

**Rochester Conservation Commission
September 17, 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: *(none)*

The meeting was held in the Town Hall conference room. Chairman Conway called the meeting to order at 7:01 p.m. and announced that the meeting was being televised.

Public Meetings

Request for Determination of Applicability filed by Tim Lynch, 257 Walnut Plain Road, Rochester, MA 02770 for work on property located at 257 Walnut Plain Road designated as Lot 10F on Rochester Assessors' Map 29. The property owner of record is Melissa Brodeur-Lynch, 257 Walnut Plain Road, Rochester, MA 02770. The applicant proposes to demolish and remove the existing collapsed barn and install a 14'X36' shed on an existing concrete pad within the 100 Foot Buffer Zone of a bordering vegetated wetland.

Tim Lynch, 257 Walnut Plain Road, explained there was a barn in the back corner of the property that collapsed from snow load. He would like to have it removed, and is looking to put a shed on the existing concrete slab that was under a portion of the barn.

Chairman Conway asked about the signature on the application. Mr. Lynch explained that his wife owns the house. Chairman Conway asked Mr. Lynch to sign a copy of the application.

Agent Farinon reported Mr. Lynch initially applied for a building permit to demolish the structure. The barn falls within the 100 feet buffer zone and will take some work to remove it. Agent Farinon recommended issuing a negative Determination of Applicability with the stipulation that the Commission be notified when work starts.

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).**

Public Hearings

***(Continued from September 3, 2019)* DEP SE 272-0581 A Notice of Intent filed by property owner Daniel A. Paradis, Trustee, Daniel Paradis Trust, 135 Worfield Circle, Bristol NH 03222 for property located at 443 Neck Road, Rochester, MA 02770, designated as Lot 14 on Assessor's Map 26.** The applicant proposes to raze the existing cottage and construct a new single-family residence, well, septic system and associated site work within the 100-foot Buffer Zone of bordering vegetated wetlands along Snipatuit Pond. The applicant's representative is Charon Associates, Inc., 323 Neck Road, Rochester, MA 02770.

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Richard Charon of Charon Associates explained that the Conservation Commission requested a few changes on the plan. These changes were incorporated into a revised plan dated September 4, 2019 that was submitted to the Conservation Commission, which included the following changes:

1. The 25 foot No Disturb Zone was clearly labeled.
2. The proposed well is pushed a bit further away from the 25 foot No Disturb Zone.
3. A note was added to the plan that any installation of an emergency generator for the well pump will also work for the septic system.

Mr. Charon explained that he had not adjusted the limit of work line and brought new plans dated September 17, 2019 that include that change.

Chairman Conway noted he signed a Mullin Rule affidavit because of his absence at the last meeting.

Agent Farinon reported that she received a revised plan dated September 17, 2019 with the limit of work corrected to be outside the 25 foot No Disturb Zone. Agent Farinon reported that the Commission received notification from the Natural Heritage and Endangered Species Program that there is no adverse impact from the project.

Agent Farinon reported that she has spoken with the person who currently has the Purchase and Sale Agreement for the property. She made him aware that the area adjacent to the pond cannot be altered without a filing and prior approval of the Commission. Agent Farinon recommended issuing a positive Order of Conditions with the stipulation that the Conservation Commission be notified prior to any construction activity to inspect erosion control measures.

A motion to issue a positive Order of Conditions with the stipulation that the Conservation Commission be notified before any construction activity to inspect the erosion control measures 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).**

To be Re-opened DEP File # SE 272-0571 An Abbreviated Notice of Resource Area Delineation filed by SWEB Development USA, LLC, P.O. Box 20235, Worcester, MA 01602, for property located on 0 Marion Road, Rochester, MA 02770, designated as Lot 37 on Assessor's Map 6. The purpose of the filing is to confirm 3,850 linear feet of Bordering Vegetated Wetland boundary. The property owner of record is Rochester Farms, LLC, P.O. Box 278, West Wareham, MA 02576. The applicant's representative is Weston & Sampson, 5 Centennial Drive, Peabody, MA 01960.

