

**Rochester Conservation Commission  
October 6, 2020**

**Present:** Michael Conway, Chairman  
Léna Bourque  
Christopher Gerrior  
Maggie Payne  
Kevin Thompson

**Absent:** Daniel Gagne, Vice Chairman

Laurell J. Farinon, Conservation Agent  
Tanya Ventura, Board Administrator  
Marissa Perez-Dormitzer, Recording Secretary

The meeting convened by telephone and video conference via Zoom Meeting ID: 872 4619 2447. Chairman Conway called the meeting to order at 7:02 p.m. and took attendance of Members, staff, applicants, and representatives. Chairman Conway read a message about remote participation and ground rules for the meeting. He stated the meeting was being recorded. Each presentation was limited to 10 minutes and 3 minutes were allowed for public comment. Chairman Conway stated that votes would be taken by roll call.

**DEP SE 272-0533 A Request for a Certificate of Compliance** was made by Brian Mello on behalf of Andrew Laboa, for work completed at 180 New Bedford Road, Map 2, Lot 1A.

Brian Mello explained he will be purchasing the subject property at the end of October 2020 and is seeking to have the outstanding Order of Conditions lifted at the Registry of Deeds by filing a Certificate of Compliance. Agent Farinon shared her screen showing the site plan for the property. She stated the original proposal was for an addition to the existing dwelling. The Order of Conditions allowed for construction of the addition within the 100 Foot Buffer Zone with the stipulation of a preconstruction meeting. Agent Farinon showed several photos of the site demonstrating the addition was neither started nor completed. Agent Farinon recommended that the Commission issue a Certificate of Compliance to Brian Mello under DEP SE 272-0533, and check off the box indicating the project never started.

A motion to issue a Certificate of Compliance was made by Member Gerrior and seconded by Member Thompson. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

**Public Hearings**

**(Continued from August 18, 2020) DEP SE# 272-0596 A Notice of Intent filed by Featherbed Lane South Solar, LLC, Beals and Thomas, Inc., 144 Turnpike Road, Southborough, MA 01772, for property located at 0 Featherbed Lane, designated as Lot 24 on Rochester Assessors Map 46.** The applicant proposes to install an approximate 2.5 MW DC ground-mounted photovoltaic solar array on an estimated 59-acre property at 0 Featherbed Lane. The project involves work within the 100 Foot Buffer Zone to a bordering vegetated wetland and is located within the Estimated and Priority Habitat for Rare and Endangered Species. The proposed work includes converting a tract of forested upland to install the array, access road, equipment pad, and stormwater management features. The applicant's representative is Eric Las of Beals and Thomas, Inc., 144 Turnpike Road, Southborough, MA 01772. The property owner of record is Judith DuPont, 123 Rounseville Road, Rochester, MA 02770.

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Chairman Conway stated the representative for the applicant requested a continuance to October 20, 2020 to respond to a peer review expected by October 14, 2020. Agent Farinon noted that the peer review consulting report would likely not be ready by that date.

A motion to continue the Public Hearing to October 20, 2020 was made by Member Thompson and seconded by Member Gerrior. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

**Commission Business**

**New Business**

**Request for Determination of Non-Significance from Richard J. Charon, P.E. for 30 Bates Road, David & Janet Kielty, DEP SE 272-589, Proposed Cabana dimensions 10'X14' vs approved 10'X12'**

Richard Charon explained the proposed cabana is located within the 200 Foot Riverfront Area, approximately 175 feet away from the river. They are seeking to change the proposed cabana dimensions from 10'X12' to 10'X14'.

Member Bourque asked Mr. Charon where the extra two feet will be located. Agent Farinon shared her screen showing the site plan. Mr. Charon pointed out that the cabana will be moved closer to the house. Chairman Conway asked about any impact on the water flow to the riverfront area. Mr. Charon explained that the building will be above the ground and any water underneath could still infiltrate into the ground.

Agent Farinon recommended that the Commission deem the requested change nonsignificant so that an amended Order of Conditions is not required.

A motion to deem the change non-significant change was made by Member Thompson and seconded by Member Gerrior. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

**Review Chapter 61A Withdrawal Notification from Bruce Maksy, Jr. for property on Dexter Lane designated as Lot 11D on Rochester Assessors Map 6**

Agent Farinon shared her screen showing an aerial locus map of the property. She noted that the Member's packets include the purchase and sale agreement with a purchase price of \$176,000. Agent Farinon provided a description of the property and noted that proposed dwelling will most likely require a filing with the Commission. Agent Farinon recommended that the Commission recommend to the Board of Selectmen not to pursue the property.

A motion to not recommend to the Board of Selectmen to purchase the property was made by Member Gerrior and seconded by Member Bourque. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

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**15 Briarwood Lane**

Mr. Charon explained that the old dwelling was razed on the property, and a new house was being constructed on the lot outside of the 100 Foot Buffer Zone. He explained that the owners would like to remove a tree that is 96 feet from the bordering vegetated wetland on Snipatuit Pond. The tree is diseased and is a danger to the house. He added that the owners were willing to plant more trees to make up for the one being removed.

Chairman Conway asked if the owners would remove the tree and put the house where the tree is located. Mr. Charon responded no and reiterated the tree was in a location where it would be a threat to the house. Agent Farinon shared her screen showing a diagram. She pointed out the 100 Foot Buffer Zone and the location of the tree, and explained that they proposing to flush cut the tree and grind (not remove) the stump.

