

**Rochester Conservation Commission
May 1, 2018**

Present: Michael Conway, Chairman
Daniel Gagne, Vice Chairman
Christopher Gerrior
Laurene Gerrior
Maggie Payne
Chris Post
Rosemary Smith

Absent: *(None)*

Margaret Gonneville, Board Administrator
Laurell Farinon, Conservation Agent

The meeting was held in the Council on Aging Senior Center. Chairman Conway called the meeting to order at 7:00 p.m. and announced that the meeting was being televised.

Public Meeting

(Continued from April 17, 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.

Documents submitted: *Memo distributed by Stephen Meltzer dated May 1, 2018 with procedural history, review considerations, and MACC guidance on Extension permits.*

Member Post recused herself on this project.

Stephen Meltzer of Edgewood Development was present and distributed a memo dated May 1, 2018 that contained a list of procedural history, review considerations, and MACC guidance on Extension Permits. Mr. Meltzer stated that Edgewood Development requested this extension in January 2018, which was shortly after they received the approved plans from the Planning Board. Mr. Meltzer emphasized the statement from the handbook that "presumably if none of these denial conditions apply, the Commission should issue the extension permit." Mr. Meltzer read to the Commission the denials and explained why he believed that none of the denial conditions applied to this case.

Mr. Meltzer stated he believed the Commission had done a very thorough job in 2011 with peer reviews and issuance of a comprehensive Order of Condition that protected the wetlands. Mr. Meltzer stated it just made sense to not redo the work. Mr. Meltzer referenced a letter written by Rochester residents opposing the extension and stated that Mr. Lang responded to that letter and the Commission should have had a chance to review it.

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Member Laurene Gerrior asked about the small wetland area at the base of the slope she observed when the Commission conducted their site visit. Mr. Briscoe Lang approached the Commission and stated that during the site visit at the base of the cut-slope between the development site and the agricultural pond there was a narrow area that held standing water. Mr. Lang explained that he evaluated the area and provided a letter report to the Commission on April 17th stating the area is smaller in size than the minimum 5,000 square foot required for protection. It does not support hydrophytic vegetation or hydric soils. As such, Mr. Lang stated that in his opinion the area is not a local, state, or federal jurisdictional wetland area.

Chairman Conway referenced Mr. Meltzer's February 12, 2018 letter and asked what clerical changes and amendments Mr. Meltzer was referring to. Mr. Meltzer responded that G.A.F. Engineering submitted a letter explaining they were minor changes to the date of the last revision on the plans and some of the blocks on the plans.

Attorney Ben O'Grady was present representing the citizens' petition group that requested MEPA to review the project. He stated that their concern that the Order of Conditions issued in 2011 would have already expired by now if not for the Permit Extension Act. Mr. O'Grady stated that this proposal seeks to take an undeveloped wooded area and change it to an industrial facility. He stated that the Wetlands Bylaw allows the Commission to consider the development of the area, but also the operations that could impact that area. He requested that something of this magnitude undergo a thorough review given what is proposed, and how long it has been since the initial review.

Mr. O'Grady stated that the project requires an Air Quality Permit from the DEP. Mr. O'Grady stated that it is the Commission's responsibility, and the Commission's responsibility alone, to protect the wetlands as the air quality for the DEP will not address the wetlands. Mr. O'Grady stated that MEPA believed that jurisdiction existed based on the Air Quality Permit and that they would be contacting Edgewood for further review and be making a determination. Mr. O'Grady stated that MEPA is still contemplating whether or not they will do a review, so at a minimum he believed the Commission should wait to see what MEPA decided to do.

Chairman Conway stated that he thought the MEPA review was denied. Agent Farinon confirmed that on February 28th they denied the review. Chairman Conway questioned why Mr. O'Grady was before the board tonight as there have been no material changes made to the site. Mr. O'Grady stated that he believed that there were other projects that have come before the Commission since 2011 that had been approved in the area that may affect the storm water or displace water in the area which might have changed the area to the extent that this project might warrant a review. Mr. O'Grady referenced the changes to the plans and stated that he found it hard to believe that in the last 7 or 8 years, there have been no technological innovations in this industry that could be implemented at the site that would better protect the wetlands.

