

RYE CONSERVATION COMMISSION MEETING

**Thursday, March 12, 2020
7:00 p.m. – Rye Town Hall**

Members Present: Chair Sally King, Vice-Chair Suzanne McFarland, Mike Garvan, Susan Shepcaro, Jeff Gardner, Heather Reed and Alternates Danna Truslow and Karen Oliver

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. APPROVAL OF MINUTES

- February 13, 2020**

The following corrections were noted:

- Page 3, 4th paragraph from bottom, last sentence should read: **It is not yet known if other carriers will be added; however, that has to be planned for because it is required by the code and that is what the industry does.**
- Page 6, 1st paragraph, 4th sentence should read: **It is not known where the current tanks are located; however, the existing system seems to be functioning well.**
- Page 8, paragraph 5 ‘G’, 4th line should read: **She has spoken with the folks from the Rye’s Farmer’s Market to see if people would be willing to take a day a week to sell at the Goss Farm.**
- Page 10, under ‘Bills’, it should be noted that the reimbursement to Suzanne McFarland for Southport Printing should be listed as **\$90.00.**

Motion by Mike Garvan to approve the minutes of February 13, 2020 as amended. Seconded by Susan Shepcaro. Vote: 5-1 Abstained: Suzanne McFarland.

III. WETLAND APPLICATIONS

A. 1611 Ocean Blvd, Tax Map 23, Lot 06

Matt Barton – landscaper
BOA – NOD landscaping plan

- ***Continued as the presenter was not able to attend the meeting.***

B. 120 Garland Road, Tax Map 07, Lot 113

Owner: Zachariah U. Malpass
Mark West – West Environmental
Dam, Bailey’s Brook

Chair King noted for the record that the Conservation Commission has hired counsel for this case. The Commission has environmental concerns about the potential impact on the Atlantic White Cedar Swamp/Forest and Bailey's Brook. The Commission is also working with the Board of Selectmen to hire an environmental expert, at the Town's sole cost, to determine what studies need to be performed to look at the potential impacts to the area. The Commission will listen to the presentation at this meeting and will move it forward to a later date. A site walk will also be set up as part of the process.

Mark West, West Environmental, stated that he was asked to delineate the wetlands for the project and prepare the new application with the necessary attachments. He understands that there may be a need for additional information. He will take into account the Commission's request for any specific information that they would like. He continued that Mr. Malpass purchased the property in 2004. There was a previous 1991 permit for a woods road. (He pointed out the parcel on the plan before the Commission. He also pointed out the location of the structures, barn and large wetland complex.) He explained that the area highlighted in yellow on the plan is the delineation that was done by NH Soil Consultants back in 2000. He did not re-delineate those wetlands because work was not done in that area. He focused his delineation on the area for the permit. The blue section on the plan delineates the area for the crossing which was constructed to access the wood lot and was done under a standard permit. It was not a temporary Minimum Forestry Permit. It was a permanent crossing with a culvert. He noted this is the area for the structure in question.

Mr. West stated that in addition to building some structures in that location, Mr. Malpass continually had issues with beavers building dams and blocking the culvert. He also had issues with the rise and fall of the water creating phragmites behind the beaver dam. In 2013, Mr. Malpass built a weir and did not understand the need for a permit for that work. That is the reason this case is at the Commission this evening. An after-the-fact application has been submitted to retain that weir. Mr. West continued that there is 300sf of impact and there are photos in the Commission's packet showing the weir. (Mr. West reviewed a plan before the Commission that showed the access road crossing, the wetlands, and adjacent property, which is owned by the Rye Water District. He pointed out the location of the weir structure and an overflow pipe that was installed.) He explained that the pipe sticks out over the wetlands and property boundary. The proposal is to cut the pipe back to the wetland boundary. The impact was calculated at 200sf and 300sf, including the temporary impact for sandbags during construction. The weir has an opening that is larger than the actual pipe. One of the ways to solve the phragmites issue and the beaver issue was to build the weir so the water levels could be controlled. Mr. Malpass has not had any problems with beavers since the weir was constructed in 2013. Mr. West noted that it is about a 1.2-acre area of water that is impounded to the rear. It is several hundred feet upstream and then turns into a forested wetland. It goes from open water, to emergent, scrub shrub and wooded swamp.