Chairman Conway asked Agent Farinon what she would recommend in a similar situation. Agent Farinon suggested they come up with a policy of administrative approval for minor projects. She explained she researched what other communities were doing and found there was no legal authority for the administrative approval; it was more of a policy. She concluded that without an administrative policy, the applicant would have to submit a Request for Determination of Applicability (RDA) filing. She stated that removing the tree would not have an adverse impact to the nearest wetland resource area 96 feet away. Chairman Conway suggested reviewing the matter with Town Counsel. Member Thompson asked if it was possible to create a simple form to be completed along with a map and a description. Chairman Conway responded that the regulations do not allow for anything other than an RDA or Notice of Intent.

Discussion ensued at length among Members and Agent Farinon about possible resolutions. Member Gerrior suggested they might be causing danger by preventing a property owner from taking care of the tree in a timely manner. Agent Farinon noted if there is imminent danger, an applicant may file after the fact. Chairman Conway asked if they could use the same mechanism used by SEMASS recently with an emergency certification. Agent Farinon responded that it would not be appropriate since there are several criteria that need to be met. She suggested they seek input from Town counsel and discuss a possible administrative approval process for minor projects at the next meeting.

Agent Farinon texted Town Counsel Bailey and he was attending another meeting and unable to join the Commission Zoom meeting. She stated that some communities interpret that filings are not required with minor projects where the applicant can demonstrate the project will have no adverse impact. Agent Farinon stated the Commission could make a special exception and allow removal of the tree if it is the Commission's opinion that the project would not result in adverse impacts.

A motion to allow the property owner to cut the tree for the safety of the homeowners because the Commission will not have a proper procedure in place in a timely manner was made by Member Gerrior and seconded by Member Thompson. Chairman Conway stated that he did not know of any legal authority that allows it. He suggested that if it is an RDA, then the applicant should file one. Chairman Conway was opposed. **The motion passed in a roll call vote of 4 in favor, 1 opposed, 0 abstained (4-1-0).**

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**Update on Seaboard Solar Project**

Agent Farinon reported that Agilitas Energy purchased the rights to the Old Middleboro Road solar project. She attended a preconstruction today with Town Planner Starrett, Ken Motta, and Jeff Eldridge. She noted the erosion control barriers have been installed and tree cutting will start soon.

**Notice of Intent Applications**

Agent Farinon stated that the applicant for the Snipatuit Road solar project has requested a site visit date. Members agreed to a site visit on October 17, 2020 at 8:30 a.m.

**Discuss Monitoring of Rochester ponds**

Agent Farinon reported she was working with the Snows Pond Association. They have been monitoring water quality throughout the season and have been trained by the University of Rhode Island Watershed Watch program to use equipment for water monitoring on pond. They are looking at the issue of aquatic vegetation. Agent Farinon mentioned possible monitoring of other water bodies in Rochester. She will reach out to Tony Williams of the Buzzards Bay Coalition about the work and equipment involved.

**Mini-Grant Application**

Agent Farinon reported that she reviewed a draft of the application with Allen Decker of the Buzzards Bay Coalition. She obtained a letter of support from the Rochester Land Trust, and submitted the application yesterday well in advance of the Thursday deadline.

**Issues with Water Management on the Mattapoissett River**

Agent Farinon mentioned there was a letter included in Members' packets from DEP to owners of a cranberry bog on Wolf Island Road. She noted that we are in the middle of a drought during the harvest season for cranberry growers. In addition, there are three beaver dams down gradient from New Bedford Road. Both the drought and beaver dams are impacting the availability of surface water in the Mattapoissett River. Agent Farinon explained she had been working with Town Counsel in determining the Commission's role in responding to complaints from growers about water management. Town Counsel Bailey advised that it is not the role of the Commission to instruct farmers how to manage their water. She stated that no action was needed by the Commission.

Member Thompson asked if the beaver dams were on the main flow of the Mattapoissett River and Agent Farinon responded yes. She noted she has been in contact with Herring Warden David Watling, and representatives of the Massachusetts Division of Fisheries and Wildlife Southeast Wildlife District. They have learned that property owners on which the dams occur may apply to the Board of Health for a permit to trap beaver. Member Gerrior asked if the beaver dams were on private property. Agent Farinon responded that one is on private property, the second is on Town of Rochester property, and the third is on land co-owned by the Rochester Land Trust and the Mattapoissett Land Trust. Member Gerrior asked about visiting the dams and Agent Farinon responded that they were remote, and she had not been there yet.

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Member Gerrior commented that the Herring Warden position was created when herring was a food source, and that the position has changed to serve as steward of a natural resource to be kept alive. He noted that over the years the role has changed from fishway management.

Agent Farinon stated the Commission's role will be to review any applications for breaching the dams, however there have been no applications made yet.

Member Gerrior asked if they had access to minutes from meetings years ago to see what the Commission did during historic droughts and understand why they did it. Agent Farinon responded that she could speak with Alewives Anonymous, Inc. Member Payne noted that beaver dams are a natural part of the environment and create more wetlands. Agent Farinon agreed and stated that beavers are a sign of a healthy ecosystem.

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

All Members present verified they could attend the next meeting on October 20, 2020.

**Minutes**

Chairman Conway mentioned several edits to the minutes from the last meeting including a correction from Certificate of Completion to Certificate of Compliance, identifying the Member who was opposed on a particular motion, and identifying the date of the minutes.

A motion to accept the minutes as amended by Chairman Conway was made by Member Gerrior and seconded by Member Bourque. Member Thompson abstained. **The motion passed in a roll call vote of 4 in favor, 0 opposed, 1 abstained (4-0-1).**

**Adjournment**

The meeting adjourned at 8:24 p.m. on a motion made by Member Bourque and seconded by Member Thompson. **The motion passed in a roll call 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