

**Rochester Conservation Commission
April 9, 2020**

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

Absent: (none)

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

The meeting was convened by telephone and video conference via Zoom due to the Covid-19 pandemic. Member Thompson provided an overview of Zoom and how to participate in the meeting. Chairman Conway called the meeting to order at 7:05 p.m. and took attendance of Members, staff, applicants, and representatives. Chairman Conway also read a message about remote participation and ground rules for the meeting. He stated that each presentation was limited to 10 minutes and votes would be taken by roll call.

Public Meeting

(Continued from March 3, 2020) 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.

Anthony Will of Reed Custom Soils reported his company has offered to donate the stabilized stone dust needed for the boat ramp leading to Leonard's Pond. He explained the installation process of applying a base material and then a layer of stabilized stone dust. The stabilized stone dust is bound together by Organic-Lock, a water activated binder that is made from all-natural materials.

In response to a question from Member Payne about the binding agent, Mr. Will stated the binder makes up less than 1% of the material and includes psyllium, lime, and soda ash. Member Payne asked about the stability of the slope and possible erosion. Mr. Will responded that proper installation is important. He noted by regrading the parking lot and adding a water bar, there will be much less runoff directed to the ramp area. Chairman Conway asked if there were testing results such as a Material Safety Data Sheet (MSDS) indicating if the material is toxic to aquatic life. Mr. Will responded that the MSDS for the binder has cautions about inhaling the material or getting it in your eyes. He noted that the product is 99% stabilized stone dust.

Agent Farinon recommended issuing a negative Determination of Applicability with the stipulation that a preconstruction meeting be held prior to construction activity with the Rochester Highway Department and Reed Custom Soils.

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

A Request for Determination of Applicability was filed by Jill Taylor for proposed work on property located at 200 Mattapoissett Road, designated as Lot 16E on Rochester Assessors' Map 4. The applicant is proposing to upgrade a failed Title 5 sewage disposal system. A portion of the sewage disposal system, and associated grading, are within the 100 Foot Buffer Zone to an adjacent Bordering Vegetated Wetland. The applicant also seeks to authorize a previously constructed paver patio. Approximately 180 square feet of a paver patio has been constructed approximately 88 feet from the adjacent wetland. The applicant's representative is Brian Grady of G.A.F. Engineering, Inc., 266 Main Street, Wareham, MA 02571.

Brian Grady of G.A. F. Engineering Inc. shared his screen showing the plan for the project. He explained the owner is looking to replace a failed septic system in the same location as the existing system. By locating it in the same spot, they will minimize cost and it will be more aesthetically pleasing since it is a mounded system. The system is 90 feet to wetlands. A siltation barrier will be installed approximately 25 feet from the edge of bordering vegetated wetlands. Mr. Grady stated it will take a week to construct the project.

Member Gerrior asked if they will bring a portable tank for the week. Mr. Grady said any occupants would continue to use the existing tank, which can be pumped if needed. Member Payne asked if there will be any tree removal. Mr. Grady responded no. Vice Chairman Gagne asked about the history of the stone walls on the property. Mr. Grady said he was not familiar with the history.

Agent Farinon explained the property owner is looking to do a closing on the property within a couple of weeks. Agent Farinon recommended issuing a negative Determination of Applicability.

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

A Request for Determination of Applicability was filed by property owners Richard & Lynn Amicucci, for proposed work on property located at 79 Haskell Ridge Road, designated as Lot 14 on Rochester Assessors' Map 29A. The applicant proposes the installation of a small 28'X45' private, ground-mounted photovoltaic system sixty-five (65) horizontal feet from bordering vegetated wetlands (BVW). The interconnection lines will be laid underground, outside the 100 Foot Buffer Zone. The proposed project will not adversely affect the adjacent BVW. The applicant's representative is Brian Butler of Oxbow Associates, Inc., P.O. Box 971, Acton, MA 01720.

