

**Rochester Conservation Commission  
May 21, 2019**

<b>Present:</b>	Michael Conway, Chairman	<b>Absent:</b>	Chris Post
	Daniel Gagne, Vice Chairman		Kevin Thompson
	Léna Bourque		
	Christopher Gerrior		
	Maggie Payne		
	Laurell J. Farinon, Conservation Agent		
	Marissa Perez-Dormitzer, Recording Secretary		

The meeting was held in the Town Hall conference room. Chairman Conway called the meeting to order at 7:03 p.m. and announced that the meeting was being televised.

**Public Meetings**

***(Continued from March 19, 2019)* DEP SE 272-0201 A Request for Certificate of Compliance was submitted by Decas Real Estate Trust for property located at 15 Cranberry Highway, designated as Lot 31 on Assessor's Map 17. An Order of Conditions was issued to Decas Real Estate Trust on August 8, 1993 under DEP SE 272-0201 allowing for the construction of two commercial buildings with parking areas, installation of utilities, sewage disposal, drainage systems and associated grading. An Amended Order of Conditions was issued on May 13, 1997 for the revised design to incorporate a more comprehensive stormwater collection system.**

Chairman Conway reported that G.A.F. Engineering submitted a request for continuance until June 4, 2019 in order to allow time for drainage improvements to be constructed.

A motion to continue the Public Meeting to June 4, 2019 was made by Member Payne and seconded by Vice Chairman Gagne. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

**DEP SE 272-0501 A Request for Certificate of Compliance was submitted by Shawmut Associates, LLC for property located at 50 Cranberry Highway, designated as Lot 41F on Assessor's Map 17. An Amended Order of Conditions was issued to Shawmut Associates, LLC on April 4, 2014 and an Order of Conditions Extension was issued on April 4, 2017 under DEP SE 272-0501 allowing for modifications to a previously approved site design for a recycling facility. Based on a visual inspection of the site, it appears that all installed BMP's are functioning properly and that the work performed is in substantial compliance with the OOC. There have been minor field changes and deviations of the approved plan.**

Stuart Clark of Green Seal Environmental, Inc. was present at the public meeting, and distributed photos of the site and a signed, stamped illicit discharge statement. He explained the stormwater management system components starting from the entrance, and stated they repaved the road and the photos show the sides of the road stabilized with grass. He pointed out a rain garden feature that traps sediment and is working well. A level spreader takes water from the side of the road to a rain garden. There is also a scupper with rip rap sediment trap. They are finding that no sediment is reaching the discharge point.

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Mr. Clark stated they made a couple of minor changes. The original design included a sediment trap; however there was one already there and they cleaned it and put in a new grate and rip rap.

At the drainage detention basin, there were two outfall structures proposed side by side. Instead of bringing in heavy equipment and disturbing the newly graded basin directly adjacent to the bordering vegetated wetland, they abandoned one in place and modified the other one. Mr. Clark noted the basin is full of Phragmites.

Mr. Clark mentioned there is another rain garden and a grassed swale that collects water from the scale area. He stated all the systems work and performing as designed.

Vice Chairman Gagne asked if the Phragmites is inside the basin. Mr. Clark responded yes. Vice Chairman Gagne responded that the basin needs to be cleaned. Mr. Clark responded that the phragmites help with nutrient uptake and provide for cleaner water. However, he stated the phragmites takes up some volume in the basin. Vice Chairman Gagne noted he is concerned the phragmites will spread to the wetlands.

Vice Chairman Gagne asked if the structures left in place were missed in the original survey. Mr. Clark responded no and added there were different engineers. He noted that he tried to have a more practical approach that would be less damaging to the wetlands. Vice Chairman Gagne asked if they have a rip rap spillway or an apron on the outflow side. Mr. Clark responded they do not; the wetland flag is touching the back of the structure. They cut the existing pipe so it's more like a flared end section. Vice Chairman Gagne asked if the original design included a rip rap apron. Mr. Clark responded no.

Vice Chairman Gagne stated that one of the performance standards is not to have scour due to flows. Mr. Clark stated it's achieved by going from the 18 inch to a 3 inch pipe into the structure. It lets the water out at a controlled rate. Vice Chairman Gagne asked if it still empties in 72 hours. Mr. Clark responded yes.

Agent Farinon recommended that the Conservation Commission issue a Certificate of Compliance to Shawmut Associates for DEP SE 272-0501.

