

Rochester Conservation Commission
April 2, 2019

Present: Michael Conway, Chairman
Daniel Gagne, Vice Chairman
Léna Bourque
Christopher Gerrior
Maggie Payne
Kevin Thompson

Laurell J. Farinon, Conservation Agent
Marissa Perez-Dormitzer, Recording Secretary

Absent: Chris Post

The meeting was held in the Town Hall conference room. Chairman Conway called the meeting to order at 7:06 p.m. and announced that the meeting was being televised.

Public Meeting

***(Continued from February 19, 2019)* DEP SE 272-0305 A Request for Certificate of Compliance was submitted by Richard Tabaczynski, P.E. of Atlantic Design Engineers, Inc. for property located at 4 Sparrow Lane as Lot 7 on Assessor's Map 11A. An Order of Conditions was issued to Decas Cranberry Company on April 7, 2000 under DEP SE 272-0305 approving a single-family residence to include in-ground pool, deck, shed and gazebo.**

Agent Farinon reviewed the history of the request for a Certificate of Compliance. The owner submitted an after the fact Request for Determination of Applicability for approval for a basketball court which the Commission granted.

Agent Farinon visited the property on the day of the meeting to ensure there were no changes. She recommended issuing a Certificate of Compliance under DEP SE 272-0305.

A motion to issue a Certificate of Compliance under DEP SE 272-0305 was made by Vice Chairman Gagne and seconded by Member Gerrior. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

A Request for Determination of Applicability filed by Fisher Hill Development LLC c/o Mario DiBona, 8 Perry's Lane, Rochester, MA 02770 for work on property located off Dexter Lane, Rochester, MA 02770. The applicant proposes the construction of a new single-family dwelling, septic system, driveway and associated site work outside of the flood zone and outside of the Buffer Zone of the cranberry bogs. The proposed septic system is a Presby/ADS design with advanced treatment of effluent. Siltation control measures will be implemented. The property owner of record is Bruce Maksy, Jr., P.O. Box 293, Rochester, MA 02770. The project location is off Dexter Lane and is designated as Lot 11D on Rochester Assessors' Map 6.

Mario DiBona explained that a prior Determination of Applicability for a single family dwelling on the property was approved and has since expired. They were seeking to renew it. The only change to the plan is that the home/garage flipped sides: the structure in not within the 100-foot Buffer Zone.

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Agent Farinon corroborated that the Commission had issued a Determination of Applicability for a single-family dwelling which has expired. She explained that the dwelling, grading, and the subsurface sewage are all outside the 100 foot buffer zone to a cranberry bog. The only work within the buffer zone is the proposed well and water line to the dwelling. They propose a ring of staked hay bales for erosion control. Agent Farinon recommended issuing a negative Determination of Applicability with the condition that erosion control barriers are staked in the field prior to any construction activity and the Commission office is notified to review and approve placement in the field.

A motion to issue a negative Determination of Applicability was made by Member Gerrior and seconded by Vice Chairman Gagne. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

A Request for Determination of Applicability filed by Laurie Curtis, 7 Sparrow Lane, Rochester, MA 02770 for work on property located at 7 Sparrow Lane, Rochester, MA 02770. The applicant proposes to cut approximately 20 trees (mostly pine) within the 100-foot Buffer Zone of a bordering vegetated wetland that have the potential to fall and damage property. The property owner of record is Laurie Curtis, 7 Sparrow Lane, Rochester, MA 02770. The project location is 7 Sparrow Lane, which is designated as Lot 11A on Rochester Assessors' Map 4.

Laurie Curtis was not present at the meeting.

Agent Farinon explained that an arborist marked 20 trees for removal within the 100-foot Buffer Zone of a bordering vegetated wetland. Vice Chairman Gagne asked if any of the trees are in the 25-foot No Disturb Zone: Agent Farinon responded that four (4) trees are in the 25-foot No Disturb Zone. However, she pointed out that the locations shown on the site sketch are approximate; they did some rough measuring in the field. Member Thompson pointed out that one of the trees is dead.