Brian Butler of Oxbow Associates, Inc. showed several plans by sharing his screen. He reported the owner is proposing to install a residential grade photovoltaic system. He explained that when the property was built around 2000, it was determined that a stream mapped to the rear was intermittent. Through the previous determination as well as digital information, Mr. Butler said the stream continues to be intermittent. He noted the wetlands were flagged in the previous year.

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Mr. Butler pointed out the location of the proposed array on the plan. The array will be greater than 65 feet from the bordering vegetated wetland. He reported that 16 trees will be removed – some to remove shading and some that present a potential hazard to the array. The closest tree will be 54 feet from the bordering vegetated wetland. The trees to the west will be flush cut and their main trunks will be cut in pieces and left in place. Mr. Butler stated that all the trees would be flush cut and there will be no stumping. Matthew Sly, Project Manager, of Isaksen Solar explained they will be using metal helical piles, as opposed to concrete, which is more ecofriendly than a typical solar installation.

Vice Chairman Gagne asked how many trees are in 25 Foot No-Disturb Zone. Mr. Butler responded none and noted the closest tree is 55 feet from the bordering vegetated wetland. Chairman Conway asked why they are not moving the array to the front yard where they can avoid the bordering vegetated wetland and the 100 feet buffer zone. Mr. Sly responded that there are setback restrictions from the Town, and it would require more tree removal. Also, the septic system is in the front yard.

Agent Farinon recommended issuing a negative Determination of Applicability with the stipulation that a preconstruction meeting be held with the site contractor and the property owner before the start of work. Chairman Conway stated the determination that the perennial stream is not a perennial stream has lapsed. Agent Farinon responded that the stream was not flowing when she visited the site, and she agreed with the submitted sub-watershed assessment corroborating that the stream is intermittent.

A motion to issue a negative Determination of Applicability with the stipulation that a preconstruction meeting be held with the site contractor and the property owner before the start of work was made by Vice Chairman Gagne and seconded by Member Thompson. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

DEP SE 272-0450 A Request for a Partial Certificate of Compliance was made by Edgewood Development Company, LLC for work completed off Forbes Road, Douglas Corner Road, and associated public improvements in the Connet Woods Development designated as Map 19A, Lots 1, 19, 20, 13, 26, 48, 22, 51, 23, 42, , 51, and 53.

Briscoe Lang, Principal Environmental Scientist, of Pare Corporation explained that in addition to the Request for partial Certificate of Compliance, the applicant submitted a request to extend the Order of Conditions for 3 years. They are withdrawing the request and would submit a separate request for extension. He added that he would like to “bank” the \$200 application fee with the Commission for the extension request.

Mr. Lang shared his screen and reviewed the layout of the subdivision and the as-built plan. He stated the request for the partial Certificate of Compliance is for Forbes Road from High Street to the end of the cul de sac and Douglas Corner Road. He explained they are looking for the partial Certificate of Compliance for turtle fencing in specific locations that he reviewed. Mr. Lang also reviewed the remaining work to be done on the subdivision.

Member Gerrior asked who will be responsible for the turtle fences once the Certificate of Compliance is approved. Stephen Meltzer of Edgewood Development Company explained that

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currently the developer is responsible for the turtle fences in the open space areas. Once the fee for the open space areas is transferred to the Massachusetts Farm Bureau, along with an endowment fund, the Massachusetts Farm Bureau in conjunction with Massachusetts Division of Fisheries and Wildlife will be responsible for the turtle fences.

Vice Chairman Gagne commented that on the engineer's certificate, the notes indicate the stormwater basins were not built to the design plans. He asked for more information. Mr. Lang responded that the basins are outside the Commission's jurisdiction and noted field changes were made in conjunction with the Town's engineer, Kenneth Motta of Field Engineering. The changes were approved by the Planning Board. Vice Chairman Gagne asked if they were requesting that the partial Certificate of Compliance include the wetlands replication area. Mr. Lang responded no. Mr. Lang clarified they are requesting the partial Certificate of Compliance only for that portion that is proposed to be accepted by the Town.