A motion was made to issue a Certificate of Compliance for DEP SE 272-0501 by Member Gerrior and seconded by Member Payne. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

**Public Hearings**

**DEP File # SE 272-0570 A Notice of Intent filed by Brian & Sheryl Porter, 369 Neck Road, Rochester, MA 02770 for property located at 11 Briarwood Lane, Rochester, MA 02770, designated as Lot 19 on Assessor's Map 26. The applicant proposes to construct and maintain a seasonal 24' Floe Sectional Dock System and a 12' x 12' portable deck platform within Flood Zone A and PH521. This will include selective clearing of underbrush. The property owners of record are Peter & Michele Frey, 11 Briarwood Lane, Rochester, MA 02770. The applicant's representative is SITEC, Inc., 449 Faunce Corner Road, North Dartmouth, MA 02747.**

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Jon Connell of SITEC and Mr. and Mrs. Porter were present at the Public Hearing. In response to a question from Chairman Conway, Mr. Connell explained that PH521 is the priority habitat and that the species in the priority habitat are not listed in the letter they received from the Natural Heritage and Endangered Species Program.

Mr. Connell, referring to a mounted site plan on an easel, explained the applicant is proposing a portable dock and deck on Snipatuit Pond. The owner has a 10 foot wide easement to the water and a beach easement. The proposed portable deck is 144 square feet in size on portable legs. Both the deck and the dock will be removed off season. The dock is comprised of four 8-foot sections; 3 are on legs in the pond; 1 section is over the bank. The response letter from the Natural Heritage and Endangered Species Program states that the project will not negatively impact state listed species. There will be selective clearing of shrubs and one tree with a 3" diameter.

Referring to a letter dated May 15, 2019 from SITEC to the Conservation Commission, Mr. Connell stated they are not impacting the stability of the bank. The last dock section will span the bank and rest on the shoreline beyond the bank. They won't be impacting water quality, and there will be no alterations to the bank. Regarding the land under waterbody resource area, the dock will have legs and a sand pad system. The legs will be concave and will rest on the surface and there will be no permanent impact. Each of the legs is less than one square foot in size; there will be a total of 14 legs in the water.

Mr. Connell stated since they are in the 25-foot no-disturb zone, they want to ensure minimal disturbance. They are not doing any excavation or earthwork, and will use a small area to construct the deck.

Vice Chairman Gagne asked for the definition of bank which Mr. Connell provided. Agent Farinon stated at the Conservation Commission's site visit, she could see there is a defined bank. There was further discussion about where the bank starts.

Agent Farinon stated there are several large boulders in the area of the proposed deck. It would be helpful to have an expanded cross section to show more detail on how they will segue from the deck to either a stairway or a ramp to the dock. Mr. Porter showed the Commission a sketch showing how the deck will be constructed around the boulders. Agent Farinon commented that Mr. Porter collected data on water depth that can be added to the plan.

There was discussion about stabilizing the area where vegetation is being removed and Members agreed that the area is already rocky and stable.

Vice Chairman Gagne asked if there is vegetation to the water line if they will be removing it. He added that it's habitat for species living in the pond. Mr. Connell stated they submitted information to the Natural Heritage and Endangered Species Program and the response was that the project would not have an impact.

Vice Chairman Gagne asked if they will move boulders. Mr. Porter responded that they will not. Chairman Gagne commented that they will be working in the 25-foot no-disturb zone. Mr. Connell responded that the portable deck will be raised above the ground.

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Vice Chairman Gagne asked how long the system will be up; Mr. Porter responded it will be in place from May to the end of September.

Agent Farinon commented that additional details need to be added to the plan, and recommended the applicant request a continuance.

Mr. Connell asked if approval could be conditioned on submission of the additional information. Vice Chairman Gagne responded no. Agent Farinon stated that revised plans must be submitted by the end of day on May 29, 2019 to be considered for the next meeting on June 4, 2019. This includes added detail on the decking, adding the boulders to the plan, showing the stairs, showing how they will tie into the ramp coming up, and the water elevations. Chairman Gagne added that it will be helpful if the profile is a larger scale.

