

**Rye Conservation Commission
Thursday, October 19, 2017
7:00 p.m. – Rye Town Hall**

Members Present: Chair Sally King, Vice-Chair Suzanne McFarland, Mike Garvan, Susan Shepcaro, Jaci Grote, Jeff Gardner, Heather Reed and Lawton Struble

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chair King called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. PUBLIC HEARING

The purpose of the public hearing is to discuss acquisition of a gift of a 1.15 acres unbuildable lot at 0 Ocean Blvd., Map 8.4, Lot 158, owned by Deborah A. Anderson and assessed at \$24,200.

Chair King opened the public hearing at 7:02 p.m.

Chair King noted that the owner inherited the property, which is a lot that consists of wetlands. The unbuildable lot is located near Locke Road off Route 1A directly in front of Foss Circle. The owner is gifting the lot to the town.

Chair King opened to the public for comments. None were heard.

Chair King stated the Commission is always interested in protecting coastal wetlands. This is a great opportunity to have something gifted to the town. It is invaluable for many reasons. She continued that last year, New Hampshire received 865 million from bird watching revenue and a lot of it was coastal bird watching. This is one little fact that people don't think about. The parcel is a great piece of wetland.

Chair King called for a vote on accepting the 1.15 acre parcel from Deborah A. Anderson:

Jeff Gardner – Aye, Mike Garvan – Aye, Lawton Struble – Aye, Heather Reed – Aye, Sally King – Aye, Suzanne McFarland – Aye, Susan Shepcaro – Aye, Jaci Grote – Aye

Motion by Jaci Grote to close the public hearing at 7:06 p.m. Seconded by Heather Reed. All in favor.

III. APPROVAL OF MINUTES – September 21, 2017

The following corrections were noted:

- Under Wetland Item A, it should be noted that the lot is **17,625sf.**
- Page 5, Under Item C, middle of paragraph should read: **He pointed out there is a freshwater wetland that is not contiguous with the tidal wetland, therefore, it has no setback in Rye.**

Motion by Mike Garvan to accept the minutes of September 21, 2017 as amended.

Seconded by Jeff Gardner. All in favor.

IV. WETLANDS:

A. 0 Brackett Road Tax Map 17 Lot 34-2

Owner; Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely of 216 Caney Court Prince Frederick, MD

Joel and Lauren Feid, 7 Skyview Drive, Greenland, NH

Attorney Tim Phoenix

Engineer Corey Colwell TF Moran

Portion of dwelling and patio within 75' wetlands

Corey Colwell, TF Moran Engineering, presented the proposal to build a single family residence on a 1.9 acre parcel on Brackett Road. The property is currently owned by the Ceely Estate and was subdivided off the Ceely farm in 2010. (He pointed out the wetlands on the plan before the Commission.) He noted that within the wetland is a seasonal stream that flows onto the property, through the property and through a culvert underneath Brackett Road. When the lot was created in 2010, Rye's Zoning Ordinance had a 50ft wetland buffer, which gave the lot a significant amount of buildable area. Since that time, Rye has adopted a 75ft wetland buffer, which severely restricts that buildable area of the lot. (He pointed out the buildable area on the plan.) He explained that to fit a house, driveway, septic system and yard is virtually impossible. The proposal is for a reasonable sized 2400sf building. It has a pervious patio in the back and a shed. They are proposing a clean solution septic system. He noted that they have shown two alternative locations for that system and both are beyond the 75ft wetland buffer. He continued there is a small portion of the building, most of the patio and the grading associated with the yard would be in the wetland buffer. Separating lawn from the buffer is vegetation. The septic system and shed are completely out of the buffer. The house would be about 60ft away from the buffer. The patio would be about 55ft away. All would comply back to the old 50ft buffer as it was when the lot was created but does not comply to the 75ft buffer today. He noted that 10ft beyond the patio they tried to restrict the grading in the lawn area. The lawn will be limited to 10ft beyond the corner of the building and beyond the patio. The edge of the grading would be 24ft to the buffer at its closest point. The ordinances that are being requested from the Zoning Board are to Sections 301.8, disturbance within the 75ft buffer and 203.3, for a shed in the side yard setback. They are also requesting relief from Building Code 7.9.2.3 for the septic system to

be 2ft above the seasonal high water table. He explained that if they were to go with the 4ft requirement of the town, the system would be elevated significantly and would require additional grading. By reducing the mound, every component of the system is out of the wetland buffer.

