naturally high area that they're taking advantage of and will be constructing the dwelling there. He stated that they will not be grading the low area in the back and they don't believe it will displace any water. Mr. Duval was pleased to hear that.

Vice Chairman Gagne made a motion to continue to the May 1st meeting, which was seconded by Member Christopher Gerrior. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

Commission Business

Minutes

A motion to approve the minutes of April 3, 2018 was made by Member Christopher Gerrior and seconded by Vice Chairman Gagne. **The motion passed by a vote of 3 in favor, 0 opposed, 1 abstained (Chairman Conway) (3-0-1).**

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Voucher(s)

The following voucher was approved for payment: MSMCP Annual Meeting: \$15.00.

Old Business

Enforcement Order Issued to Taylor Jesse & Chance Avery, 422 High Street, June 20, 2017

Agent Farinon drew the Commission's attention to page 94 of the meeting packet. She summarized that in April of 2017 the Commission had issued a Notice of Violation for illegal work within the 25 Foot No Disturb Zone of a bordering vegetated wetland. Agent Farinon explained that this is the second violation on this property, as a landscaper had previously illegally cut vegetation in almost the same location. Agent Farinon stated that on June 20, 2017 an Enforcement Order was issued to property owners Taylor Jesse and Chance Avery and they have not complied and submitted the necessary after-the-fact filing and mitigation plan. Town Counsel served a letter by constable to the property owners on August 8, 2017. In the fall, discussions ensued regarding possibly bringing this to litigation. The case was discussed by the Commission at the last meeting and the board voted to notify the owners by constable that the Commission will begin exercising the Non-Criminal Disposition and ticketing the premises if they do not appear before the Commission on April 17, 2018.

Mr. Chance Avery and Ms. Jesse Taylor were present at the meeting and Mr. Avery stated he had sent an email apologizing for the lack of response and claimed he had contacted a company last year about doing the work but the prices were not suitable for him. Upon receiving the recent letter from the Commission, he contacted consultants and they've hired wetland consultant Brooke Monroe of Pinebrook Consulting to help them file the Notice of Intent and will put a together a plan of what to do.

Member Laurene Gerrior asked if they'll be delineating the wetlands. Mr. Avery stated they have recent plans that detail where the wetlands are. Member Laurene Gerrior explained to Mr. Avery and Ms. Jesse that there is a wetlands line and the 25-feet closest to it is a valuable resource afforded extra protection as a no-disturb zone under the Wetland Bylaw.

Chairman Conway asked if they intend to file the required Notice of Intent. Ms. Jesse responded that Ms. Monroe's schedule does not allow her to help them until after the 17th.

Agent Farinon stated that the deadline will be very strict and the ticketing policy will be enforced if they do not comply. She stated that the wetland in question has been damaged twice already and that a portion of the illegal work was done on the neighboring private property. Ms. Jesse stated they were misinformed regarding the property line.

Agent Farinon stated that within 60 days is a reasonable amount of time for the property owners to file and have their case heard. Chairman Conway confirmed that they would need to be heard by June 19, 2018. Vice Chairman Gagne asked what the filing deadline would be for that meeting, and Agent Farinon responded by June 1st.

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Vice Chairman Gagne made a motion that the after-the-fact Notice of Intent filing be made by June 1st, 2018 and ticketing will begin on June 2, 2018 if the Commission does not receive the filing by the June 1, 2018^t deadline: Member Christopher Gerrior seconded the motion. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

New Business

Discuss possible property line encroachment onto Rochester Conservation Commission property located off Burgess Avenue, Rochester Assessors Map 27, Lot 8

Agent Farinon distributed maps to the Commission and explained that the parcel in question is behind the Stuart Bogs and is owned by the Rochester Conservation Commission. There is an encroachment onto the southerly property line between the Rochester Conservation Commission and Decas Cranberry property. Agent Farinon stated that Decas has been doing work on the Stuart Bogs and had been removing sand for agricultural purposes. At a site visit with the Soil Board attended by Agent Farinon, she informed Decas Cranberry of the encroachment as shown on the aerial photos, and requested that the property line be staked in the field for inspection.

Agent Farinon reported that she has been working with Scott Hannula, Nick Decas and Brian Grady of G.A.F. Engineering to work towards a solution. She explained that Mr. Grady has researched the deeds in order to stake in the field the exact location of the property line.

Mr. Grady stated he took coordinates from MassGIS and put stakes on the property line. He compared the photographs and stated they align closely, but there is still no real definition of where the line is. Armed with the information he gathered while doing property line research for the Estabrook property, Mr. Grady suggested using the line that is shown on MassGIS as it appears to be reasonably accurate. Agent Farinon asked if he thinks they'll gain any additional information in the coming weeks. Mr. Grady stated they need to dig further into the plans.

Vice Chairman Gagne suggested looking at older aerial photos to determine when the vegetation had been cut and if the property was owned by the Conservation Commission at the time. Member Christopher Gerrior wondered if they could establish an agreement line. Mr. Grady confirmed they absolutely can have an agreed upon line that gets memorialized with the Town. Vice Chairman Gagne stated he believed an agreement line would be an appropriate course to take.

Agent Farinon suggested doing a site visit. The Commission agreed upon doing one before the meeting on May 1st at 6pm. Mr. Grady said he would be happy to join them.

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

Agent Farinon reported that Rochester Land Trust (RLT) Board Member Russ Keeler recently raised an excellent point that there wasn't a statement in the Conservation Restriction prohibiting the clear cutting of Atlantic White Cedar on the subject property. She said Allen Decker of the Buzzards Bay Coalition will discuss the matter with RLT and add a provision to the CR that addresses clear cutting.

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Member Laurene Gerrior distributed an information sheet on Atlantic White Cedar swamps to Commission members, and explained that there are places in Massachusetts with cedars that are over 300 years old. They are slow growing and the wood is valuable, but very slow to regrow when aggressively harvested.

Discuss Solar Initiative - Dan Gagne

Vice Chairman Gagne stated that the state has an interesting grant program out to help educate members of the town with how to promote residential solar programs. He doesn't have the time or the availability to promote it with the town but was hoping someone would be able to look into it. Agent Farinon will share the information with the town group actively investigating the Green Communities Initiative.

Massachusetts Vulnerability Preparedness Program

Vice Chairman Gagne informed the Commission that this is a grant program that looks at all of the town's vulnerabilities. He asked Agent Farinon to pass this along to the appropriate parties.

Future Meetings and Site Visits

Commission members discussed their availability for upcoming meetings and site visits. All attending members will be available for the May 1, 2018 site visits. All attending members, with the exception of Chairman Conway, stated they are able to attend the May 15, 2018 meeting.

Correspondence

No new correspondence.

At this time, Agent Farinon suggested that the Commission institute a policy requiring that all wetland flagging stations be established in the field for review at the time of application submittal, otherwise the application will be considered incomplete. She explained that if the flags are not in place to be reviewed in a reasonable amount of time before the meeting, it delays the project review and reflects poorly at no fault of the Commission. Discussion ensued and Commission members all agreed this was a good idea.

Vice Chairman Gagne made a motion that the Commission establish a policy that requires that the edge of wetlands be delineated in the field at the time of the filing; the motion was seconded by Member Christopher Gerrior. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

Adjournment

The meeting adjourned at 8:35 p.m. on a motion made by Vice Chairman Gagne and seconded by Member Post. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**