A motion was made to continue the Public Hearing to June 4, 2019 by Member Gerrior and seconded by Vice Chairman Gagne. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

***(Continued from May 7, 2019)* DEP File # SE 272-0568 A Notice of Intent filed by Liam Delowery, South Coast Creations, LLC, 68 Bowen's Lane, Rochester, MA 02770 for property located at 68 Bowen's Lane, Rochester, MA 02770, designated as Lots 8 and 12 on Assessor's Map 31. The applicant proposes to restore approximately 2,735 square feet of altered/filled Bordering Vegetated Wetland (BVW). The 25-foot No-Disturb Zone adjacent to the BVW and intermittent stream will be restored/stabilized. The existing trailer and block storage area will be relocated outside the 25-foot No Disturb Zone. The applicant also seeks after-the-fact approval for an ATV dirt track within the 100-foot Buffer Zone of a bordering vegetated wetland and intermittent stream. The property owners of record are Joseph & Diane DeLowery, 68 Bowen's Lane, Rochester, MA 02770. A portion of the wetland restoration work will take place on the property owned by John M. & Susan Blackmore Teal, 567 New Bedford Road, Rochester, MA 02770 designated as Lot 12 on Rochester Assessor's Map 31. The applicant's representative is G.A.F. Engineering, Inc., 266 Main Street, Wareham, MA 02571.**

Brian Grady of G.A.F. Engineering, Liam DeLowery and Diane DeLowery were in attendance at the meeting.

Mr. Grady explained they recently had an onsite inspection and revised their plan as a result. One of the changes is to the barrier to be placed at the 25 feet line. The fence will be replaced with a boulder barrier. Agent Farinon informed him that there's a wetland on the adjacent property that throws a 100 Foot Buffer Zone that is not shown on the plan. Mr. Grady stated he found a previously approved plan that demonstrates the ATV track isn't in the 25-foot no-disturb zone. Chairman Conway noted they are doing work and housing vehicles and equipment in the 100 Foot Buffer Zone. Mr. Grady responded that phase 2 of the project involves filing a new NOI in the next few months.

Vice Chairman Gagne asked what kind of material is in the dumpsters that are being relocated. Mr. DeLowery responded that it's wood construction debris.

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An audience member asked if the ATV trail will be used all the time. Chairman Conway responded that it has already been in use. Mr. Grady explained they are seeking after-the-fact approval for work in the 100 Foot Buffer Zone.

Bill and Jane Taylor of 94 Bowens Lane were present. Ms. Taylor asked if the ATV track was a commercial venture; Mr. DeLowery responded no and that they use the area once every couple of weeks.

Agent Farinon reported that the Conservation Commission conducted a site visit the prior Saturday. The NOI was submitted as a result of an Enforcement Order that was issued. Bordering vegetated wetland was filled by compost and construction debris; they are proposing to restore the wetland by removing the compost pile and unsuitable fill material. They are also looking to relocate a trailer and a manure pile. Agent Farinon explained they encroached onto abutter's John and Susan Teal's property. Mr. Grady reported that the Teals' have reviewed the plans and agree with the remediation plan.

Agent Farinon reported that she has reviewed the wetland delineation on the property and is in agreement with it.

Agent Farinon recommended closing the hearing and issuing a positive Order of Conditions with the following stipulations:

1. A preconstruction meeting should be held prior to any restoration activity.
2. A wetland scientist shall be on site to monitor unsuitable soil removal.
3. The wetland restoration area shall be monitored for two years to ensure it grows back properly.
4. Erosion control barriers shall be reviewed in the field and approved prior to any construction activity.

Vice Chairman Gagne mentioned that it would be helpful to require signage for future owners.

A motion to issue a positive Order of Conditions consistent with Agent Farinon's recommendations was made by Member Gerrior and seconded by Member Bourque. Vice Chairman Gagne asked if they should consider signage or placards.

A motion to amend the current motion to include placards to be approved by the Conservation Agent to be installed along the semi-permanent barrier 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).**

The Members then voted on the motion as amended. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

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***(Continued from May 7, 2019)* DEP File # SE 272-0569 A Notice of Intent filed by Jose & Elsie C. Araujo, P.O. Box 91, Rochester, MA 02770 for property located at Mary's Pond Road, Rochester, MA 02770, designated as Lot 1B on Assessor's Map 12. The applicant proposes to construct a single-family residence and associated site work within the 100-foot Buffer Zone of Leonard's Pond and bordering wetlands; private dock site work and vegetative restoration within F.E.M.A. Zone A and 100-foot Buffer Zone of Leonard's Pond bordering wetlands. The property owners of record are Jose & Elsie C. Araujo, P.O. Box 91, Rochester, MA 02770. The applicant's representative is Charon Associates, Inc., 323 Neck Road, Rochester, MA 02770.**

Rich Charon of Charon Associates and Mr. Jose Araujo were present at the Public Hearing.