Referring to one of the proposed locations of the septic in the front yard, Vice-Chair McFarland asked why the system is abutting the 75ft wetlands buffer and not closer to the driveway.

Mr. Colwell explained that a number of test pits were done and that is the area where the best soils were found for the leachfield.

Vice-Chair McFarland asked why the proposed shed is located way in the back and not pulled closer towards the street.

Mr. Colwell commented it was the location chosen by the applicant. It could be brought forward, however, they were trying to get the shed as far away from the abutting house as possible.

Member Gardner asked why the house could not be moved forward closer to the road.

Mr. Colwell pointed out it is right on the edge of the setback. He stated that they looked at every way of fitting the house on the lot with the least possible impact. If the house went to the front setback, the grade from Brackett Road to the driveway would exceed 6%, which is a pretty significant grade. By twisting the house and moving it back the grade would be closer to 3 or 4%.

Chair King opened to the public for comments or questions.

Tom Clifford, 95 Washington Road, stated he has two concerns. The seasonal stream is a very active stream in the season. If the stream becomes blocked or impeded in any way the water backs up, flows around the back and floods the abutter's property, which will flood his property also. The other concern is with vernal pools. He is pretty sure there are vernal pools in this area. He asked if with the slope of the property there will be more water being dumped back into the wetlands, causing a further rise in the wetlands which will impact the properties around it.

In regards to the stream, Mr. Colwell explained it is about 10ft beyond the edge of the wetlands. It is all vegetation between the yard and the wetlands. There is no proposal to impact the stream. Gove Environmental delineated the wetlands in 2010. They went back this year to verify the delineation and to search for vernal pools. They have that there are no vernal pools on the property and they have verified the wetlands.

Richard Snierston, 711 Brackett Road, stated he has concerns about the plan. Originally, this land was part of the Remick Farm and was subdivided in 2010. He thinks that Barbara Ceely would be surprised to find that her sons subdivided this lot, which is really not a good building

lot. The original subdivision plan shows that the lot was approved for a house way in the back. He stated that he and his wife would not have an objection to the proposal if the lot was a regular lot and was nice and dry. There are only two culverts along Washington Road between Brackett Road and Wallis. All of the water that drains off hundreds of acres has to go in those two places. There is a lot of water that comes down through. He noted that when there is a spring melting the water pours over the stonewall at the back of his property, crosses over his property and runs down to the culvert. He pointed out that where some grading is going to be done there are some depressions and water pools up in there. In the back of his yard, when there are heavy rains, there are puddles that will stay forever. He noted that there is a proposal for the stonewall that is about 400ft long. Approximately, 300ft of it is in the wetlands buffer. To move a stonewall along the boundary line is going to create a tremendous impact in the wetlands buffer. He pointed out that the proposed grading is within 24ft of the edge of the wetlands. The grading is going 50ft into the wetlands and they are going to clear cut the area. He also pointed out that the foundation is going within the wetlands buffer. It is about 20ft on either side of the house but they will have to dig out to 23 or 24ft, which will cause a disturbance by the foundation going out that far. They also have to dig down 8ft for the footings. Sometimes fill has to be put in before the forms can be put down for the footings.

Vice-Chair McFarland summarized his concerns:

- Water issues
- High water table
- Concerns with the disruption of the wetlands buffer
- Concern with the moving of a stonewall
- The ledge
- Clearing of the trees
- Clearing of the brush
- Concerns all related back to water

She noted that she received several phone calls from other abutters with similar concerns.