Chairman Conway commented that Mr. O'Grady was speculating, and requested him to present facts for the Commission's consideration. Mr. O'Grady stated that he believed there were a number of factors (both operational wise and site condition wise) warrant a second look., however provided no specific examples.

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Agent Farinon noted that the MACC guidance that Mr. Meltzer referenced draws very heavily from the Wetlands Protection Act regulations. She reported that Commission members have all been provided meeting minutes from the original Notice of Intent meetings for the Edgewood Development project under 272-483. These meetings were held on December 21, 2010, the January 18, 2011, February 15, 2011 and March 1, 2011. Agent Farinon read aloud into the record the following summary page that was attached to the Order of Conditions for this project:

Edgewood Development Company, LLC proposes construction of a bituminous concrete production facility (“drum plant”) on five wooded acres of land that will be subdivided from Assessors’ Map 17, Lots 6, 57 and 58 off King’s Highway in the Industrial District. The project includes construction of a new bituminous concrete facility and associated site improvements, a paved parking area, a new access driveway from King’s Highway, utilities, stormwater management system, and landscaping improvements. A portion of retention basin #1 is proposed within the 100-foot buffer zone to an agricultural pond/reservoir owned by Bayside Agricultural, Inc. to the west. The east bank of the pond/reservoir has a 100-foot buffer zone that encroaches onto the west side of the site. The site does not fall within a mapped Priority or Estimated Habitat of Rare Species by the Natural Heritage & Endangered Species Program.

The proposed bituminous concrete production facility qualifies as a Land Use with Higher Potential Pollutant Loads (LUHPPL). The Rochester Conservation Commission hired Nover Armstrong Associates, Inc. to conduct a peer review of the project proposal for conformance with the MA Wetlands Protection Act, Rochester Wetland By-law, and DEP’s Stormwater Management Standards. A thorough review of the project by peer review consultant Nover Armstrong Associates, Inc. and the Rochester Conservation Commission indicates that the proposed project, as conditioned, meets the above referenced regulations and standards. All efforts have been made to avoid and minimize wetland impacts, and the unavoidable impacts are the minimum necessary to achieve the project purpose and are allowable under the Regulations.

The resulting Order of Conditions below provides for the following mitigation measures:

- *A sedimentation and erosion control program shall be implemented to protect the adjacent cranberry bog and agricultural pond/reservoir during construction activities*
- *The facility shall meet the requirements of an approved Stormwater Pollution Prevention Plan (SWPPP)*
- *The facility shall meet the requirements of the approved Spill Prevention, Control and Countermeasure Plan*
- *The facility shall meet the requirements of the approved Erosion Control Plan*
- *The project shall adhere to an annual ground water monitoring program*

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- *The project shall be constructed to conform to this Order of Conditions and the plans entitled “King’s Highway Bituminous Concrete Facility, Kind’s Highway, Rochester, Massachusetts”, Prepared for Edgewood Development Company, LLC by G.A.F. Engineering, Inc. dated November 18, 2010 and last revised February 21, 2011*

Agent Farinon noted that a special condition was added requiring ground water monitoring, a read aloud the condition that requires the following:

Proposed ground water monitoring wells shall be installed immediately adjacent to and down gradient of the basins instead of inside of the basins. Proposed wells shall be installed in accordance with Massachusetts Department of Environmental Protection’s Standard References for Monitoring Wells, WSC #91-310 and the groundwater shall be sampled annually by the owner and analyzed by a Massachusetts Certified Analytical Laboratory for a minimum of Total Petroleum Hydrocarbons (TPH) – EPA Method 8100m; Volatile Organic Compounds (VOCs) – EPA Method 8260b; and 8 RCRA Metals dissolved using EPA methodologies. Method detection limits for the laboratory analysis shall be noted by the reviewer to ensure they are low enough to indicate contaminants in the groundwater, if they exist.

Agent Farinon summarized that she believes the original Order of Conditions is comprehensive and protects the interests under the Wetlands Protection Act and local bylaw, and recommended that the Commission issue the Extension Permit to Edgewood Development under DEP SE 272-483.