Mr. Charon presented and summarized the changes to the revised plan, which was mounted on a presentation board. The following changes were made as indicated in a letter dated May 15, 2019:

- The walkway down to the dock from the house will consist of concrete pavers.
- The existing building steps will be moved out of the 25-Foot No-Disturb Zone to prevent foot traffic in the area.
- 60 shrubs were planted adjacent to the top of bank.
- They added ½ inch spacing between the wooden dock planks on aluminum frames which will be 48 feet in length.
- They added in 6'x6' timbers that will support the first section of dock.
- They added the recharge system off the corner of the house that will pick stormwater from the roof that will be directed into downspouts.

Mr. Charon explained that where the driveway is currently located will be lawn. There will be some minor grading (less than a foot) and they will loam and seed. He stated the edge of the lawn and shrubs will demarcate the 25 feet no touch zone. They will use pine needle mulch from other parts of the site.

Mr. Charon noted they don't plan to do anything with the old privy. Discussion ensued about what do with the privy. Members were concerned that it could be reactivated in its current location. Mr. Araujo stated he will move the privy out of the 100 Foot Buffer Zone.

Mr. Charon stated the area between the bog and the property line will be loamed and seeded and fruit trees will be added. Mr. Charon stated they examined the existing building and the underpinnings are in good shape. It was built in 1989, well before the current Wetland Bylaw.

Vice Chairman Gagne asked what renovations are happening to the building. Mr. Charon replied the façade will be redone. Vice Chairman Gagne stated they need a written management plan to ensure construction waste doesn't go in the pond. Mr. Charon suggested putting it in the Order of Conditions.

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Vice Chairman Gagne stated the grading toward the water appears to be steep. He asked how will perform the grading without working in the 25-Foot No-Disturb zone. Mr. Charon responded that it doesn't look that way in the field. In response to a question from Vice Chairman Gagne, Mr. Charon stated the bottom depth on the recharge is 2 feet below grade. Vice Chairman Gagne asked Mr. Charon about the water elevation there. Mr. Charon responded that their test pits indicated no water down to 10 feet. The pond elevation is approximately 24 feet.

There was discussion between Vice Chairman Gagne and Mr. Charon about whether Mr. Charon provided sufficient information to show how the Araujo project meets the Wetlands Protection Act performance standards. Mr. Charon stated that the Conservation Commission has not asked for that information in the past, and should make it a standard requirement or formal policy. Vice Chairman Gagne stated he can't say this meets the performance standards without additional information. Chairman Conway added that it's up to the applicant to demonstrate the proposal meets the standards. Mr. Charon stated he has demonstrated that through the submitted narrative.

Agent Farinon explained that this is something new for the Conservation Commission. Mr. Charon had asked her for an example of a project being asked for that information in the past, and she didn't have one. She noted that the Commission has a lot of information on the property and believes it meets the performance standards. Member Gerrior noted that another applicant that evening was able to say their project is in compliance with the regulations. Vice Chairman Gagne noted the applicant needs to show that putting aluminum feet in the pond won't have impacts on the resources. Member Payne stated that they have outlined clearly what they plan to do in the letter that was submitted.

Vice Chairman Gagne stated the project doesn't address the trees knocked down within the 100 foot buffer zone. Agent Farinon explained the applicant proposed to do a 5.3-acre conservation easement as mitigation. In addition, the felled trees within the easement area will be cut in place into cordwood lengths and stacked in wildlife piles to decompose. No equipment other than chainsaws will be used to accomplish this work.

Vice Chairman Gagne asked if there will be a semi-permanent barrier around the conservation easement. Agent Farinon responded that the easement language states there will be markers. Vice Chairman Gagne responded that they are not shown on the plan. Mr. Charon explained there will be placards on 4' x 4' posts.

Vice Chairman Gagne asked if the easement will be in the Order of Conditions. Chairman Conway responded that the easement will be done in conjunction with the Order of Conditions. Agent Farinon stated the easement will be referenced in the Order of Conditions and will be signed by the Conservation Commission and the owner. She stated the language has been reviewed by Town Counsel and Conservation Commission Members. They will need the metes and bounds survey. Member Gerrior asked if they can submit the easement to the Registry of Deeds and then the Conservation Commission close later. Chairman Conway stated the owner likely won't want to file until the Order is approved.

Member Bourque asked what the standard is for marking the edge of the easement boundary. Discussion ensued and members agreed on marking every 100 feet.

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Vice Chairman Gagne asked which items in the narrative should be included in the Order of Conditions that aren't shown specifically on the plan. As an example, he suggested including item number 8 in the letter which relates to cutting trees in place that were knocked down.

Member Bourque asked if they should add the condition about moving the outhouse. Chairman Conway responded yes and that it should be moved out of the buffer zone. Member Gerrior asked if it's possible to move it and Mr. Araujo stated he will take care of it.