Mr. Snierston confirmed her summary.

Vice-Chair McFarland stated that **Thomas Burke, 700 Brackett Road**, has very similar concerns. Mr. Burke is planning on attending the Commission's site walk. He is also in the process of writing to the ZBA but would like to hear the Commission's recommendations first. She reiterated that there are several other abutters who may be showing up at the site walk and will be writing letters to the ZBA.

Speaking to Mr. Colwell, Member Garvan pointed out that he did not ask for any relief for moving the stonewall. He asked if this will cause disturbance in the wetlands buffer.

Mr. Colwell explained that if it is done mechanically there will. Right now, it is an idea that was put on the plan. If it is mechanical that would require a variance to go into the buffer. If the

Commission feels that is going to compromise the buffer in any way, the relocation of the stonewall would be abandoned and it would be limited to a smaller section. He continued that one of the concerns of Mr. Snierston was in regards to drainage. (He reviewed the water flow on the plan for the Board.) He commented that they graded it such that the roof runoff would be coming off, most of it would be intercepted by the pervious patio and infiltrated into the ground. The only runoff that would be leaving and going into the wetlands would be rain water. All roof water is designed to be captured by the pervious patio. They are not introducing additional runoff into the wetland. He pointed out that before a building permit is issued the Building Inspector will require a Stormwater Management Plan. With regards to the Planning Board approving the lot in the back that is not the case. He did the subdivision and presented the plan to the Planning Board. He agrees that they showed a buildable area in the back; however, the purpose of that was to demonstrate to the Board that a house will fit on this lot. There is no requirement to put the house in that back buildable area. On that same plan, there was a triangle shown in the front with a 44ft front setback, 75ft septic and side yard setback, indicating that this was a buildable area as well. The Planning Board does not require it to be shown that this is the only area a house can go. They require it to be shown that a house will fit on the lot.

Chair King asked if the house would fit on the lot with no variances.

Mr. Colwell explained that at that time a house could fit on the lot with the 50ft buffer. Now there is a 75ft buffer; however, even building in the back would require a variance. Building in the front or back would require similar variances. He continued that soil is all dictated on the septic plan. A High Intensity Soil Survey is not required for a septic design, nor for a variance application.

Member Gardner asked if it would be possible to build the house in the requested location without variances.

Mr. Colwell replied no. He explained that a smaller house could probably be fit in; however, some removal of trees and grading would occur in the buffer.

- **Site Walk scheduled for Wednesday, October 25th, 4:00 p.m.**

B. 1237 Ocean Blvd Tax Map 17.3 Lot 3
Owner: Judy and Frank Scott
Generator within the 100' buffer

Motion by Jaci Grote to table the application for 1237 Ocean Boulevard. Seconded by Mike Garvan. All in favor.

C. 1233 Ocean Blvd Tax Map 17.3 Lot 5

Owner: Peter J. Aikens, Jr.

Replace current gravel driveway with permeable paver driveway Aurelindo Cunha, Landscapes by Aurelindo

Justin Cunha, Landscapes by Aurelindo, presented the proposal to the Commission to replace the existing gravel driveway with permeable pavers. This will consist of 6 inches of 1.5 inch stone with another layer on top of that of ½ inch stone and peastone. Variances are not needed for the project.

Member Gardner asked about the maintenance for permeable pavers.

Mr. Cunha explained that in regards to cleaning out filter fabrics nothing has been talked about through any of the stone companies. There are a few others that have been done in the area right on Ocean Boulevard. There have not been any issues. There is no specific maintenance that needs to be done.

- **Site Walk scheduled for Wednesday, October 25th, 4:45 p.m.**

D. 300 Pioneer Road Tax Map 24, Lot 111 Charles Sampson – continued to November per Ambit Engineering and owner Ambit engineering, Steve Riker DES Application for garage in wetland buffer

Motion by Jaci Grote to continue the application for 300 Pioneer Road to the next meeting. Seconded by Susan Shepcaro. All in favor.