Mr. West noted that aerial photos have been included in the application package. The photos show the wetlands system in 2008 and a stream channel. The weir was constructed right in the bed of the stream channel. In addition to the application, Mr. West prepared a functional assessment to address questions of impacts on functions. Mr. West explained there are some functions of the wetlands that are improved by the weir; such as, more flood storage capacity, because water is being retained in the wetland, and more open water habitat, which increases water quality function of the wetland. He reiterated that this is 1.2-acres of impounded water, which is generally 2ft to 3ft at its deepest. The wetland complex downstream is about 180 acres, which also includes the Atlantic White Cedar Swamp.

Chair King asked Mr. West the first year that he became involved in this case.

Mr. West replied it was early March of 2019. He noted that he has been to the site several times and has looked at several aerial photos.

- **Site Walk date to be determined depending on availability of the Commission's counsel. Chair King will contact Mr. West with a date.**

C. 40 Brackett Road, Tax Map 022, Lot 090

Owner: Eric A. Cummings and Cheryl Ann G. Loren
Ambit Engineering – Steve Riker
Attorney Tim Phoenix
New septic system and porch

Attorney Tim Phoenix, representing the applicants, spoke to the Commission in regards to the project for 40 Brackett Road for a new septic system and porch. He understands from Steve Riker that the main issue with the plan was that the Commission wanted to see some plantings. The plans now show sixteen plantings along the edge of the wetland close to the septic slope.

The Commission reviewed the plans.

Referring to the plans, Member Garvan noted that the plantings do not go along the entire property line. The property is in the buffer and the Priority Protection Zone. He does not understand why it would not extend down past the stone firepit.

Attorney Phoenix commented that he will make this recommendation to Mr. Riker, if this is what the Commission would like.

Referring to the site walk minutes of January 15th, Vice-Chair McFarland noted that the Commission recommended to Mr. Riker that native plantings be planted along the wetland boundary of about 80 feet in length and 5 feet in depth.

After reviewing the plan, it was felt that the length of the plantings is probably 80ft. There may be existing plantings in the area extending beyond the firepit. The plan seems to be consistent with the recommendations of the Commission and a letter will be sent to the BOA.

D. 33 Sagamore Road, Tax Map 024, Lot 06

Owner: Mike Labrie
Altus Engineering – Eric Weinrieb
Attorney Tim Phoenix
New building

Eric Weinrieb, Altus Engineering, presented the proposal for the construction of a new building with barn at 33 Sagamore Road. Mr. Weinrieb reviewed the treatment for the runoff on the site.

Mike Labrie, applicant, explained that this is Phase II of a plan that involves The Atlantic Grill and the area located at the rotary. The intent is to create a village atmosphere and the building/barn being

proposed for this lot is designed with the historic character of an 1800's building. The plan is to combine the use of the site for herb and flower gardens, along with honey and maple syrup production. One section of the building will be used to conduct classes on sustainable gardening, honey and syrup production, foresting and cooking classes. Shoals Marine Lab will be holding classes on the site. The Seacoast Science Center will also be conducting classes, along with the Strawberry Banke Museum. He continued that there will be a lot of heirloom and unique varieties of plants grown at the site that will be brought into the menus for The Atlantic Grill and his other restaurant in downtown Portsmouth.

Vice-Chair McFarland asked how much acreage will be planted on the site.

Mr. Labrie replied that it is not necessary to plant large gardens. The area has not been plotted out yet; however, he wants it to remain a beautiful meadow. (He pointed out on the plan the area behind the proposed buildings where there may be herb gardens and landscaping.)

Vice-Chair McFarland noted that this property is in the Restoration Priority Area. If there is an opportunity to restore or protect this area, Conservation and the land boards are to look at these areas to weigh-in.