Member Payne suggested adding a stipulation that construction debris be stored outside the 25-Foot No-disturb zone.

Agent Farinon asked when the metes and bounds survey would be done; Mr. Charon responded it would be completed in a week. There was some discussion about the timing of a decision and Mr. Araujo stated the offer of the conservation easement would be withdrawn if the Conservation Commission didn't vote approval that night. Mr. Charon reiterated they were not looking for any extensions or continuances.

Agent Farinon suggested conditioning the project so that the easement come in with the metes and bounds survey. The survey could be reviewed by the Conservation Commission and then filed with the Registry of Deeds. If the conditions aren't met, the Conservation Commission could issue an Enforcement Order. Member Gerrior asked if they normally would have the metes and bounds survey. Agent Farinon reiterated that this was the first time this has been done.

Agent Farinon stated that she spoke with Town Counsel. If the project is denied, Town Counsel advised her it probably wouldn't be upheld by DEP or Superior Court under the Bylaw. Agent Farinon suggested the Conservation Commission could condition the project so that the few lingering items were addressed. She noted that once the hearing is closed, the Commission cannot accept new information unless specified in the Order of Conditions.

Agent Farinon explained it's important to stipulate the timing for the conservation easement and metes and bounds survey. Mr. Charon stated the easement won't be signed until there is an Order of Conditions. Agent Farinon responded that it will be a condition that the conservation easement with metes and bounds will be submitted. She stated the Commission could review the metes and bounds survey at the June 4, 2019 meeting but the positive Order of Conditions would need to be voted that night, with the metes and bounds and survey plan submitted no later than May 29, 2019. She asked if Mr. Charon could commit to that schedule; Mr. Charon responded yes.

Agent Farinon recommended a positive Order of Conditions referencing the most recent revised site plans with the following stipulations:

1. A preconstruction meeting shall be held prior to any construction activity.
2. The privy will be relocated outside the 100 Foot Buffer Zone.
3. The exposed bank along the westerly side of the cranberry bog will be loamed and seeded and planted with trees and shrubs.
4. The 5.3-acre conservation easement and metes and bounds shall be submitted for review by the Commission by May 29, 2019 for review at the June 4, 2019 meeting.
5. Placement of the placards shall be installed every 100 feet along the limit of the conservation easement and will be sent to the Conservation Agent for review and approval.



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6. Construction debris will be stored outside the 25-Foot No-Disturb zone.
7. The trees that were felled within the proposed conservation easement area will be cut into cordwood lengths and stacked in wildlife piles. No equipment other than chainsaws will be needed to accomplish this order.

A motion to issue a positive Order of Conditions with the above conditions was made by Member Payne and seconded by Member Bourque. Chairman Conway and Vice Chairman Gagne were opposed. **The motion passed in a roll call vote of 3 in favor, 2 opposed, 0 abstained (3-2-0).**

*(Continued from April 16, 2019)* **DEP File # SE 272-0557 A Notice of Intent filed by REpurpose Properties, LLC, 55 Main Street, Buzzards Bay, MA 02532 for property located at Rounseville Road, Rochester, MA 02770, designated as Lots 24, 25B, and 25C on Assessor's Map 30.** The applicant proposes construction of an age-related community with 22 duplex units and a common building with a pool area. A roadway with underground utilities, drainage facilities, and a shared septic system for all buildings will be installed. All proposed work within the development is outside of the 25-foot No Disturb Zone, but 14 duplex units, 3 point-source discharges, and 16,100 square feet of roadway will be constructed within the 100-foot Buffer Zone to a resource area. Erosion control measures will be implemented. The property owner of record is Gibbs V. Bray & Patricia M. Bray, Trustees, P.O. Box 989, Marion, MA 02738. The applicant's representative is John Churchill, Jr., J.C. Engineering, Inc., 2854 Cranberry Highway, East Wareham, MA 02538.

Brian Wallace of J.C. Engineering, Inc. and Michael LaCava of REpurpose Properties, LLC were present at the Public Hearing.

Mr. Wallace presented the changes to the plan since the last meeting, and explained that overall the concept and layout has remained the same. They revised the plans based on feedback from the Historical Commission, Planning Board, and the Conservation Commission's peer reviewer Henry Nover. The new plans are dated 5/2/19. J.C. Engineering provided the Commission with a letter of changes and responses to peer review.

The changes include the following:

- Removed the second entrance that intersected Rounseville Road and left a single boulevard style entrance;
- Removed bio retention area;
- Moved some proposed grading away from the bordering vegetated wetland;
- Added the new drainage system for Plumb Corner Plaza;
- Added subsurface infiltration systems for each unit;
- Changed architectural elements including each unit now having side entrance garages.