Vice Chairman Gagne noted with the partial Certificate of Compliance, the Town owned parcels will still be encumbered by the Order of Conditions until the full Certificate of Compliance is approved. Mr. Lang stated when a partial Certificate of Compliance is issued and recorded at the Plymouth County Registry of Deeds, those lots are no longer subject to the Order of Conditions. Town Counsel Bailey explained the streets in the subdivision are separate parcels and once the partial Certificate of Compliance is approved, that portion of the title will be clear.

Agent Farinon recommended issuing a partial Certificate of Compliance to Edgewood Development Corporation for DEP SE 272-0450.

A motion to issue a partial Certificate of Compliance for this project was made by Vice Chairman Gagne and seconded by Member Thompson. Member Gerrior was unable to vote due to a problem with his internet connection. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 1 abstained (5-0-1).**

Public Hearings

***(Continued from February 18, 2020)* DEP SE 272-0584 Notice of Intent filed by Pedro Rodriguez of Solar MA Project Management LLC, Series XXXVI, 143 West Street, Suite C201, New Milford, CT 06776 for properties located at 0 Walnut Plain Road/0 Old Middleboro Road, designated as Map 21, Lot 33; Map 22, Lots 1 & 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, MWH, LLC. 405 Washington Street, Braintree, MA 02184, and the Town of Rochester, 1 Constitution Way, Rochester, MA 02770.

(Member Gerrior recused himself from the Public Hearing)

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Pedro Rodriguez of Solar MA Project Management LLC and Austin Turner of Bohler Engineering were present at the meeting by video conference. Mr. Turner reported they have been working with Henry Nover, the Commission's peer reviewer, on technical items. He shared his screen showing the project plans and reviewed comments received from Mr. Nover.

Mr. Turner reported Mr. Nover requested the following changes in a letter dated March 12, 2020:

- Enlarge basin 4 and expand the nearby stormwater swale.
- Refine the time of concentration calculations.
- Include additional temporary sedimentation basins upstream to the permanent stormwater basins.
- Include additional test pits near some stormwater basins and provide the results to Mr. Nover.
- Provide additional mounding calculations.
- Modify the bottom elevation of specific basins to ensure 3 feet of separation from the bottom to the estimated seasonal high groundwater.
- Provide additional separation from the calculated mound height in specific basins by elevating them.
- Relocate a stormwater management feature on Old Middleboro Road 100 feet to the south.
- Provide additional calculations in support of the perimeter swales regarding the velocity of the water.
- Add stone check dams in certain locations to dissipate flows.

Mr. Turner reported that the requested changes were made, and he is awaiting review and signoff by Mr. Nover. Mr. Turner also noted that Mr. Nover provided a more recent letter dated April 1, 2020 primarily focused on mounding calculations and additional separation. He noted that said requested changes have since been made.

Mr. Turner summarized Agent Farinon's feedback. As a result, they rebranded the plans as clearing and erosion control plans – not “demolition” and erosion control plans. Agent Farinon also requested that they modify the limit of work to indicate they will improve the travel surface on Old Middleboro Road. Mr. Turner said they also modified the limit of work to clarify they will not be working within the wetland. They have also matched up the construction sequence and narrative with the plan, and corrected omissions on the roadway cross-sections.

Member Thompson read Vice Chairman Gagne's question regarding whether the Commission was waiting on one final letter from Mr. Nover. Chairman Conway responded that he received a letter from Mr. Nover dated April 6, 2020. Mr. Turner noted the plans were revised to reflect comments in the April 6, 2020 letter. He stated they have communicated with Mr. Nover verbally and by email but are waiting for Mr. Nover to provide an official response.

Agent Farinon reported the most recent plans were dated April 1, 2020. She received a request for the Commission to consider the final changes part of the Order of Conditions. However, she said the applicant needs to submit a final set of revised plans and the Commission needs to receive a final review report from Mr. Nover. Agent Farinon reported the Commission will receive a bill from Mr.

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Nover for the final report. However, the peer review account was expended. She requested that Mr. Rodriguez submit \$1,000 to replenish the account and that any unused funds would be returned with interest. Agent Farinon recommended continuing to the next meeting so that additional revised plans can be submitted and to give time for Mr. Nover to submit his final recommendations.