A motion was made by Member Smith to issue a three year Extension Permit to Edgewood Development Company under DEP SE 272-483, which was seconded by Vice Chairman Gagne. Chairman Conway conducted a roll call vote that went as follows: Member Smith approved, Member Laurene Gerrior approved, Member Post had recused herself, Vice Chairman Gagne approved, Member Payne approved, Member Christopher Gerrior approved, and Chairman Conway approved. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

(Member Post resumed her role in the meeting.)

Public Hearing

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 Mattapoisett Road and 248 Mattapoisett 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 Mattapoisett 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.

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Vice Chairman Gagne recused himself from this hearing. Chairman Conway announced that there was a procedural error at the previous hearing, and the meeting was inadvertently closed without a quorum. The hearing has since been re-advertised and abutters notified at the Commission's expense.

Doug Carton from Clean Energy Collective, LLC explained that changes to the plan had been made requiring a request for Amended Order of Conditions. Mr. Carton explained that they needed to increase the height of the berm to meet Planning Board requirements; however they maintained the same limit of work and a 3:1 slope towards the wetland area to the north. They have added erosion control blankets for sloped area adjacent to the wetlands.

Chairman Conway asked if Commission members or the public had any questions or comments, and there were none. Agent Farinon noted that there were members present that were not at prior meeting, but everyone would be eligible to vote other than Vice Chairman Gagne who recused himself. Agent Farinon stated that the submitted plan set was included in the Commission's packet and she further explained that Clean Energy Collective, LLC was requesting an Amended Order of Conditions because they revised the slope along the perimeter roadway due to some changes that were requested by the Planning Board.

Agent Farinon reminded the Commission that they had requested a seed mix that would benefit native bees and wildlife habitat and noted that it was incorporated into the decision and that they've agreed to use a 50/50 pollinator mix of ERNMX-123 (Native Upland Wildlife Forage & Cover Meadow Mix) and ERNMX-157 (Honey Bee Forage Mix). She stated that Clean Energy Collective, LLC proposed erosion control blankets at the location that was closest to the wetland area to ensure slope stabilization. Agent Farinon recommended that they grant the Request for an Amended Order of Conditions under DEP SE 272-530 and approve the submitted plan set of record.

Member Laurene Gerrior made a motion to issue an Amended Order of Conditions which was seconded by Member Rosemary Smith. Chairman Conway conducted a roll call vote that went as follows: Member Smith approved, Member Laurene Gerrior approved, Member Post approved, Chairman Conway approved, Member Payne approved, and Member Christopher Gerrior approved. Vice Chairman Gagne recused himself. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

***(Continued from April 17, 2018)* DEP SE # 272-055 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, Rochester, MA 02702. The applicant's representative is Brian Grady, G.A.F. Engineering Inc., 266 Main Street, Wareham, MA 02571.**

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Documents submitted: *Plan entitled: "Sewage Disposal System Design" prepared for Robert & Nancy Barboza, Map15 / Lot 21, Alley Road, Rochester, MA dated December 6, 2016 and revised through April 23, 2018*

Chairman Conway stated that the public hearing was continued so that Agent Farinon could review the wetland delineation. Brian Grady of G.A.F. Engineering Inc. introduced himself to the Commission as being there on behalf of the applicants Robert & Nancy Barboza, who were in attendance. Mr. Grady reported that he met Agent Farinon on site to review the wetland line, and that Agent Farinon made a few adjustments which are reflected on the new plan. The 100 Foot Buffer Zone and the 25-foot no disturb lines have been revised. Mr. Grady pointed out the location of the damaged tree on the plan that is recommended to be cut down to the stump. He also pointed out a proposed garden and shed on the plan outside of the 25-foot no disturb zone. Mr. Grady pointed out that the erosion control barrier placement is proposed. The garden shed will be placed on concrete blocks so there will not be any earth disturbance.

Agent Farinon reported that she met Mr. Grady on site and made adjustments to the flagging stations as shown on the plan; there were corresponding minor changes to the 25-foot no disturb zone as a result. Agent Farinon recommended that the Commission issue a positive Order of Conditions so that the project can move forward in accordance with the revised plan, with the stipulation that a semi-permanent barrier be constructed along the 25-foot no disturb zone prior to occupancy of the dwelling.