Mr. Wallace stated he went through Mr. Nover's first peer review letter, and is waiting on a possible second letter and feedback from the Planning Board.

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Member Gerrior asked what changes were made regarding moving water. Mr. Wallace responded that they pushed the entrance 10 feet further away, lessened the amount of fill needed, lessened the height of the retaining wall, and are staying out of 200 Foot Riverfront Zone. They also pushed a unit away from the isolated wetland, and have one less unit within the buffer zone.

Vice Chairman Gagne noted that the retention wall along the boulevard entrance should not encroach into the 25 Foot No-Disturb Zone. Mr. Wallace responded that he can add more detail. Vice Chairman Gagne commented that none of the utilities should conflict with the pipe to the wetland system. Mr. Wallace state the pipe is very low to the ground; it's essentially flat. Chairman Conway asked if the Commission has the most current plan; Mr. Wallace responded yes. Chairman Conway asked if they have submitted an operation and maintenance plan; Mr. Wallace responded yes.

Chairman Conway asked for more information on the residential units. Mr. Wallace responded that they will be townhouses and each unit will be privately owned. Chairman Conway asked who will take care of the common space; Mr. Wallace responded that it will be an association. Member Gerrior asked if they will have a binding homeowner's association; Mr. Wallace responded that documents submitted to the Planning Board will indicate the responsible party.

Chairman Conway stated before they come back, he would like to know how common areas will be managed.

Vice Chairman Gagne asked for verification that there will be no impacts to wetland resource areas; Mr. Wallace responded there will be no disturbance within the 25-Foot No-Disturb Zone. Vice Chairman Gagne asked if there will be one common septic system; Mr. Wallace responded yes. Vice Chairman Gagne asked if it will require a groundwater discharge permit. Mr. Wallace responded that he will look into it. Chairman Conway asked if the development will be using Town water; Mr. Wallace responded yes.

Agent Farinon stated the Commission received the requested peer review consulting fee, and she signed the contract with Henry Nover to do the supplemental engineering review.

Agent Farinon noted that some proposed work is up against the 25-Foot No-Disturb Zone and she would like to see additional protection for proposed work up to the limit. Discussion ensued and Vice Chairman Gagne suggested installation of an orange snow fence.

Vice Chairman Gagne asked for the plan to show a few cross sections; Mr. Wallace agreed to do that in the areas that are close to the 25 feet no touch zone.

Mr. Wallace mentioned arranging a site visit. Agent Farinon asked if the Planning Board has set a date to stake. Mr. Wallace responded no. Agent Farinon suggested they wait for a site visit until they stake.

Chairman Conway asked for they are requesting a continuance. Mr. Wallace responded yes and requested to continue to the first meeting in July.

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A motion to continue the Public Hearing to July 2, 2019 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).**

**Commission Business**

**Minutes**

A motion to approve the minutes of May 7, 2019 was made by Member Payne and seconded by Member Gerrior. Member Conway abstained. **The motion passed by a vote of 4 in favor, 0 opposed, 1 abstained (4-0-1).**

**Mullin Rule Affidavits**

Chairman Conway signed a Mullin Rule Affidavit for DEP SE 272-0568 Notice of Intent for DeLowery / South Coast Creations / 68 Bowen's Lane and DEP SE 272-0569 Notice of Intent for Araujo / Mary's Pond Road.

**Old Business**

**591 Neck Road - Order of Conditions Issued to Lorraine Roy Hawkes & William Hawkes  
DEP SE 272-539**

Lorraine Roy Hawkes and William Hawkes were present.

Chairman Conway explained that 2 years ago the Commission issued an Enforcement Order for cutting of vegetation in wetlands. Ms. Roy showed Members photos on a tablet. She stated she asked her landscaper to clean up the area and not use any chainsaws, but they did. She stated that the water level has made it impossible to do the plantings. She spoke with Brad Holmes, a wetlands scientist. She doesn't know what to do; there are areas where the water goes up mid-calf.

Member Gerrior asked if the planting is part of the Order of Conditions. Ms. Roy stated there's a lot to plant. Member Gerrior asked if she has the plants. Mrs. Hawkes responded they are not going to buy something if they can't plant it. She knows the mulch has to be removed but it has been difficult.