Sarah Rosenblat, Development Manager of SWEB Development USA, LLC distributed stamped revised site plans to Commission members. She explained there were 2 different wetland lines. The plan shows the final line that their consultant and the Conservation Commission's consultant agreed upon.

Member Payne asked if this was the only line that was reviewed or if all the wetland boundaries were reviewed. Ms. Rosenblat pointed out the area that was reviewed on the site plan.

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Chairman Conway asked if the applicant agrees with the Town's consultant. Ms. Rosenlat responded yes. Vice Chairman Gagne stated there are several lines on the map and asked which line they're looking to approve. Ms. Rosenblat pointed out the lines in question on the member's site plans.

Vice Chairman Gagne noted the plan that is dated August 15, 2019 is stamped and sealed for June 3, 2019. There was discussion about the changes to the wetland line as reflected on the maps.

Ms. Rosenblat verified the Commission is looking for them to recertify the plan with the correct date, and asked if other changes were needed. Vice Chairman Gagne noted there are a lot of lines on the plan. He asked for it to be made clear what needs approval. Vice Chairman Gagne also requested that they clip all wetland lines and buffer zones at the property line.

A motion to continue the Public Hearing to October 1, 2019 was made by Vice Chairman Gagne and seconded by Member Thompson. **The motion passed by a vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

***(Continued from September 3, 2019)* DEP SE 272-0573 An Abbreviated Notice of Resource Area Delineation filed by Erica Buster, Quaker Lane – Simpson Solar, LLC, 3021 Airport Pulling Road N – Suite 201, Naples, FL 34105, for property located at 102 Quaker Lane, Rochester, MA 02770, designated as Lots 6 & 10 on Assessor's Map 37.** The purpose of the filing is to confirm 10,100 linear feet of Bordering Vegetated Wetland boundary and 1,600 linear feet of Riverfront Area. The property owner of record is John Simpson, 102 Quaker Lane, Rochester, MA 02770. The applicant's representative is SITEC, Inc., 449 Faunce Corner Road, Dartmouth, MA 02747.

Jon Connell of SITEC, Inc. explained that the plan incorporates changes suggested by John Rockwell, the Town's consultant. Mr. Connell mentioned a letter was sent by Mr. Rockwell indicating the plan meets the requirements of wetland regulations and the Town's Wetland Protection Bylaw.

Vice Chairman Gagne asked how their wetland flags were located. Mr. Connell responded they were located by survey. Vice Chairman Gagne asked why the plan isn't stamped by a surveyor. Mr. Connell handed Vice Chairman Gagne a document from their surveyor.

Vice Chairman Gagne asked Agent Farinon if the Commission's consultant agrees with the wetland line. Agent Farinon responded yes. She said that substantial adjustments were made to the line.

Vice Chairman Gagne noted the scale on the plan of 1 to 120 seems like a considerable scale. He asked the distance between the wetland flags. Agent Farinon responded that the area is wooded but it doesn't have a dense shrub layer so you can see from flag to flag. Member Gerrior asked if there is a minimum or maximum distance required between each flag. Agent Farinon responded no and that Vice Chairman Gagne has talked about standards in the past. She noted that she would like to see a policy set for minimum standards on flag to flag distance, flag color, and type of flagging to be used.

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Member Gerrior asked if 50 feet between flags is reasonable. Agent Farinon responded that it's reasonable. She added that in an open area, the distance could be even greater.

Vice Chairman Gagne noted there are wetland flags in Acushnet on the plan and asked if the applicant was looking for approval on those. Agent Farinon responded no. Vice Chairman Gagne added that one flag is shown on an abutter's property. Agent Farinon commented that when someone flags, they may not know the location of the property line. Member Gerrior stated they can't approve flags in Acushnet. Agent Farinon suggested having the plan corrected since there were several comments.

Vice Chairman Gagne stated that standard survey notes should be added. Mr. Connell summarized the discussion saying they will make the following changes to the plan: 1. clip the wetlands line and buffer zones at the property line and the Town line, and 2. add standard survey notes. Mr. Connell stated he will submit the revised plans by September 24, 2019, the deadline for the next meeting.

