

**Rochester Conservation Commission
February 18, 2020**

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

Absent: Kevin Thompson

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 7:01 p.m. and announced the meeting was being televised.

Public Meeting

Request for Determination of Applicability filed by property owner Chris Makuch, 89 Ryder Road, Rochester, MA 02770 for work on property located at 89 Ryder Road, designated as Lot 27 on Rochester Assessors' Map 21.

The applicant seeks a determination and confirmation that the mapped perennial stream per USGS is not a perennial stream in accordance with 310 CMR 10.58(2)(1). Documentation via field observation and photography was submitted by a wetland scientist confirming no flow on 4 consecutive days from 12/26/19-12/29/19. The applicant proposes construction of a 36' by 42' garage outside of the 100 Foot Buffer Zone and mapped Priority Habitat of Rare Species.

Elyse Tripp of Outback Engineering, the applicant's representative, explained there is a mapped perennial stream on the property that is an old ditch associated with a cranberry bog. The culvert flows only if the reservoir reaches high enough to flood the ditch. Ms. Tripp referred to plan mounted on an easel. She explained that the applicant wants to construct a garage outside of the 100 Foot Buffer Zone and NHESP mapped areas. The applicant will request a variance from the Zoning Board of Appeals because the garage will be close to the property line.

Agent Farinon reported that Ms. Tripp submitted documentation showing the stream was not flowing on four consecutive days. Agent Farinon visited the site with Ms. Tripp and subsequently went to the site in January and the ditch was not flowing. She distributed photos she took that day that show background, the pool area, and the stakes for the location of the proposed garage.

Agent Farinon reported that she independently field verified the information submitted, and recommended that the Commission accept the documentation that indicates the ditch is not a perennial stream. Because the proposed structure is outside the 100 Foot Buffer Zone, Agent Farinon recommended issuing a negative Determination of Applicability.

Vice Chairman Gagne asked if the location of the stream was surveyed, and Ms Tripp explained how they determined the location of the stream. Vice Chairman Gagne asked if they were planning a driveway; Ms. Tripp responded that it will be left as grass.

A motion to issue a negative Determination of Applicability 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).**

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Reopened Request for Determination of Applicability filed by the Town of Rochester, 1 Constitution Way, Rochester, MA 02770 for work on property located at the Leonard's Pond Recreational Area off Mary's Pond Road designated as Lot 9B on Rochester Assessors' Map 11. The property owner of record is the Rochester Conservation Commission, Town Hall Annex, 37 Marion Road, Rochester, MA 02770. The applicant proposes to add dense grade gravel and regrade the existing eroding canoe/cartop boat access path to Leonard's Pond, add a proposed water bar, remove the large boulder and replace with two smaller boulders and a removable bollard to allow emergency access. The existing parking lot will be regraded to minimize runoff to the pond access path. Siltation control measures will be implemented.

Agent Farinon reported they have been researching the appropriate material to stabilize the path down to Leonard's Pond. She mentioned she was absent from a recent site visit. She stated she discussed options with Jeff Eldridge, Town Highway Surveyor and Doug Cameron from the MA Office of Fishing and Boat Access and they recommended focusing on improving what is already there. She said that anything more will require an extensive filing and more work in the 25 Foot No Disturb zone. Agent Farinon reported she spoke with a representative from A.D. Makepeace who said the value of the material is \$3,000. The representative noted the material needs to be checked once a year and estimated a yard or two of new material may be needed each year for maintenance.

Agent Farinon reported there was a question about how the material would be blended with the regraded parking lot. The representative indicated the material will be put down and tamped using a roller type vehicle to flatten and blend. Agent Farinon distributed photos of an alternative for a water bar. Vice Chairman Gagne explained it's a 4" x 4" backed up by a pump hose. He noted it can be driven over with no issues.