E. 255 Central Road Map 008 Lot 012

Owner: Tour Auto of NH LLC

Mark Olson, Landwright landscaping

Tree cutting request and working in wetlands buffer

Mark Olson, Landwright Landscaping, spoke to the Commission in regards to 255 Central Road. He explained that they have been doing a project at the property. It was discovered by members of the Commission that the fence was in the wetlands buffer; about 8 posts of 30. (He pointed out the area in question on the plan for the Commission.)

Vice-Chair McFarland explained that she and Member Garvan went to the site because there was some discussion with the Building Inspector about trees. They asked Mr. Olson to come before the Commission so the project could be presented and a site walk be scheduled. This way the Commission can make a recommendation on the trees because some are actually in the wetlands and buffer, and there was discussion of losing some pavement.

Mr. Olson stated they were interested in cutting out some trees that are in the buffer very close to the actual wetland. The owner is willing to postpone that idea. He noted a variance would be needed to cut the trees and they are not significant to the project so they will not be cut. He continued that the fence has been installed. A lot of fence and asphalt pavement has been taken out. He pointed out that there is really no more work to be done on the project, except for the removal of about 400ft of asphalt in the buffer.

- **Site Walk scheduled for Wednesday, October 25th, 3:30 p.m.**

F. 45 Washington Road Tax Map 017 Lot 073

Owner: Amy and John Shafmaster

The owner for the property was not present. The Commission agreed to try and schedule a site walk before the next meeting.

Motion by Jaci Grote that if a site walk is not completed between now and the next meeting, the application will be continued to the November meeting. Seconded by Mike Garvan. All in favor.

Motion by Jeff Gardner to take the discussion with Brian Murphy regarding the Town Forest out of posted agenda order. Seconded by Mike Garvan. All in favor.

- **Brian Murphy - Town Forest**

Brian Murphy, 496 Wallis Road, met with the Commission to discuss expanding the use of the Rye Town Forest to connect the recreational resources with the center of town. He noted that they have put together five suggestions over the last 10 months, in speaking with people who are impacted by this scenario of having students and athletes who are in the middle of town and having resources at the recreational area by linking those two together by using the existing Rye Forest Trails. When this was first discussed, there were members of the Commission who were concerned whether or not this would be conforming with the easement of the Town Forest. He noted that the suggestions that have been made are consistent with the easement. There is nothing that is being suggested that would violate the Rockingham Conservation Easement that is associated with the forest. He continued that these are things that are not a big expense. There are things that already exist and may just need to be repurposed. He stated that he and others went through this warrant article process because there are different opinions about how the Town Forest should be preserved and used. It was put in a warrant article and presented to the people about whether or not there was interest in increasing the access of the Town Forest and use it as a resource to link the center of town to the recreational area. He explained that they would not change anything outside the forest. It is really looking at the forest and having one dedicated trail that would be for access to the recreational area. There should be signage for that purpose and maintained for that purpose.

Member Garvan, commission liaison to the Town Forest, stated that he does not think there is an issue with improving signage in the forest. That should probably be done anyways for many of the trails. He thinks it is fine to have a better kiosk that not only informs people about the trails but some of the permitted and allowed uses. He continued that he thinks it varies a little from the intent of the easement in that it is not using the Town Forest as a piece of nature to enjoy but as a thruway from one spot to another. There has been some concern from other citizens that the Town Forest is beginning to get over used. There was concern that there has been an increase in dog walkers and traffic, perhaps more than the forest can withstand. Certainly, Rye residents should be able to use the Town Forest but he is not sure if there should be a big sign on the road stating "Town Forest". He stated they are in the process of updating the Forest Management Plan. The Conservation Easement specifically states that the Forest Management Plan has to approve uses such as this. As he understands it, they are not talking about wood chipping, widening or doing anything to the trails, other than making it fairly obvious how to get to Point A and Point B.