Agent Farinon distributed copies of the Rochester Wetlands Bylaw. She directed the Commission's attention to Section 5.4, which states the Commission may allow certain regulated activities where the applicant demonstrates no practicable alternative exist. Chairman Conway stated that in this situation, they could either remove the trees to avoid having them fall on the house, or they could move the house, which is not practicable.

Vice Chairman Gagne asked if there was discussion about the means and methods for taking down the trees. Agent Farinon stated they would have a contractor do the work and use an open area for staging. Member Thompson commented that roots are starting to pull up in some of the larger pines.

A motion to issue a negative Determination of Applicability for clearing 20 or fewer trees was made by Vice Chairman Gagne and seconded by Member Gerrior. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

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Public Hearings

(Continued from March 19, 2019) DEP File # SE 272-0565 A Notice of Intent filed by Sofia Darras, 79 Walpole Street, Dover, MA 02030 for property located at 565 Rounseville Road, Rochester, MA 02770, designated as Lots 24, 25, & 25D on Assessor's Map 30. The applicant proposes the installation of a new drainage system to replace the existing system, and bring the site into conformance with stormwater standards. This project also involves the permitting of an existing drainage pipe and discharge to the wetlands. The property owners of record are Sofia Darras, 79 Walpole Street, Dover, MA 02030 and Gibbs V. & Patricia M. Bray, Trustee, P.O. Box 989, Marion, MA 02738. The applicant's representative is J.C. Engineering, Inc., 2854 Cranberry Highway, East Wareham, MA 02538.

(Member Bourque recused herself from the Public Hearing.)

Brian Wallace of J.C. Engineering, Inc. explained that minor changes were made to the plan in response to Conservation Commission and Planning Board peer reviews: the most recent plan is dated March 7, 2019. The changes include the removal of the grass swale and replacing it with 3 catch basins and pipes to the stormceptor system. Another change is the removal of a section of the concrete pipe discharging to the wetlands. They will install a concrete flared end section and stone rip-rap.

The plans were reviewed by Henry Nover in a letter dated March 27, 2019 with no further findings. In a letter from Planning Board peer review consultant Field Engineering, two changes were recommended: 1. Catch basin 7 (a leaching catch basin) shall be removed as part of construction, 2. Field verification will be required prior to installation of the water line crossing beneath the new drain pipe between catch basin 5 and the stormceptor.

Chairman Conway asked why they are removing the catch basin. Mr. Wallace stated that it's not needed for the design.

Vice Chairman Gagne asked if switching from the swale to pipe conveyance impacted the peak rate going into the wetland: Mr. Wallace confirmed that all calculations were revised.

Agent Farinon explained that there is a limited amount of construction activity under the Commission's jurisdiction in this Notice of Intent Filing. However, they want to ensure they are meeting all the DEP stormwater standards. Agent Farinon stated there is evidence of vernal pool activity. This wetland system has a ponding area where water is standing beyond the wetland line. She stated construction can be done without impacting the standing water and any vernal pool species using the wetland system. There are several general conditions in the standard Order of Conditions that relate to stormwater management review. Agent Farinon reviewed several of the conditions.

Agent Farinon recommended issuance of a positive Order of Conditions with a stipulation that 1. A preconstruction meeting is held and erosion control barriers are reviewed and approved prior to any construction activity, and 2. Construction shall not take place between April 1st and April 30th of any given year due to vernal pool activity.

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Vice Chairman Gagne asked if a revised plan will need to be submitted and expressed concern that the Planning Board will be approving plans with a different date. Mr. Wallace responded that the plans will not be revised. The two changes will be incorporated into the Planning Board special conditions.

A motion to issue a positive Order of Conditions with the stipulation that a preconstruction meeting be held and erosion control barriers reviewed prior to any construction activity, construction not take place between April 1st and April 30th of any given year, and that catch basin 7 will be removed was made by Vice Chairman Gagne and seconded by Member Gerrior. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

(Member Bourque resumed her role in the meeting.)