Agent Farinon explained A.D. Makepeace is willing to donate the material and there are funds left over from the Leonard's Pond site that can be used to regrade the parking area. Member Bourque asked if the water bar option proposed by Vice Chairman Gagne is a tripping hazard. Vice Chairman Gagne responded that any type of water bar is a tripping hazard. Chairman Conway asked if the Highway Surveyor will do the maintenance. Agent Farinon responded that it's likely yes. She added that the tamping tool could be purchased or borrowed. Member Payne noted at the site visit that the path is lower in elevation and asked if more material is included in the plan to bring it up in elevation. Agent Farinon responded that they will have to hire a subcontractor for the parking area and perhaps the additional work can be included.

Vice Chairman Gagne noted they have questions about the binding agent in the material. Agent Farinon responded that the representative indicated that the material is proprietary, but she will try to get more specific information. Chairman Conway noted there should be information on whether the material is toxic. Agent Farinon mentioned that the material is used on a site in Plymouth and she can get more information on that.

A motion to continue the Public Meeting on March 3, 2020 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).**

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Public Hearings

(Continued from February 4, 2020) Reopened 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. reported the only change on the most recently revised plans is that the club house orientation rotated 180 degrees. The Mattapoisett River Valley Water Supply Protection Advisory Committee sent a letter to the Planning Board with stipulated approval of the project as well as several recommended conditions.

Chairman Conway asked if they met the recommendations of Henry Nover, the Commission's peer reviewer; Mr. Wallace responded yes.

Agent Farinon reported a separate set of plans was submitted that clearly marks the erosion control barriers including the location of the snow fencing and the semi-permanent post and rail fence. Agent Farinon noted the semi-permanent post and rail fence is proposed behind the units that are closest to the wetlands. She explained that a separate tree removal schedule was submitted for trees proposed to be removed within the 25 Foot No Disturb Zone. Agent Farinon asked if they will do tree cutting for all 3 phases at one time. Mr. Wallace responded yes. Agent Farinon asked if it would include stumping for the additional phases. Mr. Wallace responded that he believes so and will confirm.

Vice Chairman Gagne asked if they will have a National Pollutant Discharge Elimination System (NPDES) construction general permit for the project; Mr. Wallace responded yes. Vice Chairman Gagne requested the reporting to be forwarded to Agent Farinon.

There was discussion about the next steps. Mr. Wallace stated they would like to close the Public Hearing. Chairman Conway stated he would like to see the Public Hearing continued for two weeks to give time to review the application. Agent Farinon reviewed some of the proposed special conditions to be included in the decision.

Chairman Conway asked what they have done to secure the potable water supply. Mr. Wallace responded that he reached out to the Marion DPW and will be submitting calculations for their review. Member Gerrior asked if there is a chance it won't work out. Mr. Wallace responded that there's a chance, but no concerns have been raised.

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A motion to continue the Public Hearing to March 3, 2020 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).**

(Continued from February 4, 2020) **DEP SE 272-0584 A Notice of Intent was filed by Pedro Rodriguez of Solar MA Project Management LLC, 143 West Street, Suite C201, New Milford, CT 06776 for properties located at 0 Walnut Plain Road/0 Old Middleboro Road, designated as Map 22, Lot 3 and Map 23, Lots 6, 6D, 7, 21, 23, and 31.** The applicant proposes the construction of a ground-mounted photovoltaic solar array generation facility and roadway improvements to Old Middleboro Road, an unpaved road that provides access to the array. The project will not alter any wetland resource areas but requires the alteration of portions of the 100-foot Buffer Zone, which are subject to the jurisdiction of the Massachusetts Wetlands Protection Act and Rochester Wetlands Bylaw. The property owners of record are Decas Cranberry Co., Inc., 4 Old Forge Drive, Carver, MA 02330, Diana Murphy, Trustee Midchester Realty Trust, 24 Old Powerhouse Road, Lakeville, MA 02347, and MWH, LLC. 405 Washington Street, Braintree, MA 02184

(Member Gerrior recused himself from the Public Hearing.)

Matthew Bombaci of Bohler Engineering and Nicole Hayes of Goddard Consulting were present.