A motion to continue the Public Hearing to October 1, 2019 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).**

(Continued from August 20, 2019) **DEP File # SE 272-0574 An Abbreviated Notice of Resource Area Delineation filed by Joe Harrison, SunRaise Investments LLC, 26 Market Square, Portsmouth, NH 03801, for property located at 0 Braley Hill Road, Rochester, MA 02770, designated as Lots 32 & 36 on Assessor's Map 48.** The purpose of the filing is to confirm 2,900 linear feet of Bordering Vegetated Wetland boundary. The property owners of record are Lisa Holden, Trustee, Aquidneck Nominee Trust, P.O. Box 388, Rochester, MA 02770 and Ann Poland, 41 Green Acres Road, Hartford, ME 04220. The applicant's representative is Prime Engineering, Inc., 350 Bedford Street, Lakeville, MA 02347.

(Vice Chairman Gagne recused himself from the Public Hearing.)

Julie Goodwin of Prime Engineering, Inc. was present at the Public Hearing. She reported that Agent Farinon was reviewing the wetland delineation. Ms. Goodwin requested a continuance to give Agent Farinon sufficient time to complete the review.

A motion to continue the Public Hearing to October 15, 2019 was made by Member Gerrior and seconded by Member Thompson. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

(Vice Chairman Gagne resumed his role in the Public Hearing.)

(Continued from August 20, 2019) **DEP File # SE 272-0575 An Abbreviated Notice of Resource Area Delineation filed by Joe Harrison, SunRaise Investments LLC, 26 Market Square, Portsmouth, NH 03801, for property located at 0 Featherbed Lane (North Property), Rochester, MA 02770, designated as Lots 22 & 35 on Assessor's Map 46.** The purpose of the filing is to confirm 5,423 linear feet of Bordering Vegetated Wetland boundary. The property

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owners of record are Bradford D. & Ruth C. Correia, 220 Mattapoisett Road, Rochester, MA 02770. The applicant's representative is Prime Engineering, Inc., 350 Bedford Street, Lakeville, MA 02347.

(Vice Chairman Gagne recused himself from the Public Hearing.)

Julie Goodwin of Prime Engineering, Inc. reported that Agent Farinon was reviewing the wetland delineation. Ms. Goodwin requested a continuance to give Agent Farinon sufficient time to complete the review.

A motion to continue the Public Hearing to October 15, 2019 was made by Member Gerrior and seconded by Member Thompson. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

(Vice Chairman Gagne resumed his role in the Public Hearing.)

***(Continued from August 20, 2019)* DEP File # SE 272-0580 An Abbreviated Notice of Resource Area Delineation filed by Joe Harrison, SunRaise Investments LLC, 26 Market Square, Portsmouth, NH 03801, for property located at 0 Snipatuit Road, Rochester, MA 02770, designated as Lots 1, 4, 9, & 9A on Assessor's Map 47.** The purpose of the filing is to confirm 4,000 linear feet of Bordering Vegetated Wetland boundary. The property owners of record are Lisa Holden, Trustee, Aquidneck Nominee Trust, P.O. Box 388, Rochester, MA 02770 (Map 47, Lots 1 & 4) and Kevin J. & Cassandra A. Cassidy, 529 Snipatuit Road, Rochester, MA 02770 (Map 47, Lots 9 & 9A). The applicant's representative is Prime Engineering, Inc., 350 Bedford Street, Lakeville, MA 02347.

(Vice Chairman Gagne recused himself from the Public Hearing.)

Julie Goodwin of Prime Engineering, Inc. explained the applicant is looking for a review of the wetland delineation completed by SWCA.

Agent Farinon reported she reached out to Ms. Goodwin and Evan Watson, also of Prime Engineering, Inc., to speak about the timing for the group of sites. She was told it's critical to review these quickly. Agent Farinon stated she reviewed all the sites and recommended hiring John Rockwell to serve as a peer reviewer for the delineation on this site to be able to get it done as soon as possible.

Chairman Conway asked when the peer review will be complete. Agent Farinon suggested keeping with the October 15, 2019 meeting to make it consistent with the other sites. Ms. Goodwin submitted a \$3,000 check to the Commission as a deposit for the peer review.