Mr. Labrie explained that they do not have a need to do intensive commercial planting or growing to achieve what they are trying to do. There is plenty of area outside the wetland buffer for planting.

Vice-Chair McFarland asked if this could be marked out for the site walk.

Mr. Labrie agreed.

Mr. Weinrieb reviewed the area outside the wetland buffer on the plan for the Commission. He also reviewed the square footage for the new building, which has a total footprint of 3,496sf. The second floor is a mezzanine which is one-third of the barn area.

Variances being requested from the BOA for:

- Corner of the building, pavement, and retaining wall in the front setback;
 - Building height greater than 35';
 - Disturbance for building pavement in 75' wetland buffer;
 - Disturbance in 100' buffer;
 - 9' parking stall where 10' is required; and
 - Parking in the front setback.
-
- **Site Walk scheduled for Wednesday, March 18th, 4:00 p.m.**

IV. OTHER BUSINESS

a. 1090 Washington Road, Driftwood Equestrian Parking Plan

The property owner and property manager for Driftwood Equestrian located at 1090 Washington Road met with the Commission to discuss and review proposed parking for the site. Four different proposals were presented and reviewed. There was discussion on the size of the horse trailers that would be expected and the length of time they would be on the site. It was confirmed by the property owner that there would be no overnight parking for the horse trailers on site. It was noted that Plan A has enough

parking space for 40 trailers, which is the preferred option of the property owner as it is felt it would be the least impactful to the land.

After discussion, Chair King recommended that the Commission hold a site walk and invite the Fire Chief to attend.

Referring to Plan A, Alternate Truslow suggested that some stakes and flagging be set up for the site walk to give them a better idea of the parking area.

There was some discussion about how many horses could be on the property at any one time versus how many would be in a class.

- **Site walk tentatively scheduled for Tuesday, March 24th, 4:00 p.m., pending Fire Chief availability.**

The property manager and property owner discussed their proposal to install a gate across the driveway near the location of the house. The intent is to keep horses from running into the road.

b. Forest Green drainage

Alternate Truslow stated that at the recent BOA meeting, abutters of 381 Sagamore Road were in support of taking the discharge pipe, which runs out of the cellar, and putting it into a dry well. The abutters felt there were a lot of problems with the constant running of that sump pump into the wetlands. The Wilsons and their immediate neighbor were at the meeting. Both of them said that things are getting wetter and wetter in that area. They also referred back to when the development of Forest Green went in and felt the wetland had become more backed up. Alternate Truslow wonders if it makes sense to get a look at the drainage in this area to determine if it might be an issue. She wanted to bring up these concerns to the Commission.

Chair King stated that the concerns are valid; however, she is not sure how they would approach it. She suggested speaking with the Public Works Director, Dennis McCarthy, about the drainage in that area.

c. Morgan Court – bird watching

Member Shepcaro recently visited the conservation parcel on Morgan Court. She found the parcel to be a great place for bird watching and may be a beautiful spot for a bench.

d. Jet ski update

The Bill regarding the restriction of Jet Skis passed in the House and is now on to the Senate.

e. House bill updates

**No other House Bill updates.*

f. Natural Resource Inventory (NRI) Workshop

The Commission discussed a possible NRI Workshop for May and who would be interested in attending. The NRI is an important piece in how the Town will be looked at when applying for grants for

conservation funding. It identifies priority areas in the Town and provides a base line for existing resources. This is a working document and is updated approximately every two years.

Scheduled for Thursday, April 2nd, 11:00 a.m.

g. Water Resource Workshop

The idea is to have Tracy Degnan, Rockingham Planning Commission, give a presentation on buffers and buffer restoration, followed by inviting Eben Lewis, NH DES, to discuss what can and cannot be done on private properties.

Members who are interested in the Water Resource or NRI Workshops may email Suzanne McFarland.