Mr. Bombaci provided an overview of the project, and stated they have filed with Massachusetts Environmental Policy Act and Natural Heritage & Endangered Species Program (NHESP). Mr. Bombaci reviewed the locations of the wetlands on a diagram on an easel, and stated they have received Planning Board approval and that minor changes were made to the plans in that process.

Mr. Bombaci reviewed questions from Members from the site visit:

- Additional wetlands delineation along the east side of the road was requested and has since been completed by Goddard Consulting.
- Members requested improvements in stormwater management along Old Middleboro Road. They added small settling basins with rip rap spillways.
- They provided cross sections in different locations.

Mr. Bombaci stated they received a letter from Mr. Nover on October 21, 2019, sent comments back, and received a subsequent letter from Mr. Nover on February 3, 2020. He said the comments from Mr. Nover in the most recent letter related to various calculations, additional basins and swales, and additional points of analysis for stormwater design. Chairman Conway asked about the parameters they use for stormwater. Mr. Bombaci explained for soil testing they look at soil type, permeability and estimated seasonal high groundwater. They have done soil testing in many basins, but not yet in the new basins. Mr. Bombaci stated Mr. Nover suggested phasing the project and noted these projects aren't usually phased. Mr. Nover suggested installing the erosion controls and temporary settling basins first, which they will do. Mr. Bombaci stated they will provide the additional calculations requested by Mr. Nover.

Mr. Bombaci reviewed the locations of the road widening and temporary settling basins on mounted diagrams. Agent Farinon suggested one of the level spreaders doesn't appear to function properly with the grades that are shown. Mr. Bombaci responded they can trim off the berm to make sure

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water gets in there. Chairman Conway asked about plans to maintain the road. Pedro Rodriguez of Solar MA Project Management LLC responded they will maintain it. Chairman Conway asked if they will still maintain the road if they sell the property. Mr. Rodriguez responded that whoever buys it will have to maintain it. Mr. Bombaci noted they will be filing a Stormwater Pollution Prevention Plan (SWPPP) with the U.S. Environmental Protection Agency.

Vice Chairman Gagne asked about a grey line on the roadway plan and Mr. Bombaci responded that it's the limit of work. Vice Chairman Gagne pointed out that in one location the limit of work is beyond the wetland lines; Mr. Bombaci responded that he will adjust it. Vice Chairman Gagne asked if it's the only place where they can't widen the road due to the proximity of the wetlands; Mr. Bombaci responded that there is one other location. Vice Chairman Gagne asked if they inspected the culvert crossings. Mr. Bombaci responded that there is one that they don't want to adjust it because it's in the resource area. If it collapses, they will repair it. Vice Chairman Gagne asked if the Town is a signatory on the Notice of Intent since they are doing work on Town property. Mr. Rodriguez explained the Planning Board included a requirement to work on Town property as a condition and they are working on an easement with Town Counsel Bailey. Chairman Conway suggested they could amend the existing application. Chairman Conway asked when they will be done with the Planning Board. Mr. Rodriguez responded that the Planning Board closed the Public Hearing and provided a draft decision. They will have a signed decision at the next meeting.

Bill Chamberlain, 91 Walnut Plain Road, asked if the company has an interconnection agreement; Mr. Rodriguez responded yes. Mr. Chamberlain asked when the property will be purchased; Mr. Rodriguez said they anticipate closing as soon as they receive approvals from the Town. Mr. Rodriguez noted they won't own the land; after purchasing the property it will be donated to the Buzzard's Bay Coalition and leased back to Seaboard Solar. Mr. Chamberlain asked if they planned on selling the solar project; Mr. Rodriguez responded that the plan is to be the long-term owners. Member Bourque asked what will happen with the project after 25 years. Mr. Rodriguez responded that the Buzzard's Bay Coalition will have ownership. Mr. Chamberlain asked if they have anything signed with the Buzzard's Bay Coalition that they will take over the property in 25 years. Mr. Rodriguez responded that they have a purchase and sale agreement with the Buzzard's Bay Coalition and a contract to purchase the Decas property.