A motion to continue the Public Hearing to April 21, 2020 was made by Member Thompson and seconded by Member Bourque. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 1 abstained (5-0-1).**

(Member Gerrior resumed his role in the meeting.)

DEP SE 272-0588 A Notice of Intent filed by Massachusetts Bay Transportation Authority, 10 Park Plaza, Boston, MA 02116, for properties located at 45 Kings Highway, designated as Lot 21 on Rochester Assessors Map 17. The Notice of Intent application requests permission to install security fencing around the facility and restore the 100-foot buffer zone to Bordering Vegetated Wetlands, pursuant to an Enforcement Order that issued to the MBTA on February 4, 2020. The applicant's representative is Jacobs Engineering Group, 120 Saint James Avenue, 5th Floor, Boston, MA 02116. The property owner of record is Massachusetts Bay Transportation Authority (MBTA) 10 Park Plaza, Boston, MA 02116.

The following representatives were identified as taking part in the Zoom meeting:

Holly Palmgren, Manager of Environmental Construction, MBTA

Jessica Rebholz, Environmental Scientist, Jacobs Engineering Group

John Carrega, MBTA

Peter Cruz of Jacobs Engineering Group

Janis Kearney, Esq., MBTA

Holly Palmgren began the discussion by apologizing for the situation. She shared her screen and showed a presentation. She explained the Notice of Intent was filed as required by the Enforcement Order issued to the MBTA. She stated that hydro-mulching has stabilized exposed soils and they installed a silt fence for erosion control. Ms. Palmgren displayed photos of the site and noted the Notice of Intent includes a restoration plan with reseeding and plantings.

Jessica Rebholz explained they are proposing to re-seed exposed areas with New England wildflower mix that will promote pollination. They are also proposing a row of arborvitae to act as a visual barrier between the roadway and the cleared area. She showed a slide with the proposed seed mix as well as one with the proposed number of plantings which include 30 shrubs and 36 trees. Ms. Palmgren reported they are proposing security fencing to prevent vandalism and burglary. There will be an average fence offset to the edge of the bordering vegetated wetland of 18.19 feet. Ms. Palmgren explained they have moved the fencing further away from wetlands than originally proposed.

Member Bourque asked if there was an alternative to arborvitae since it is often eaten by deer. Ms. Rebholz responded that she can look at other options. Member Thompson noted that one slide indicated a couple of flags where the fence is 6 feet from the bordering vegetated wetland. Ms. Palmgren responded that they are 6 feet from an isolated wetland.

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Vice Chairman Gagne noted they are proposing to put a fence down the middle of the 25 feet no touch zone and it is not clear how they are meeting the performance standards. Ms. Palmgren replied that since they are a state agency, they are not subject to the Bylaw requirements. Town Counsel Bailey stated that under the law, the MBTA is not subject to local wetlands restrictions that interfere with the mission of their state agency. He added that they need to secure the property since there have been problems with vandalism. Vice Chairman Gagne noted a location where the fence appears to be on a wetland flag. He also noted the tree line is not shown on the plan and asked if they were installing the fence through a wooded area. Ms. Palmgren responded that the fence is not being run through trees; however, they may need to remove some trees to install the fence. John Carrega confirmed that no additional clearing was required to install the fencing.

Vice Chairman Gagne asked if there is a plan for the restoration plantings. Ms. Palmgren responded yes. Vice Chairman Gagne asked if they are proposing to plant between the fence and the wetlands. Ms. Rebholz pointed out an area by Kings Highway where they are proposing to loam and seed with wildflower mix. Vice Chairman Gagne asked about the plans for the rest of the property. Ms. Palmgren explained the area that was cleared and then hydro-mulched was not originally forested.

Agent Farinon noted that the proposed planting of arborvitae will be problematic due to expected foraging by deer. Although serving as a visual buffer, from a wetlands mitigation standpoint, it doesn't represent restoration. It is serving as screening for the facility. She added that where they are proposing the fence, a 40-60 foot wide swath of vegetation was already cut through along the bordering vegetated wetland. She noted that such a wide swath was not need to install a 6 foot fence.