***(Continued from February 19, 2019)* DEP File # SE 272-0564 A Notice of Intent filed by T-Mobile Northeast LLC c/o Network Building & Consulting, LLC, 100 Apollo Drive, Suite B, Chelmsford, MA 01824 for property located at 98 Bowen's Lane, Rochester, MA 02770, designated as Lot 14 on Assessor's Map 31. The applicant proposes installation of a 25kw generator on a 4' x 10' pad approximately 34' from a bordering vegetated wetland: all work will be performed outside of the Town of Rochester's 25-foot No Disturb Zone. The generator will provide power to a T-Mobile antenna installation attached to the adjacent communications tower. The property owners of record are Michael J. Umano & Donald C. Cody, Trustees, New England Nominee Trust, 4 Lone Street, Marshfield, MA 02050. The applicant's representative is Marty Cohen, Network Building & Consulting, LLC, 100 Apollo Drive, Suite 303, Chelmsford, MA 01824.**

Marty Cohen of Network Building & Consulting, LLC stated the Conservation Commission had requested an operations and maintenance plan when he attended a meeting in February. He explained that when all the permits are in place, T-Mobile will sign with a company for long term maintenance and operation. He provided a letter from Adam Sullivan, Real Estate and Regulatory Consultant for T-Mobile, with about 30 bullet points of what the maintenance company will do.

Vice Chairman Gagne stated they requested an operations and maintenance plan and they didn't get one. He asked to clarify if the 250-gallon tank was diesel or propane. Mr. Cohen stated it was diesel and that he may have misspoken at the meeting in February. Chairman Conway asked if the diesel tank requires an EPA Spill Prevention, Control, and Countermeasure plan. Mr. Cohen responded that he was unsure.

Chairman Conway pointed out that on page 2 of Adam Sullivan's letter it says "In the unlikely event of a sudden drop in fuel level, T-Mobile's Network operators will be alerted immediately." He asked what happens after the operators are notified. Mr. Cohen responded that it would be part of the operations and maintenance plan. Chairman Conway referred to a part of the letter stating that visual inspections of the generator should take place on a frequent basis. Chairman Conway asked how frequently they would occur. Mr. Cohen suggested the Conservation Commission put a reasonable frequency in the Order of Conditions. Chairman Conway pointed out on page 8 that it mentions checking antifreeze with a spector-analysis. He asked how much antifreeze will be in the unit. Mr. Cohen responded that he was unsure.

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David Watling, 360 Cushman Road asked the size of the fuel tank. Mr. Cohen responded that it's 280 gallons. Mr. Watling asked if it has a containment catch basin. Mr. Cohen responded there's a 7-gallon containment vessel for refilling to avoid spillage. The tank is double walled. Chairman Conway asked if there is any exterior piping from the fuel oil tank and if it's double walled. Mr. Cohen stated he was unsure.

Agent Farinon explained she had concerns related to secondary containment, however, on page 2, the letter mentions a "250 gallon fuel tank with two walls, providing secondary containment in the unlikely event of damage to the tank." She stated she spoke with Adam Sullivan about the ability to determine remotely through the sensors if there's a problem. Member Gerrior cited a part of the letter that mentions monthly visits. Mr. Cohen stated that for towers without a generator, its standard practice for T-Mobile technician to check it monthly.

Vice Chairman Gagne asked who is responsible and is the contact. Mr. Cohen responded there would be a contractor and they would provide the contact information. However, ultimately, it's T-Mobile's generator and diesel tank.

Vice Chairman Gagne stated an operations and maintenance plan is a requirement under DEP regulations. Agent Farinon asked if T-Mobile has given Mr. Cohen an idea when they'll have it. Mr. Cohen stated he would communicate with T-Mobile to get an approximate time frame when the operations and maintenance plan will be available. Agent Farinon explained that the Commission cannot continue indefinitely.

Mr. Cohen suggested having an Order of Conditions that's contingent upon submitting a satisfactory operations and maintenance plan. T-Mobile wants to have the permits in place before awarding the operations and maintenance contract.

