

**Rochester Conservation Commission
October 20, 2020**

Present: Michael Conway, Chairman
Léna Bourque
Christopher Gerrior
Maggie Payne (*arrived at 7:06 p.m.*)
Kevin Thompson

Absent: Daniel Gagne, Vice Chairman

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

The meeting convened by telephone and video conference via Zoom Meeting ID: 869 7634 3199. Chairman Conway called the meeting to order at 7:05 p.m. and took attendance of Members, staff, applicants, and representatives. Chairman Conway read a message about remote participation, ground rules for the meeting, and that the meeting was being recorded. He announced each presentation will be limited to 10 minutes, and 3 minutes will be allowed for public comment. All votes will be taken by roll call.

(Member Payne arrived at 7:06 p.m.)

Discuss Options for Administrative Approval of Tree Cutting, Minor Projects in 100 Foot Buffer Zone, Commission Policies

Town Counsel Bailey reported he met with Agent Farinon and Chairman Conway to discuss the options for administrative approval of minor projects, specifically tree cutting. Agent Farinon had explained to him that several Conservation Commissions enacted policies or regulations under their bylaws setting forth protocol for the agent or members to administratively approve designated minor projects without a formal filing. He noted there was a question of where to draw the line. He stated that Agent Farinon had indicated the process could be used for trees, imminent threat or other sorts of pruning. Town Counsel Bailey reported he spoke with Chairman Conway who suggested they explore other possible minor projects as well. Town Counsel Bailey stated he would put together several scenarios – one with a more limited scope and one with a broader scope. He noted that a bylaw change takes more time and effort than adopting a regulation, which can be done at a public meeting. He explained the Agent can administratively approve minor projects between meetings, and report them to the Commission at the following meeting. A vote would not be required. Town Counsel Bailey explained the Commission would not be abdicating responsibility. If a homeowner goes beyond the approved scope of work, the Commission can assert authority and require a filing. Chairman Conway asked if the issue could be put on the agenda for Town Meeting. Town Counsel Bailey suggested adding it as a regulation for the short term and then working on a bylaw change for the annual town meeting.

DEP SE 272-0536 A Request for a Certificate of Compliance was made by Donald F. Bracken, Jr., P.E. of Bracken Engineering, Inc., on behalf of Gary & Nancy Mills, for work completed on 2 Old Mill Way, Map 37, Lot 27A.

Agent Farinon shared her screen showing an as built plan of the property and completed work. She also showed two photos of the site. When she visited the site, she found it was constructed in

**Rochester Conservation Commission
October 20, 2020**

conformance with the plan as stipulated in Donald F. Bracken's letter dated September 23, 2020. Agent Farinon recommended issuing a Certificate of Compliance for 2 Old Mill Way under DEP SE 272-0536.

Chairman Conway asked if the engineer had gone on site and reviewed the property. Agent Farinon responded that it was her understanding that the engineer or someone from his office visited the property in order to compile the as-built plan. Chairman Conway noted the filing indicated the project was in substantial compliance and asked Agent Farinon if she knew of any deviations. Agent Farinon responded that she was not aware of any deviations.

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

DEP SE 272-0537 A Request for a Certificate of Compliance was made by Donald F. Bracken, Jr., P.E. of Bracken Engineering, Inc., on behalf of Anne Holbrook, for work completed on 1 Old Mill Way, Map 37, Lot 27A.

Agent Farinon shared her screen showing the as built plan submitted by Mr. Bracken. She noted the dwelling was approximately 55 feet from the edge of wetlands. She also showed several photos of the site. Agent Farinon recommended that the Commission issue a Certificate of Compliance for 1 Old Mill Way under DEP SE 272-0537.

A motion to grant the certificate was made by Member Thompson and seconded by Member Payne. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

Public Hearings

DEP File # 272-0600 An Abbreviated Notice of Resource Area Delineation filed by Ryan Young of CVE North America, Inc., 109 W. 27th Street, 8th Floor, New York, NY 10001, for property located at 0 Neck Road, designated as Lot 5 on Rochester Assessors Map 28. The purpose of the filing is to confirm 2,940 linear feet of bordering vegetated wetland boundary. The property owners are Henry & Bonnie Hartley, Trustee, The Bonnie L. and Henry A. Hartley Trust, 267 Vaughan Hill Road, Rochester, MA 02770. The applicant's representative is Richard Tabaczynski of Atlantic Design Engineers, Inc., P.O. Box 1051, Sandwich, MA 02563.

Chairman Conway noted a file number of SE DEP 272-0600 had been issued.

Ryan Young of CVE North America, Inc. introduced himself, Betsy Mason of Klavens Law Group, and Ward Smith, Wetland Scientist of Wendell Wetland Services LLC.