Agent Farinon stated she would like to see the plans revised with additional plantings and the fence pushed out from the 25 feet no touch zone. Ms. Palmgren replied that the location of the fence is for security purposes and she can look at the plantings. She noted she sent an email stating the installation of the fencing is exempt and does not require a permit. Vice Chairman Gagne stated that if the area within the 100 feet buffer zone is used as a staging area they will have to come before the Commission.

A motion to continue the Public Hearing to April 21, 2020 was made by Vice Chairman Gagne and seconded by Member Thompson. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Commission Business

For Signature

Permits

There was discussion about possible procedures for signing permits in the current Covid-19 pandemic. Agent Farinon reviewed several options including digital signatures and mailing copies of the signature page to each Member. Chairman Conway suggested another option of putting the permits in one location to be signed such as the Town Hall Annex. Agent Farinon reported there is a question of whether the Registry of Deeds will accept digital signatures. Members agreed to have the entire documentation mailed to them and then sign and mail back or drop off the signature page within a time frame of 3 or 4 days.

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Agent Farinon reported there is a policy in which the Chairman can sign the vouchers on the Commission's behalf and then the Commission ratifies them at the next meeting. Members agreed they would like to move forward with Chairman Conway signing the vouchers.

Minutes

A motion to accept the minutes of February 18, 2020 was made by Member Thompson and seconded by Member Bourque. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

A motion to accept the minutes of March 3, 2020 was made by Vice Chairman Gagne and seconded by Member Thompson. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Vouchers

The following vouchers were included on the meeting agenda for approval:

BayNet Web Services Invoice # 7187/Monthly Hosting Fee: \$60.00; Staples, office supplies: \$121.94, \$355.92; Falmouth Printing & Copy Center Invoice #33249, Notice of Violation Tickets: \$167.00; SWS PCP, Annual PWS Certification: \$75.00; Mileage Reimbursement for Conservation Agent: 10/4/2019 – 03/2020: \$591.60; Henry Nover Invoice for Peer Review/Solar MA Project Management: \$1,000.00

A motion to ratify all the vouchers listed on the meeting agenda that were previously authorized by Chairman Conway was made by Vice Chairman Gagne and seconded by Member Thompson. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

A motion to authorize Chairman Conway to authorize the voucher for Henry Nover for an invoice of \$500 for peer review services for Solar MA Project Management was made by Vice Chairman Gagne and seconded by Member Thompson. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Old Business

Update on Status of SEMASS/Covanta Emergency Certification for Tree Work

Agent Farinon reported the tree and limb cutting was completed in mid-March and SEMASS/Covanta will be submitting a Notice of Intent application in the coming weeks.

New Business

Confirm member availability for future site visits and meetings

All Members stated they were available for the next meeting April 21, 2020. There was discussion about how to proceed with new applications. Town Counsel Bailey stated it is up to the Conservation Commission with the recent law that was passed. Vice Chairman Gagne mentioned a concern about the Zoom meetings not being a good venue to look at big projects. Chairman Conway commented that he would like to continue with business as usual. Members agreed it would help to have the full-size plan sets mailed directly to them. Town Counsel Bailey noted that other boards

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and commissions are having initial discussions and engaging consultants but not rendering decisions until they are able to have an in-person hearing. He stated it may help to prevent large meeting agendas when the Commission resumes in-person hearings. Vice Chairman Gagne suggested that consultants not make full presentations; the Commission could open large projects and vote to engage the services of a peer review consultant to keep things moving before we are back to open public meetings held at the Town Hall.

Adjournment

The meeting adjourned at 9:39 p.m. on a motion made by Member Thompson and seconded by Vice Chairman Gagne. **The motion passed in a roll call vote of 6 in favor, 0 opposed, 0 abstained (6-0-0).**

Marissa Perez-Dormitzer, Recording Secretary

Michael Conway, Chairman