Vice Chairman Gagne asked who will review the operations and maintenance plan: Agent Farinon responded the review will be done by the Conservation Commission. Chairman Conway stated the permit wouldn't be active until the plan is approved. Agent Farinon asked Mr. Cohen if T-Mobile had done this before with similar generator units. Mr. Cohen responded that his firm is working on a number of sites in New England. He can find out if this process has been done before. Mr. Cohen requested to continue the hearing again and he can see what information he can find.

A motion to continue the hearing to June 18, 2019 was made by Member Gerrior and seconded by Member Thompson. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Enforcement Order Issued to Jose Araujo, 15 Elizabeth Drive, Rochester, MA 02770 dated January 15, 2019 for Illegal Cutting of Trees and Shrubs within the 25 Foot No Disturb Zone and 100 Foot Buffer Zone of the Bordering Vegetated Wetland and Bank to Leonard's Pond.

Engineer Richard Charon and property owner Jose Araujo were present.

Mr. Charon stated that they are finding it impractical to do the number of plantings being discussed. He reviewed the three-pronged approach, referring to plans submitted to the Conservation Commission, discussed at the last meeting that includes the following:

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1. Planting of 60 shrubs along the bank of Leonard's Pond near the old Boy Scout camp. Mr. Charon stated the shrub list includes species specific to sandy and acidic soils.
2. Loaming and seeding of eight tenths of an acre near the cranberry bog to create habitat for native bees. A dozen fruit trees (apple, pear, and prune) will be planted.
3. A conservation easement will be placed on approximately 5.3-acres of land adjacent to Leonard's Pond to preserve it in its natural state in perpetuity. They submitted a draft easement for review by the Commission based on a template from the Massachusetts Association of Conservation Commissions. Mr. & Mrs. Araujo will be the grantors and the Conservation Commission will be the grantees. Out of 5.3 acres, there are 2 acres of wetland and 3.3 acres of upland.

Mr. Charon stated the plan satisfies the need to correct what was done and protects an area that would otherwise be less protected. The shrub layer will be established in a no touch zone. Mr. Araujo explained the area next to the Boy Scout camp was already disturbed: the front of the camp had no shrubs layer on along the bank.

Mr. Charon explained that the offer provides a valuable asset to the Town. The easement language needs to be reviewed by Town Counsel Bailey. He would like to file a Notice of Intent and then the easement agreement can be perfected and included in the Order of Conditions for the proposed house.

Vice Chairman Gagne asked why they were grinding stumps, as he thinks the stumps should be left in place. Mr. Charon stated that is feasible. Vice Chairman Gagne asked about a note on Drawing No. L2 regarding a well to be installed on the property. Mr. Charon responded that they will have to turn in a septic plan first as part of the home site plan. The Town requires the well be installed first.

Vice Chairman Gagne stated he was unsure about planting fruit trees in the buffer area because they are not native to the area. Mr. Araujo responded that the reason for the fruit trees is that they bloom early in the season which is helpful to his bees. Member Gerrior commented that not a single tree is being planted where trees were cut. Vice Chairman Gagne stated there are other native trees that are pollinator friendly and that he would like to see native trees.

Mr. Charon suggested they ask Town Counsel Bailey to review the easement language, submit an NOI, and seek approval for a septic system with the Board of Health. Agent Farinon explained the most important thing is to keep the process moving in a positive direction.

Agent Farinon explained that the land will be protected, but not in the same way as a Conservation Restriction. There could be legal ways it could be extinguished, but it would be many years from now: it's a deed restriction. Chairman Conway asked how the Conservation Commission, as the grantee, would be responsible for the land in the easement. Agent Farinon responded that she would like to discuss it more with Town Counsel Bailey. She stated with a Conservation Restriction, there are annual inspections. In response to a question from Chairman Conway about the time required to do the inspections, Agent Farinon responded that a once a year inspection would not place a burden on staff time.