A motion to continue the Public Hearing to October 15, 2019 was made by Member Thompson and seconded by Member Bourque. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

Agent Farinon asked Chairman Conway if they could discuss an item from Old Business since it related to the same group of properties. Chairman Conway agreed to take the following Old Business item out of order at this point in the meeting.

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Discuss Hiring Peer Review Consultant to Review Wetland Delineation on 0 Featherbed Lane South Property ANRAD, SunRaise Investments LLC 272-578

(Vice Chairman Gagne recused himself from the discussion.)

Agent Farinon explained the applicant is looking to wrap up the delineation quickly and recommended requesting a \$3,000 peer review consultant fee to hire John Rockwell as the peer reviewer. Ms. Goodwin submitted a \$3,000 check to the Commission as a deposit for the peer review.

(Vice Chairman Gagne resumed his role in the Public Hearing.)

Commission Business

Minutes

A motion to approve the minutes of September 3, 2019 was made by Member Gerrior and seconded by Member Bourque. Chairman Conway abstained. **The motion passed by a vote of 5 in favor, 0 opposed, 1 abstained (5-0-1).**

Vouchers

The following vouchers were approved for payment:

Massachusetts Municipal Association /Employment Listing for Board Administrator Position ½ Paid by Planning Board: \$75.00; BayNet Web Services / Monthly Hosting Fee (Oct., Nov., & Dec.): \$60.00, LEC Peer Review on 0 Marion Road SWEB Development USA, LLC. DEP SE 272-571: \$457.50, John Rockwell Peer Review on Simpson Solar, LLC DEP SE 272-573 Quaker Lane property: \$3,134.00.

Mullin Rule Affidavits

Chairman Conway signed Mullin Rule Affidavits for the following: DEP SE 272-0581 Notice of Intent for of Daniel A. Paradis, Trustee, Daniel Paradis Trust/443 Neck Road and DEP SE 272-0557 Notice of Intent for Repurpose Properties, LLC/Rounseville Road, and DEP SE 272-0579 An Abbreviated Notice of Resource Area Delineation for SunRaise/Cushman Road

New Business

Review submitted data refuting perennial stream designation on Cambra property, 1098 Walnut Plain Road, DEP SE 272-582

Mr. and Mrs. Cambra, owners of 1098 Walnut Plain Road, were present. Chairman Conway asked if Mr. Cambra had submitted a filing. Mr. Cambra responded no, but that he forwarded documentation required to refute the perennial stream status. He explained that at the time of his application several Members visited his property, the stream was not flowing. The stream hadn't been flowing for weeks before, but he didn't know the process needed to refute it. Mr. Cambra stated that he did some research into the process and had photos taken as well as field notes made. He forwarded the information to Agent Farinon.

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Agent Farinon explained that she didn't learn about this concern until after the Commission had issued the Order of Conditions. It was too late to impact the filing. Agent Farinon read aloud a section of the Wetlands Protection Act that refers to perennial streams and how they are determined.

Chairman Conway stated that since the filing is closed, Mr. Cambra would need to apply for a Notice of Intent. Vice Chairman Gagne suggested the option of filing for a Request for Determination of Applicability.

Vice Chairman Gagne asked Agent Farinon if the perennial stream is mapped by the United States Geological Survey: Agent Farinon responded yes. Vice Chairman Gagne suggested due to wording in the Wetlands Protection Act ("Notwithstanding 310 CMR 10.58(2)(a)1.a. through c..."), if it's mapped perennial, then it stays perennial.

Member Bourque asked what the impacts are of changing the designation. Vice Chairman Gagne responded that it changes it from a resource area to a buffer zone. Chairman Conway asked Mr. Cambra if he wanted to change the designation for the current project or a future project. Mr. Cambra responded he is looking to change it for the current project.

Agent Farinon stated she will need a legal opinion about the wording referred to by Vice Chairman Gagne. Member Gerrior explained he received guidance from Outback Engineering because they had successfully done something similar not too long ago. Mr. Cambra commented that he understands the USGS takes photos in the winter with no canopy during a wet period which is why they give the option to refute it.