Chairman Conway asked if there was a motion on the floor. Vice Chairman Gagne responded "So moved" and Member Smith seconded the motion.

Chairman Conway stated that before the Commission voted on the matter, there were three Mullen Rule affidavits on this project: Member Payne, Member Post and Member Smith. Chairman Conway asked for a roll call vote which went as follows: Member Smith approved, Member Laurene Gerrior approved, Member Post approved, Chairman Conway approved, Vice Chairman Gagne approved, Member Payne approved, and Member Christopher Gerrior approved. **The motion passed by a vote of 7 in favor, 0 opposed, 0 abstained (7-0-0).**

Commission Business

Minutes

Chairman Conway stated there had a change to the meeting minutes regarding future meetings and site visits: the original date on the Meeting Minutes stated April 15, 2018; the corrected date is May 15, 2018.

A motion to approve the minutes of April 17, 2018 was made by Vice Chairman Gagne and seconded by Member Laurene Gerrior. **The motion passed by a vote of 4 in favor, 0 opposed, 3 abstained (Member Smith, Member Post and Member Payne) (4-0-3).**

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Voucher(s)

The following voucher was approved for payment: W.B. Mason / Office Supplies in the amount of \$6.85.

Mullin Rule Affidavits

Member Rosemary Smith and Chairman Michael Conway signed Mullin Rule affidavits for DEP SE 272-0483 Request for Extension Permit filed by Edgewood Development for property located on King's Highway for a hearing missed on March 6, 2018. Member Rosemary Smith, Member Christine Post and Member Maggie Payne signed Mullin Rule affidavits for DEP SE 272-0555 Notice of Intent filed by Robert & Nancy Barboza for property located on Alley Road for a hearing missed on April 17, 2018.

Old Business

None

New Business

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

Mr. Grady of G.A.F. Engineering was present to discuss the property line encroachment onto Rochester Conservation Commission property located off Burgess Avenue, Rochester Assessors Map 27, Lot 8. The Commission conducted a site visit prior to the meeting to review flags that delineated the property line as determined by MA GIS coordinates. He stated there had been a fair amount of research done on the subject property, the adjacent property and the property or two removed from that (the Estabrook Property) to try to determine this property line and that property line. Mr. Grady stated the deeds go back quite a while and they're indeterminate as they mention certain landmarks such as a ring of stones. He explained to the Commission that he had spent half a day looking for linear features, wire fences, etc. He did not uncover anything. As part of the Estabrook survey, his crew spent a day and a half out there and they did put some coordinates on some other survey stations. He reported they found an old woods row for the Estabrook property, but nothing that would help on this case.

Mr. Grady explained that he could not state exactly where the line is between the Decas and Town of Rochester land, and his default position would be to use what was shown on MA GIS. Mr. Grady further stated that as part of the survey that was being done for Estabrook (which abuts Decas and Town of Rochester's land), the lines were poorly defined and an agreement would need to be made between the owners involved. He explained they would prepare a plan where Mr. Estabrook and Mr. Decas and the Town of Rochester will agree to the lines as shown on the plan. He stated their plan is to use the line on the plan to submit and the "town fathers" of Rochester will review and approve.

Chairman Conway asked Mr. Grady if the encroachment was 10 feet into Rochester's land. Mr. Grady stated it was probably between 10 to 20 feet in the small triangular piece. He noted that there had been some historic disturbance that goes way back on the property. He also mentioned Decas' plan to remove sand as they need it for their agricultural activities, restore the slopes to 3:1, spread the loam over and a plant a meadow mix or something similar.

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Member Smith stated they're concerned that they will continue to take sand from the area and the Commission wants to ensure that Decas will not degrade the edge of the property any more than it already is. Mr. Grady stated that as this is an agricultural project, it was exempt from the earth removal process so there was no setback requirement. Vice Chairman Gagne requested a 25-foot that they cannot dig beyond. Member Smith confirmed that they wanted Decas to smooth out the little hill and seed it.