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Vice Chairman Gagne asked if there is a way to get the plants in the ground sooner rather than later for the spring growing season. Mr. Araujo stated he could move forward with the 60 shrubs and get them planted in a couple of days. Vice Chairman Gagne stated it's important to get the plants in the ground.

Member Gerrior expressed concern that restoration is not being done, and about the message being sent to current and future landowners about work in in protected areas. Mr. Araujo stated he already paid a fine and is voluntarily giving up over 100 feet of buffer zone for future use. Member Gerrior asked the amount of the fine: Agent Farinon replied it was \$600. Mr. Charon added that since January 15, 2019, a total of \$15,000 in fees has accrued for work done by the owner's consultants in response to the Enforcement Order. Mr. Charon stated that anyone following the case would be deterred. Member Payne commented that the Conservation Commission would most likely have allowed cutting in the 100-foot Buffer Zone if they had filed an NOI.

Agent Farinon explained that the proposal to plant four trees for every tree cut would be very difficult to implement, and could potentially disturb already established trees and shrubs in Buffer Zone Areas. Vice Chairman Gagne stated they could come to an agreement that at a minimum, they want the 60 shrubs.

A motion that the restoration plan will include at a minimum 60 shrubs and a sediment control barrier to be conditioned in a future Notice of Intent filing was made by Vice Chairman Gagne and seconded by Member Payne. Member Gerrior was opposed. **The motion passed by a vote of 5 in favor, 1 opposed, 0 abstained (5-1-0).**

Request for Determination of Non-Significance on Plan Change, Map 30, Lot 2 Mendell Road, DEP SE 272-560, Request Made by Nyles Zager, PE of Zenith Consulting Engineers, LLC on behalf of new property owner Mark Sollauer. Order of Conditions was issued to CorGo Enterprises on November 28, 2018.

Property owner Mark Sollauer explained that he purchased the property and has revised the house design and as a result is asking for 16 extra square feet (4'x4') into the 100-foot Buffer Zone.

Agent Farinon stated that the plan provided could suffice as an update, and that in her opinion the plan change is not significant enough to warrant a new filing or an amended Order of Conditions.

A motion to accept the drawings and not require a new Order of Conditions was made by Member Gerrior and seconded by Vice Chairman Gagne. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Commission Business

Minutes

A motion to approve the minutes of March 19, 2019 was made by Chairman Conway and seconded by Member Gerrior. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

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Vouchers

The following vouchers were approved for payment:

- Henry T. Nover / REpurpose Properties / Darras Drainage Improvements DEP 272-0565
Escrow Account: \$500.00
- W.B. Mason / Office Supplies: \$48.82

Old Business

April 16, 2019 Meeting to be held in the Town Hall Conference Room

Chairman Conway stated the next meeting will take place at the Town Hall Conference Room.

New Business

Conservation Commission Member Term Expiration on April 30, 2019 – Member Post and Member Conway – Vote to Recommend Reappointment

A motion to recommend that the Board of Selectmen reappoint Member Post was made by Chairman Conway and seconded by Vice Chairman Gagne. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

A motion to recommend that the Board of Selectmen reappoint Chairman Conway was made by Vice Chairman Gagne and seconded by Member Gerrior. Chairman Conway abstained. **The motion passed by a vote of 5 in favor, 0 opposed, 1 abstained (5-0-1).**

Confirm Member Availability for Future Site Visits and Meetings

Most Members present confirmed their availability for the next meeting: Member Gerrior will not be in attendance. Chairman Conway requested that Commission re-organization be added as an agenda item for the next meeting on April 16, 2019.

Agent Farinon stated there are two new filings for the next meeting. One is an RDA for tree cutting on Walnut Plain Road, and the other is an ANRAD for a 60-acre property off Marion Road. Discussion ensued about the timing of the site visits, and members agreed to meet at 6:00 p.m. on April 16th to visit the 60-acre site before the next meeting, and they will drive by the other site on their own.

Adjournment

The meeting adjourned at 8:59 p.m. on a motion made by Member Payne and seconded by Member Gerrior. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**