Agent Farinon asked if revised drainage calculations had been submitted and Mr. Bombaci replied no and said that they owe a formal response to the remaining comments from Mr. Nover.

Agent Farinon reported the February 3, 2020 letter from Mr. Nover has substantive comments. She noted there is a lot of work to be done and reviewed each of the comments included in the letter. Mr. Bombaci provided responses to each item, and stated that the soil test pits will take the longest. There was discussion about timing of the project. Agent Farinon stated they still need to submit a response letter, supporting calculations and dig the test pits. Mr. Nover will need to review the information for his final review. Agent Farinon suggested continuing the Public Hearing to the meeting after the next one.

Agent Farinon reported they need more information about the staging area and parking of equipment as well as a construction narrative with phasing and methods used including staking the limit of clearing in the field so it can be inspected. Mr. Rodriguez responded that there are a few companies bidding on the construction. He said they will be submitting the information for the building

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permit. Agent Farinon clarified that this is the stage when it is reviewed. Mr. Rodriguez stated they can provide preliminary information. Agent Farinon asked where they are proposing to locate parking. Mr. Rodriguez responded that he can check and pointed out on a diagram a portion of land that's cleared already. Vice Chairman Gagne stated they should include information on any tree clearing needed for a laydown area.

Member Bourque asked how long it will take to complete the project. Mr. Rodriguez replied 8 months. Vice Chairman Gagne asked if the roadway improvements will be done first. Mr. Rodriguez responded yes. Vice Chairman Gagne asked if they will chip the trees and Mr. Rodriguez replied yes. Mr. Rodriguez said they will lay down all the wood chips to stabilize for hydroseeding. Agent Farinon asked if they will be seeding the site. Mr. Rodriguez responded yes. Vice Chairman Gagne asked if the wood chips are for temporary stabilization and Mr. Rodriguez responded yes.

Bill Chamberlain, 91 Walnut Plain Road, asked if there will be fuel on site for the construction equipment and noted that vehicles will need oil changes. He also asked if there is a plan in place to mitigate possible hazard to wetlands and if the hydraulic fluids are biodegradable. Mr. Bombaci responded that the stormwater plan will have details on fueling and vehicle maintenance and noted the construction vehicles will be hundreds of feet from wetlands. Mr. Chamberlain asked if accommodations will be made for the resident at the end of Old Middleboro Road. Mr. Rodriguez responded that he is working to ensure that the road will be open for the resident at the end of Old Middleboro Road.

A motion to continue the Public Hearing to March 17, 2020 was made by Vice Chairman Gagne and seconded by Member Payne. **The motion passed by a vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

(Member Gerrior resumed his role in the meeting.)

(Continued from February 4, 2020) DEP SE 272-0587 A Notice of Intent was filed by Steen Realty & Development Corp., 3 Ledgewood Boulevard, Dartmouth, MA 02747 for properties located at 22 Cranberry Highway, designated as Lots 41C and 50 on Rochester Assessors Map 17. The Notice of Intent application is for work located entirely within the 100 Foot Buffer Zone to a wetland resource area located at 22 Cranberry Highway in Rochester. The scope of work includes associated grading and drainage outfall installation associated with the development of 208 residential units and commercial space within the Cranberry Highway Smart Growth Overlay District. A majority of the work will occur within previously altered/disturbed areas. Minor grading will occur within the Town of Rochester's 25-ft No Disturb Zone which is associated with the installation of the rip rap apron from the outlet pipe.

Chairman Conway stated the applicant requested a continuance to March 3, 2020 to provide time to address the peer review comments.

A motion to continue the Public Hearing to March 3, 2020 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).**

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Commission Business

Minutes

Chairman Conway noted two edits to the minutes of February 4, 2020.