Agent Farinon explained in 2017 there was an Enforcement Order requiring restoration of 6,000 square feet of bordering vegetated wetland. The Conservation Commission received a restoration plan from Brad Holmes, Wetland Scientist from Environmental Consulting & Restoration, LLC; said plan was approved by the Rochester Conservation Commission. Agent Farinon explained that the homeowners weren't expected to do the work, but could have directed others to do it. Ms. Roy Hawkes stated that she asked Mr. Holmes for contractors who could do the work, but he didn't know of anybody. She tried to ask the young man who did the cutting. Agent Farinon suggested reaching out to Mr. Holmes. Since some of the area had grown back, Mr. Holmes had scaled back the planting plan.

Mrs. Hawkes asked if she should put the plants in the water. It has been there for the last 2 years.

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Agent Farinon explained that this particular violation was egregious, because it involved work directly in Snipatuit Pond, flood plain, and NHESP Estimated Habitat. The wood chips could have been removed, as well as the non-native plants and tree pruning.

Member Gerrior stated the person who made the plan can provide suggestions. Mrs. Hawkes stated she asked him in the fall and wasn't sure if he was receptive. Member Gerrior suggested contacting someone else.

Agent Farinon stated that Mr. Holmes contacted her in the fall with a suggested modified list of plantings. She encouraged Mr. Hawkes to work with the person who made the plan.

*(Around this time, Mrs. and Mr. Hawkes left the meeting.)*

Agent Farinon asked if the Commission has any direction. Member Gerrior stated they are asking for some movement. Agent Farinon spoke with Town Counsel. Member Gerrior added there has been no response in 2 years. Agent Farinon stated the restoration plan was submitted in May 2017. Chairman Conway said he is not interested in waiting another year. He suggested waiting a month and if there's no action to start enforcement action. Member Payne mentioned it's wet and that she might be in favor of giving them a little more time. Chairman Conway stated he would like to hear from an unbiased party. Vice Chairman Gagne stated he can't tell where the water line is located. Members agreed that they would like to hear more on the situation from a reputable source. Agent Farinon suggested having the wetland scientist help. Member Bourque asked when Agent Farinon was last there. Agent Farinon responded last fall.

Vice Chairman Gagne asked what would be the timeline. He recommended sending another certified letter requesting documentation from their wetland scientist that planting conditions have not been and are not suitable for work and clearly spell out how they will take care of it before the permit expires in 3 years from when they received.

Member Gerrior stated if nothing is done until April 2020, much will have grown back. He asked if the Members are concerned that invasive species will grow back.

Member Payne suggested writing a letter indicating that they need to either see action or a letter that says it's too wet from a wetland scientist.

Vice Chairman Gagne said they should seek both to understand why the work hasn't been done and what the actions are for getting it done.

Member Gerrior noted that it hasn't been done in a timely manner, but they still have until a certain date to do the work. Agent Farinon responded that they are in violation and have been notified for their non-action. She can meet again with Town Counsel and draft a letter. She asked for guidance what should go in a letter. She reiterated that small steps and deadlines are needed to get things moving in a positive direction. She suggested requiring them to remove the wood chips and stump sprouts by a certain date.

Member Gerrior asked if the Commission would be adding Orders of Conditions. Agent Farinon responded that they are pursuing enforcement. Member Gerrior asked if they have until April 2020.

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Agent Farinon responded that she will go back through Mr. Holmes' plan. Member Gerrior stated they are not in violation. Vice Chairman Gagne said it depends on how it's stipulated by the order and the proposal. In response to a question from Ms. Bourque, he stated that 3 years is the limit of an Order of Conditions.

Agent Farinon responded that she will review the restoration report to see if dates were added.

**New Business**

**Appointment for Discussion – Evan Watson of Prime Engineering, Trail Side Estates**

Evan Watson of Prime Engineering and John Maffei of RCR Development were present at the meeting.

Mr. Watson explained that Trailside Estates, designed and permitted in 2005 or 2006, is an over 55 housing development off Snipatuit Road. At that time, they fully presented to the Conservation Commission and the Planning Board. They received an Order of Conditions, met stormwater standards and were peer reviewed.

The Planning Board issued a special permit and the Conservation Commission issued an Order of Conditions. The project started construction in 2006, there were subsequent problems and in 2008 everything stopped. The legal matters they had to deal with starting in 2008 are now wrapped up. Mr. Watson informally met with the Planning Board to see if they require changes to their permit. He also met with the Fire Chief to discuss his requirements. The result is that they didn't need any changes.

Mr. Watson stated the Order of Conditions expired last year and they didn't request an Extension Permit. Mr. Watson requested guidance on how the Commission recommends proceeding with the project. He showed a diagram with the as-built, and reported that they have located everything that's there – which has been sitting for 10 years and is stable. He suggested submitting a Request for Determination of Applicability for the cleanup work in the front.