Mr. Smith reported he visited the site on August 26, 2019. He observed three wetlands. One was in the southwest corner of the property, which was a large, wooded swamp. A second was located in the northeastern corner that he assumed was bordering vegetated wetland, but he did not have permission to go on the property. In the third area, there were two isolated wetlands – the C and D flag series – that were possible vernal pools. Mr. Smith stated he returned to the site on March 20, 2020. He noted the C-series wetland contained wood frog egg masses, fairy shrimp, and salamander

**Rochester Conservation Commission
October 20, 2020**

egg masses. The D-series wetland was dry and likely not a vernal pool. He mentioned that he is conservative in his flagging and noted two other possible wetlands offsite.

Bill Madden of GAF Engineering was in attendance and explained he had been retained by Jim and Carriann McCarthy, abutters to the project. He mentioned that a letter had been submitted to the Commission on October 19, 2020 by the project attorney. Chairman Conway stated that the Commission received the letter, however he would not discuss the letter since it arrived the day before the meeting after the agenda meeting packet was sent out and posted on line.

Michael Kovacevich, 174 Neck Road, asked the purpose of the meeting and what was being proposed for the property. Chairman Conway explained the role of the Commission and that the Commission was reviewing the wetland delineation only, and not potential future work on the property. He suggested more information may be shared about the project if the applicant goes in front of the Planning Board. In response to a question from Mr. Kovacevich, Agent Farinon suggested that Mr. Young share his screen showing the plan with the delineation. Mr. Young shared his screen and pointed out the location of vernal pool C.

Jim and Carriann McCarthy of 189 Alley Road were present. Mr. McCarthy stated the delineation appeared to be missing wetlands they have observed. He also noted there were issues with a lack of information on the filing. Agent Farinon explained that input from abutters is helpful since they are very familiar with the land and see the property during different seasons. She asked Mr. and Mrs. McCarthy to highlight areas on a drawing that they believe are wetlands that were not included in the delineation.

Mr. Young stated he was not clear if the letter was being admitted. Chairman Conway responded that it would be admitted at a later meeting. Mr. Young asked if the Commission would be willing to confirm their application is complete. Chairman Conway stated the application was administratively complete and clarified that it referred to including the applicant's and property owner's names, signing the application, etc. Agent Farinon recommended that the Commission retain the services of a peer reviewer and explained the process. She suggested a peer review consulting fee of \$5,000.00. She also suggested continuing to November 17, 2020.

A motion to continue the matter to November 17, 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, 0 abstained (5-0-0).**

Agent Farinon stated that she will seek an estimate for peer review of the wetland delineation. She asked if Mr. Young had a conflict with two firms the Commission works with, and Mr. Young responded no.

A motion to have the applicant submit a check for \$5,000.00 to hire a peer review consultant 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).**

DEP SE # 272-0599 A Notice of Intent filed by Cushman Road Solar, LLC, Joe Harrison, P.O. Box 1320, Portsmouth, NH 03801 for property located at 0 Cushman Road, designated as Lot 11 on Rochester Assessors Map 33. The proposed project involves the creation of a ±3.9 MW DC

**Rochester Conservation Commission
October 20, 2020**

photovoltaic solar array, associated site work, and stormwater management features on the subject property. Work within the 100-Foot Buffer Zone includes approximately 69,670 square feet of tree clearing, three stormwater outfalls, grading for portions of the perimeter road, and the creation of approximately 420 linear feet of perimeter and access roads. The applicant's representative is Eric Las of Beals and Thomas, Inc., 144 Turnpike Road, Southborough, MA 01772. The property owner of record is Lisa Holden, Trustee, P.O. Box 388, Rochester, MA 02770.

Chairman Conway announced the applicant requested a continuance to November 4, 2020 to make changes to the plans. Caroline Booth of Beals and Thomas, Inc. explained they want to include a septic pipe that runs under the easement prior to opening the Public Hearing. Chairman Conway asked if it is an existing septic pipe and Ms. Booth responded yes.

A motion to continue to November 4, 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, 0 abstained (5-0-0).**

(Continued from September 1, 2020) **DEP SE # 272-0597 A Notice of Intent filed by Snipatuit Road Solar, LLC, P.O. Box 1320, Portsmouth, NH 03801, for property on 0 Snipatuit Road, designated as Lots 26, 27 on Rochester Assessors Map 46 and Lots 1, 4, 9, and 9A on Rochester Assessors Map 47.** The applicant proposes tree clearing, grading, construction of a perimeter access roadway, stormwater collection system and installation of portions of a 4.8 MW DC ground- mounted solar photovoltaic array within the 100-foot Buffer Zone to Bordering Vegetated Wetlands. Proposed work is located within Estimated and Priority Habitat for Rare and Endangered Species, and is located within the Mattapoisett River Valley Watershed. A certified vernal pool is located within the central wetland to the south of the existing access drive and another two certified vernal pools are located on the west side of the property. The applicant's representative is Beals and Thomas, 144 Turnpike Road, Southborough, MA 01772. The property owners of record are Kevin J. and Cassandra A. Cassidy, 529 Snipatuit Road, Rochester, MA, 02770, Aquidneck Nominee Trust, ET AL, Lisa Holden, Trustee, P.O Box 388, Rochester, MA 02770 and Rochester Realty Trust, P.O. Box 388, Rochester, MA 02770.