Vice-Chair McFarland commented that number 3 says "widen and improve".

Mr. Murphy commented the yellow trail is probably the most direct trail to the recreation field. If this becomes the marked trail, he does not suggest that anything has to change for the continuity of being on one trail. He commented that the area where the stonewall is located is where he was thinking the trail should be moved on the other side of the wall and the markings be made distinguishable.

Chair King noted that she and Member Shepcaro walked the forest and this was not the path that they thought was the best path.

Member Shepcaro noted the crosswalk across from the junior high is located more towards Parson's. It would be important for the students to go in through that crosswalk. She also has some concerns about the students walking down the access road to get to the kiosk area.

Chair King asked if a site walk could be set up with the Commission. Some of the issues would be so obvious if it was walked all together.

Member Grote stated it is important that the children have a safe place to cross the street. It is best not to have people walking down the dirt road. She commented that there is no hunting in the Town Forest; however, there is hunting outside the forest. The children who walk in the Town Forest should be appropriately dressed. This is something that should be communicated to the parents who are involved.

Mr. Murphy noted that there are a group of people who are willing to donate their time to help maintain the forest. Some parents have suggested organizing fall and spring cleanups to help make this a worthwhile effort for both sides.

Graham Phillips, 730 Long John Road, spoke in support of the project.

- **Site Walk scheduled for Wednesday, November 1st, 4:00 p.m. – (starting at the junior high)**

V. STATUS OF RESTORATIONS/VIOLATIONS/NHDES CASES:

A. 25 Appledore, Tax map 19.4 Lot 52

- Continued with NH DES and the Town.

B. 245 Pioneer, Tax Map 024 Lot 118

- Continued with the Town.

C. 335 Washington Road, Tax Map 016 Lot 122

- A second Notice of Violation was sent by the Building Inspector. An email was received from Steve Riker, Ambit Engineering, stating they are continuing the work. A site walk was not conducted on 335 Washington Road because the Building Inspector did not respond to any of the dates proposed. The Commission needs to do a site walk with the Building Inspector.

D. 243 Parsons, Tax Map 19 Lot 103

- The Commission needs to schedule a site walk with the Building Inspector, waiting for a response.

E. 60 Park Ridge, Tax Map 19.4 Lot 17 - Ferguson

- **Attorney Kevin Baum**, representing the property owners, spoke to the Commission. He explained the owner began the process of cutting the trees. The trees were not on his land and this has been rectified. The goal is to work out what the options are with respect to those trees, which have been referred to by the Fergusons' insurance provider as being potentially hazardous trees. His clients feel there is some risk and danger to this situation. They are hoping they can come to some compromise.

There was some discussion on which trees should be allowed to be cut.

The Commission agreed that the limb tree needs to be topped so it can't strike the house should remain. The tree that has most of the branches towards the property seems like it is enough of a threat to the house and may come down. The tree over the drive will

be left but trimmed. The Commission also agreed the mowing into the conservation area, in the back and on the side, should be eliminated and the area returned to its natural state. The conservation land should not be disturbed and native plantings should be put in, with some of them being trees. The Commission requested a planting plan before work is started.

Attorney Baum agreed to get a plan back to the Commission for review.

F. 650 Long John Road, Tax Map 016 Lot 145

- The Commission is waiting for a response from the Building Inspector on a site walk date.

G. 35 Recreation Road, Tax Map 012 Lot 083

- A Notice of Violation was submitted by the Building Inspector. He requested a plan to be submitted to NH DES for permitting with a copy of that plan being submitted to the Town. Member Grote will follow up with the Building Inspector on the status.

H. 200 Parsons Road, Tax Map 19 Lot 115

- A Notice of Violation was issued for paving of the driveway in the wetlands buffer. The Commission will be following this case.