Vice Chairman Gagne stated they will likely need to see a filing. Agent Farinon reported she spoke with Town Counsel and Massachusetts Department of Environmental Protection (MassDEP) staff. MassDEP staff explained there is a 3-year limitation on any filing when improving a wetland line. Agent Farinon noted they see a decision on a riverfront case similarly and that the decision is good for 3 years. MassDEP staff recommended sticking with the decision in this case.

Agent Farinon explained that Town Counsel Bailey said a key milestone is if the Order of Conditions has been filed with the Registry of Deeds and in this case it hasn't been. Agent Farinon reported that Town Counsel Bailey was not concerned from a legal standpoint and he thinks the Commission has flexibility on this issue.

Agent Farinon reiterated the project was for a proposed garage. The garage is outside the 100 feet buffer and was only a rivers protection filing. She stated the project is non-jurisdictional if the river doesn't exist. Chairman Conway asked to confirm that Town Counsel Bailey said the NOI isn't valid until it's officially filed at the Registry of Deeds.

Member Thompson commented that he is hesitant to set a precedent of chasing paperwork trails and that he agrees with Member Gerrior. Member Payne suggested if the Commission accepts that it's not jurisdictional, it would be like a previous situation where the Commission issued a Certificate of Compliance for an Order of Conditions that was erroneously issued.

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Vice Chairman Gagne stated he thinks there needs to be a filing because it's mapped as a perennial stream. Member Gerrior asked if Mr. Cambra would have to renotify abutters. Agent Farinon responded no. Member Gerrior asked if it could take place at the next meeting. Agent Farinon responded no because of the advertising requirements for the newspaper. She asked Mr. Cambra how filing for the RDA on October 15, 2019 would affect his project. Vice Chairman Gagne stated it's hard to close out a project if it's partially done. Mr. Cambra asked for further clarification on what is meant by starting construction. Vice Chairman responded that it included anything such as putting up hay bales. Agent Farinon added that there is a \$50 filing fee for the RDA and a \$25 fee to the Wanderer for advertising. Member Gerrior pointed out that the Commission's requirement of drains would be eliminated if the project was determined to be non-jurisdictional saving money for Mr. Cambra. Mr. Cambra asked about a time frame if he filed the RDA and attended the meeting on October 15, 2019. Agent Farinon responded that the Commission would issue a decision that night. Mr. Cambra stated the time frame is doable for his project.

Discussion ensued and the group reiterated the process. Agent Farinon noted that Mr. Cambra will file for the RDA first. The Order of Conditions would be closed out after the RDA. Vice Chairman Gagne suggested both actions could take place at the October 15, 2019 meeting. Vice Chairman Gagne explained Mr. Cambra will need a letter from the building engineer that says the project was not completed. Vice Chairman Gagne suggested that Agent Farinon could work with Mr. Cambra on filling out the RDA form.

Chairman Conway stated Member Gerrior should recuse himself from voting since he was involved in gathering the data. Agent Farinon said she spoke with Town Counsel Bailey and suggested Member Gerrior shouldn't have to recuse himself because the regulations stipulate that a Commission Member can provide information.

Discuss Hartley WMA Water Levels

Agent Farinon reported that she reached out to Jason Zimmer regarding the water levels at the Hartley Wildlife Management Area. She learned that the boards in the outlet have been raised. The water level in the upper pond along the road is getting lower but will fill up with rain. Vice Chairman Gagne noted that because material scoured away, the pond won't hold water in the same way.

Discuss invasive species management – Snipatuit Pond

Agent Farinon reported the Commission office has been receiving comments from a few people about phragmites in the north east corner of Snipatuit Pond. The Commission has also been contacted by Michelle Kirby about pond weeds at Snows Pond, as well as invasive pond weeds at Black Pond.

Agent Farinon stated she is one of the Town's representatives on the Mattapoissett River Valley Water Supply Protection Advisory Committee (MRVWPAC). The MRVWPAC has formed a subcommittee to look at water quality, pond weeds and possibly invasive species management at Snipatuit Pond, Black Pond and Snow's Pond.

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Confirm member availability for future site visits and meetings

All Members present stated they were available for the next meeting.

Adjournment

The meeting adjourned at 8:41 p.m. on a motion 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).**

Marissa Perez-Dormitzer, Recording Secretary

Michael Conway, Chairman