A motion to approve the minutes of February 4, 2020 as amended was made by Chairman Conway and seconded by Member Gerrior. Member Payne abstained. **The motion passed by a vote of 4 in favor, 0 opposed, 1 abstained (4-0-1).**

Voucher

The following voucher was approved for payment: The Wanderer/Ad posted for Leonard's Pond/
Invoice # 7782: \$30.00

Old Business

MBTA Enforcement Order

Agent Farinon reported she expected a filing from the MBTA, however they did not submit because they are reviewing the filing with their attorneys. It's their opinion that they are not subject to local zoning requirements. However, it's doesn't preclude them from the Wetlands Protection Act requirements. Agent Farinon stated she expected representatives at the meeting to discuss fencing.

Agent Farinon reported they installed a row of erosion control barriers right on the wetland edge and the extent of clearing wasn't necessary to put in a fence. She distributed photos of the site to Members, and noted they have stopped work and all the equipment is left in place.

Member Bourque asked if the fence posts shown in the photos were at the edge of wetland. Agent Farinon responded yes. Agent Farinon noted the only additional work done since the cease and desist order was to install erosion control barriers. Vice Chairman Gagne noted that a section of silt fences was installed backwards. Agent Farinon stated the MBTA is looking for a company to hydro mulch. She reported the tickets from the Commission started at \$50 per day and are currently \$300 per day.

MACC Annual Environmental Conference to be held on February 29, 2020

Member Gerrior, Member Bourque, Member Payne, Agent Farinon, and Board Administrator Tanya Ventura will be attending the conference.

Review and approve minor budget modification

Agent Farinon reported a grade change in the Board Administrator position resulted in a minor change in the total figure for the budget.

A motion to accept the amended budget was made by Vice Chairman Gagne and seconded by Member Bourque. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

New Business

New Enforcement Order – 1009 Walnut Plain Road

Agent Farinon explained she received a complaint and made a site visit with the owner of 1009 Walnut Plain Road and found cutting of trees up to the edge of pond. The owner of the property,

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Michael Oliver, said he was surprised to learn that it was a violation. Mr. Oliver stated that he purchased the property last spring, and was trying “neaten up” the property.

Agent Farinon distributed a draft Enforcement Order which mandates that a restoration plan be filed by March 20, 2020 and a delineation of the bordering vegetative wetland boundary. She said she immediately issued a cease and desist order.

Chairman Conway asked if the Commission has the authority to force them to get a wetland scientist. Agent Farinon stated she was trying to be consistent with what the Commission has done in the past. Member Gerrior asked if a homeowner can do what’s being required. Agent Farinon responded no. However, the homeowner could do some of the work when the plan is approved. Agent Farinon added that the cutting started a month ago. Vice Chairman Gagne asked how far around the pond has been cleared. Agent Farinon responded around half.

Vice Chairman Gagne asked if they should consider ticketing; Chairman Conway responded that they can consider ticketing if the property owner doesn’t come in with a plan by March 20, 2020. Chairman Conway stated they should put this on the agenda for the first meeting in April.

A motion to ratify the Enforcement Order was made by Chairman Conway and seconded by Vice Chairman Gagne. Member Bourque suggested making sure the correspondence outlines the ticketing procedure. Chairman Conway responded that it can be in a separate letter. Member Gerrior asked if they are allowing a reasonable amount of time to create a plan; Vice Chairman Gagne responded yes. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

Discuss Flood Insurance Rate Map Updates Effective July 22, 2020

Agent Farinon reported Members will see the flood insurance rate map updates on the annual Town Meeting as an article. She reported that FEMA is in the process of updating insurance rate maps and the Town maps have changed. The Town is required to revise its floodplain zoning regulations to have flood insurance.

Discuss Correspondence

Agent Farinon noted a letter sent from Eversource letting the Commission know about right-of-way management activities off Interstate 495.

Confirm member availability for future site visits and meetings

All members present stated they will attend the next meeting on March 3, 2020.

Adjournment

The meeting adjourned at 9:18 p.m. on a motion 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).**

Marissa Perez-Dormitzer, Recording Secretary

Michael Conway, Chairman