Chair King noted that the new building inspector, Chuck Marsden, will be working directly with the Conservation Commission on applications and wetland violations.

Vice-Chair McFarland noted that the ZBA will be sending the Notices of Decisions for cases that involve the Conservation Commission. This should tell the Commission the conditions of the approval and if the Commission needs to follow up on the property. The ZBA also has requested pictures from the Commission with the letters of recommendations that are sent on each application. The ZBA would also like to know why the recommendations are being made by the Commission. Also, applications before the ZBA that have not been seen by the Conservation Commission will be continued until it is presented to the Commission.

VI. BILLS

- **NH Association of Conservation Commissions - \$463.00**

Motion by Jaci Grote to pay NH Association of Conservation Commissions in the amount of \$463.00. Seconded by Mike Garvan. All in favor.

VII. CORRESPONDENCE

VIII. OTHER BUSINESS

A. Brian Murphy - Town Forest

(Addressed above)

B. Tree cutting and Non-Building Land Development form – Jeff Gardner

There was discussion in regards to the new form that is now required by the Building Department for the cutting of trees on properties. This is now being required because of the recent cutting of trees on conservation land and in the buffers.

Member Gardner noted that he does not like the idea of having to fill out a form in order to cut trees on his property that are perfectly legal to cut and are not in violation of the zoning.

Member Grote commented that the form is not going to prevent people from cutting trees. People are not going to go get a form and pay a fee to cut down a tree.

Member Struble suggested a regulation that requires the form to be filled out any time a tree service company is going to do work on a property, such as a Tree Service Form.

Member Grote will follow up with the Building Inspector on the need for the form and possible ways to handle the issue.

C. Susan Shepcaro items – Goss Farm farmer, posting notices of hunting dates

Member Shepcaro requested permission to post notices of hunting dates around the perimeters of the Goss Farm.

The Commission agreed that signs should be ordered to address hunting and trails, and should be posted on all conservation land where appropriate.

Member Shepcaro commented that the current Goss Farmer is not going to be continuing. She suggested getting UNH interns through the sustainable farming program under the supervision of master gardeners.

Chair King stated this would be great in conjunction with a farmer who signs a contract to farm.

Member Shepcaro suggested speaking with the program coordinator at UNH to see if they would be interested in offering this as a type of internship. She will do some research to see if this would be something of interest.

- Member Garvan noted that he has received a legitimate complaint from Shawn Joyce and Dave Tilton about people trespassing on their properties and dogs running deer. The people and dogs are coming from the Town Forest onto private land. In some cases they have photographic evidence. He continued that Mr. Joyce has reached out to Fish and Game who may be walking the area. Mr. Joyce would like to have a representative from the Conservation Commission present. He pointed out that the conservation officer may be able to give some insight on language for the kiosks and newsletters. They may also have ideas on how to address the dogs running deer. He will follow up with Mr. Joyce about a date for the site walk with Fish and Game.
- Vice-Chair McFarland stated that Jim Verra has asked that any requests for surveys from the Commission be submitted to him in the next two weeks so he can see if they will fit into his schedule.

IX. NON-PUBLIC SESSION (1) per RSA 91-A:3, II (d) Acquisition (2) per RSA 91-A:3, II (e) Legal

At 9:52 p.m., Jaci Grote made a motion to go into Non-Public Session. Seconded by Lawton Struble.

Vote: Gardner – Yes, Garvan – Yes, Struble – Yes, Reed – Yes, King – Yes, McFarland – Yes, Shepcaro – Yes, Grote – Yes

The Commission came out of Non-Public Session at 10:40 p.m.

Motion by Jaci Grote to seal the minutes of the Non-Public Session. Seconded by Suzanne McFarland. All in favor.

ADJOURNMENT

Motion by Jaci Grote to adjourn at 10:41 p.m. Seconded by Lawton Struble. All in favor.

Respectfully Submitted,
Dyana F. Ledger