Member Gerrior asked what regulations have changed since the project was approved. Mr. Watson responded that at the time the stormwater management standards were known as the stormwater management policy. It wasn't a regulation at the time. However, they met the pre-regulation policy requirements. They added two standards – the operation and maintenance plan and the illicit discharge statement. Other than that everything complies. They have stormwater basins with an infiltration component. The rate of runoff has been decreased. All units have roofs going to rain gardens. He stated he is comfortable that what they have designed would meet standards today.

Chairman Conway asked if they are proposed work in the 25-Foot No-Disturb zone. Mr. Watson replied yes, in two spots. Permission was granted for one spot near the community center and the other is the outlet to the detention basin.

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Vice Chairman Gagne stated they have an open Order of Conditions that hasn't been closed out and has expired. Mr. Watson stated the open order is from 20 years ago. They filed a new NOI and order of conditions said do the work you did previously. When the order was issued, they then applied for a certificate of compliance. This will be slightly different because they have work to do. They are not looking to close out the order; they're looking to re-open it and get a new order.

Mr. Watson stated they would present the project to the Conservation Commission to show how they'll meet the stormwater management standards. The project is permissible today; a good portion is done.

Member Bourque asked if the Conservation Commission will have to release the expired Order of Conditions. Agent Farinon responded yes. Agent Farinon asked if Mr. Watson consulted with counsel on this matter; Mr. Watson responded no. He is concerned that it will get sticky down the road with a title. Chairman Conway asked if they are selling any of the property. Mr. Maffei responded that it will be condos. Chairman Conway asked who owns the common property. Mr. Watson responded that there will be a homeowner's association. A covenant has been created and recorded; it has already been established. Mr. Maffei stated that he holds the covenant until a specific percentage of the units are sold.

Vice Chairman Gagne asked how they will handle the water supply; Mr. Watson responded that they have one public supply of water. It is a couple hundred gallons per day and feeds the community center. The water for each unit is provided by a well.

In response to a question from Member Bourque, Mr. Watson stated all 60 units have 2 bedrooms. They are below the threshold for a groundwater discharge permit. The septic tank will be pumped once a year. All the sewerage will go to a tank for treatment. Chairman Conway asked if it needs a license; Mr. Watson replied that they'll need a maintenance agreement.

Vice Chairman Gagne asked Mr. Watson to show what's in the Conservation Commission's jurisdiction. Mr. Watson pointed out the locations on a map. He stated they couldn't evaluate wetlands off the property, but assumed the worst case scenario.

Mr. Watson explained the drive down the boulevard had been landscaped and is now tall grass. Mr. Maffei would like to clean up the area along the constructed roadway. It doesn't require earth work, just some cutting with a chainsaw.

Mr. Watson stated before they could construct the units, they had to have the wetland replication area planted. However, the replication area wasn't maintained; the plants are all gone and the grade is lowered.

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Vice Chairman Gagne asked if they were looking to dress up the front entrance and re-establish the wetland replication area; Mr. Watson responded yes. Agent Farinon commented that she would like to have a wetland scientist assess the wetland replication area. It can be included with an NOI for the remainder of work. She stated she likes the idea of an RDA for general clean-up work. She asked if they are going to be filing on the westerly roadway. Mr. Watson responded that they will file with the Planning Board. They plan to get the units on the constructed roads built first. It will be a couple of years until they get into the other roads. In terms of phasing, there is a ridge in the middle of the property in which all the stormwater at a certain point goes east. The plan was to have a temporary basin on the west. They need to build the basin before building the units.

Agent Farinon asked is if the basin is outside the jurisdiction of the Conservation Commission. Mr. Watson replied that it is in the jurisdiction.

Chairman Conway asked about the timing on Phase 1. Mr. Watson replied that they want to get going right away, but need permission. He was planning on filing on Friday for the second meeting in June. There will be two filings – one less complex for a smaller amount of work and the NOI. He stated he fully expects to review how they're meeting the performance standards. What was approved has been constructed. Mr. Watson stated he would like to request a Certificate of Compliance.

**Confirm member availability for future site visits and meetings**

There was discussion about scheduling a site visit for the SEMASS project. They scheduled the site visit on Sunday, June 2, 2019 at 9:00 a.m.

**Adjournment**

The meeting adjourned at 10:26 p.m. on a motion made by Vice Chairman Gagne and 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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Marissa Perez-Dormitzer, Recording Secretary

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Michael Conway, Chairman