Vice Chairman Gagne asked Mr. Grady if the deed has an acreage listed and if it corresponded with the blue square depicted on the aerial. Mr. Grady responded that it had a description and that they punched in the description with the bearings and distances and it does not close by about 20 feet. He stated that the Assessors have it at 2 acres and he recalled the Estabrook deed had acreage of 35 in MA GIS and the polygon in MA GIS had acreage of 37. Mr. Grady stated that when they do an overlay of the MA GIS, it is very close except for the 20-foot leg so the rectangle does not close. Vice Chairman Gagne asked if Mr. Grady was able to find a specific corner of the Estabrook property; Mr. Grady responded that they were unable to find anything as it was out in the middle of the cedar swamp.

Agent Farinon stated that while there is the issue of encroachment, there also was the issue of historical cutting. She mentioned that another issue was that Decas is looking to take as much sand from the area as possible, which puts the Commission against the wall as they do not have 100% confidence in the property line is and do not want to see any material taken from town land. Agent Farinon stated that she is not comfortable with just a 25-foot buffer, given the probable margin of error in the MA GIS data layer.

Member Laurene Gerrior asked if Decas had a permit with the Soil Board and Agent Farinon responded that the Soil Board reviewed it and there was no permit as sand is being removed for agricultural purposes on land in agricultural use... Member Laurene Gerrior stated that she would be comfortable with a 50-foot buffer. Mr. Grady stated that once the lines were agreed upon, the vagaries go away. Agent Farinon stated that it would still be vague, and noted that there is definitely margin of error and it was difficult to make important decisions based upon information that was not 100 percent accurate.

Vice Chairman Gagne's opinion was if the correct lot area was defined, they need to set the line from now until forever and give them a buffer zone so they will not be working on Rochester Conservation Commission property. Member Smith asked how much of a buffer Vice Chairman Gagne would be comfortable with. Vice Chairman Gagne stated that if they had an established line, it would not have to be much... possibly 20 feet... because that line would be that line from today until forever so if they were 20 feet off, it would not impact the Town.

Member Christopher Gerrior asked what the goal was from tonight. Agent Farinon stated she could pursue it with Applied Geographics and attempt to bring something to the next meeting. Mr. Brady stated a conversation with Town Counsel would be necessary to flush out what the process is with the Town for reaching the agreement line. Member Laurene Gerrior asked if this would incur any extra cost and Agent Farinon confirmed it would, and that it would be a tight budget this year.

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Member Payne questioned if there were plans to remove sand from that site soon. Mr. Grady stated they had already removed the sand that they need for the current projects but he was unsure when they would need to remove more.

Agent Farinon asked the Commission if they believed it was worth pursuing with Applied Geographics. Member Smith stated that if it would not take too much time and it was within the budget, the Commission should do that as their responsibility to the Town.

Member Smith made a motion to have Agent Farinon contact Applied Geographics to see what it will cost, and if it is reasonable, to go ahead and have them do that. Chairman Conway asked what “reasonable” would be. She stated she would be okay with a cost of \$500 or less. Member Post seconded the motion. **The motion passed by a vote of 4 in favor, 2 opposed, 0 abstained (Vice Chairman Gagne and Member Christopher Gerrior opposed) (4-2-0).**

Agent Farinon requested feedback from the members who opposed the vote. Member Christopher Gerrior voiced his opinion that he did not believe the Commission absolutely needed to have Applied Geographics explore this. Vice Chairman Gagne agreed with Member Christopher Gerrior. Agent Farinon stated that she respected the Commission members stated opinions, and that her concern is that is a Town property and resource, and it is not the Commission’s to give away. She stated she did not believe \$500 was a lot of money and it would be well spent so they would have a level of confidence that they were not giving away anything.

Confirm member availability for future site visits and meetings

All members except for Chairman Conway can attend the site visit and meeting planned for May 15th, 2018.

Correspondence

None

Adjournment

The meeting adjourned at 8:20 p.m. on a motion made by Vice Chairman Gagne and seconded by Member Laurene Gerrior. **The motion passed by a vote of 7 in favor, 0 opposed, 0 abstained. (7-0-0)**

Jessica Brodeur, Recording Secretary

Daniel Gagne, Vice Chairman