Chairman Conway stated the applicant requested a continuance to November 4, 2020 to have an opportunity to review and respond to peer review comments. Ms. Booth stated she was requesting a continuance to November 14, 2020 because they are anticipating peer review comments and want to allow time to reply. Chairman Conway mentioned the meeting was on November 17, 2020 and not November 14, 2020. He noted the request was for November 4, 2020. Agent Farinon responded that Ms. Booth sent a revised request that day.

A motion to continue to November 17, 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, 0 abstained (5-0-0).**

(Continued from October 6, 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

**Rochester Conservation Commission
October 20, 2020**

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.

Chairman Conway stated the applicant requested a continuance to November 4, 2020 to allow time to respond to peer review comments. Ms. Booth noted they had received comments from Environmental Partners and are working on a response to the comments. She anticipated providing comments by October 28, 2020 in time for the November 4, 2020 meeting.

A motion to continue to November 4, 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, 0 abstained (5-0-0).**

(Continued from September 15, 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.

Agent Farinon stated the applicant had submitted a request for continuance to November 17, 2020. Chairman Conway asked if they were awaiting Planning Board review and Agent Farinon responded yes.

A motion to continue to November 17, 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, 0 abstained (5-0-0).**

Commission Business

**For Signature
Minutes**

A motion to accept the minutes of the September 24, 2020 meeting was made by Member Payne and seconded by Member Bourque. **The motion passed in a roll call vote of 4 in favor, 0 opposed, 0 abstained (4-0-0).**

Member Bourque mentioned a change to the minutes of October 6, 2020 regarding the conversation about water management on the Mattapoissett River. She stated that a reference to the Alewives Anonymous minutes should be clarified. Member Gerrior confirmed that was what he meant.

**Rochester Conservation Commission
October 20, 2020**

A motion to accept the minutes with the correction was 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).**

Site Visit to the Snipatuit Road Project

Agent Farinon noted that the cancelled site visit to the Snipatuit Road project the previous week had to be rescheduled. Members agreed to a site visit on October 25, 2020 at 9:00 a.m.

New Business

Review Notice of Intent to Convert Chapter 61A land from Peter Beaton of Bayside Agricultural, Inc., for property off the Southeasterly side of High Street and the Southwesterly side of Pierce Street designated as Lots 8, 8A, 9A on Rochester Assessors Map 12 and Lots 6, 12, 13 on Rochester Assessors Map 13.

Agent Farinon explained that the area to be removed from Chapter 61A coincided with the area of the solar canopy. She noted that even though the remaining land is in agricultural use, they are required to offer it to the Town as a right of first refusal. She recommended that the Commission recommend that the Board of Selectmen not exercise its right of first refusal for those areas.

Member Gerrior noted that it seemed ridiculous that there was no exception, and added that it was a possible area of bylaw or regulation change in the future.

A motion for the Commission to advise the Board of Selectmen not to exercise the right of first refusal was made by Member Thompson and seconded by Member Payne. **The motion passed in a roll call vote of 5 in favor, 0 opposed, 0 abstained (5-0-0).**

Discuss Protocol for Revised Plan Submittal on Large Projects

Agent Farinon explained there were often multiple iterations of plans for large projects such as solar projects. She asked if Members wanted to see full sized plans for revised plan changes, or if they would consider 11" x 17" drawings. Chairman Conway stated he wants to see full sized plans and said he needed to see the most recent plans when modifications were made.

Old Middleboro Road Solar Project

Member Gerrior asked Agent Farinon about the pause in work on the Old Middleboro Road solar project. Agent Farinon explained that at the recently held preconstruction meeting, it was discovered there were two different final plan sets. The Planning Board closed on the project in March 2020 and the Commission closed in May 2020. The Commission had a final plan set dated in April. Agent Farinon stated the Planning Board put a hold on the project so they can review the plan changes that were made and whether they constitute a major modification requiring reopening. She stated Ken Motta of Field Engineering is reviewing the new information and advising the Planning Board. Member Gerrior asked if there were discrepancies in the plans, and if they need to adhere to the plans that the Conservation Commission approved. Agent Farinon responded yes, they have to adhere to the Order of Conditions plans of record. She explained that Henry Nover had requested the addition of interim basins to handle stormwater runoff and protect the permanent basins.

Confirm member availability for future site visits and meetings

All Members present verified they can attend the next meeting on November 4, 2020.

Rochester Conservation Commission
October 20, 2020

Adjournment

The meeting adjourned at 8:32 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).**

Marissa Perez-Dormitzer, Recording Secretary

Michael Conway, Chairman