- Landscaping for Water Quality Workshop being held on March 26th and 27th in Derry, N.H. by UNH Cooperative Extension.
- The Coastal Flood Guidance Meeting is scheduled for March 31st at 4:45p.m. at the Seacoast Science Center.
- Member Reed has setup a Facebook Page for the Conservation Commission. She will send login information to the members. She will also send information about the site to the selectmen's secretary to be posted on the Town's website.

V. ELECTION OF OFFICERS

Motion by Sally King to nominate Mike Garvan for clerk. Seconded by Susan Shepcaro. All in favor.

Motion by Mike Garvan to nominate Suzanne McFarland as chair for the Rye Conservation Commission. Seconded by Sally King. All in favor.

Motion by Suzanne McFarland to nominate Sally King as vice-chair. Seconded by Susan Shepcaro. All in favor.

Conservation Commission terms are ending for Mike Garvan, Heather Reed and Danna Truslow. A letter of intent to stay on the commission would be required from the members to send to the select board, along with a letter of recommendation from the Conservation Commission Chair.

Member Gardner noted that he would be interested in moving to an alternate position. Suzanne McFarland will find out if an alternate already on the commission can fill his remaining term and/or if the position has to be advertised as being open. Danna Truslow will wait to write her letter for this information, as she would be interested in filling that position.

VI. CORRESPONDENCE

- a. NHDES septic system approval #2020-00109, 40 Brackett Road, Tax Map 22, Lot 90
**received and noted*
- b. RCCD – 2019 Holway Easement completed

**received and to be filed*

- c. It was noted that a letter was received from the Bookkeeper of the Trust Funds asking for the Commission to vote to have a check processed from the Conservation Commission's escrow account in the amount of \$2,733.00 to the Town of Rye to reimburse the General Fund for expenses related to the Goss Farm Open House between September and October 2019.

Chair King stated that she does not feel this is accurate because there was a \$5,000 donation from Tony Jalbert for Goss Farm Day. A portion of those donated funds were used and the rest was to go to Conservation. She believes the amount of \$2,733.00 is supposed to go to the Conservation Commission Account.

Motion by Mike Garvan for the Conservation Commission to receive the amount of \$2,733.00. Seconded by Suzanne McFarland. All in favor.

VII. BILLS

Motion by Suzanne McFarland to pay the following bills:

- **Tractor Supply company – Sally - \$62.10**
- **Attorney Michael Donovan – \$647.50**
- **James Verra Surveying - \$4,987.76**
Tax Map 004-032, James Raynes conservation land – encumbered funds
- **James Verra Surveying - \$520.66**
Tax Map 004-25-2, James Raynes conservation land – encumbered funds
- **Eversource - \$62.31 – Goss Farm**
- **RCCD – Inv. #87132 - \$3,350.00 – 2019 Herbicide treatment – invasive control**
- **RCCD – Inv. #87216, \$2,750.00 – invasive control**
- **RCCD – Inv. #87304 - \$1,022.90 – land acquisition costs**
- **Cintas Fire Protection - \$322.00**

Seconded by Mike Garvan. All in favor.

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

At 9:21 p.m., Mike Garvan made a motion to go into Non-Public Session per RSA 91-A:3, II (e) Legal and RSA 91-A:3, II (d) Acquisition. Seconded by Suzanne McFarland. All in favor.

Roll Call: Jeff Gardner – Aye, Mike Garvan – Aye, Karen Oliver – Aye, Sally King – Aye, Suzanne McFarland – Aye, Heather Reed – Aye, Susan Shepcaro – Aye, Danna Truslow – Aye.

The Commission came out of non-public session at 9:50 p.m.

Motion by Suzanne McFarland to seal the minutes of the non-public session. Seconded by Mike Garvan. All in favor.

Roll Call: Jeff Gardner – Aye, Mike Garvan – Aye, Karen Oliver – Aye, Sally King – Aye, Suzanne McFarland – Aye, Heather Reed – Aye, Susan Shepcaro – Aye, Danna Truslow – Aye.

ADJOURNMENT

Motion by Jeff Gardner to adjourn at 9:50 p.m. Seconded by Susan Shepcaro. All in favor.

Respectfully Submitted,
Dyana F. Ledger