

# **RYE CONSERVATION COMMISSION**

Thursday, March 16, 2017

7:00 p.m.

Rye Town Hall

***Members Present: Chair Sally King, Mike Garvan, Suzanne McFarland, James Raynes, Jaci Grote (arrived 7:13 p.m.) and Alternate Heather Reed.***

## **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 16, 2017**

**Motion by James Raynes to approve the minutes of February 16, 2017 as presented. Seconded by Suzanne McFarland. All in favor.**

## **III. WETLANDS:**

- A. John Thonet: 2316 Ocean Blvd., Map 5/Lot 54-1  
Steve Riker, Ambit Engineering**

- Project would require a NHDES Minimum Impact Expedited Wetland Application Permit
- Proposed work totals 80 sq. ft. of permanent impact and 235 sq. ft. temporary impact within Tidal Buffer Zone
- Project proposes repair to walls of existing revetment/sea wall, and installation of a flag pole with granite base.

**Steve Riker, Ambit Engineering**, presented the proposal to the commission. The repair of the sea wall and installation of flag pole will be completed by Greg Bauer, Bauer Construction.

Member McFarland noted that the commission has been to the property for work in 2014.

Mr. Riker confirmed. The project in 2014 was for pavers, an outdoor shower, generator and second story deck. Referring to the current project, he continued that the applicant is also proposing a granite cap to the existing stonewall that is outside the buffer.

- **Site Walk scheduled for Friday, March 24<sup>th</sup>, 4:00 p.m.**

**B. Manuel & Carol Barba: 740 Washington Rd., Map 011/Lot 103**  
Steve Riker, Ambit Engineering

- **Continued**

**C. John E. McCune Jr.: 234 Parsons Road, Map 19/Lot 013 (Continued)**  
Steve Riker, Ambit Engineering

- Review ZBA decision requiring gravel removal and planting proposal

**Steve Riker, Ambit Engineering**, explained that the ZBA approved the applicant's request for zoning relief. As part of that approval, the ZBA is requiring that the gravel, near the wetland boundary, be removed. (He pointed out the gravel area on the plan for the commission. He also reviewed the planting proposal.)

Chair King asked if the landscaper who will be doing the work could be at the site walk.

Mr. Riker stated that he will ask the property owner; however, he is not sure if a landscaper has been hired for the work yet.

The commission reviewed the planting proposal.

Member McFarland noted that the Building Inspector had sent an email stating that the plantings and gravel removal must be completed by September. He would also like a follow up letter from the Conservation Commission on their review by May.

The commission agreed to schedule a site walk at the April meeting for this property, as the weather will allow for better viewing of the site. The commission also requested the landscaper to be present at the site walk.

- **Application to be addressed at the April Meeting.**

**D. Charles and Lindsay Beynon: 30 La Mer, Map 13/Lot 44**  
Attorney Christopher Mulligan

- Variances requested from - Section 301.8B(1), 301.8B(2) and 301.8B(7) for a driveway 47.9' from tidal marsh, for an impervious walkway 52.4" from tidal marsh and for a building 55.6' from the tidal marsh where 100' is required.

**Attorney Christopher Mulligan, representing the applicants**, spoke to the commission in regards to the proposal and variances being requested from the ZBA. He noted that the proposal will impact the 100' wetlands buffer. Most of the garage is within the 100' wetlands buffer. The proposal includes eliminating the existing impervious surface drive that slopes towards the

wetlands. That will be replaced with permeable pavers. The amount of impermeable coverage is going to decrease with this proposal. Although, the structure will be somewhat larger than what is there now. The existing home is approximately 1,848sf. The proposed is approximately 2,694sf. He reiterated that the existing impervious drive and hammerhead turnaround will be removed. That will be replaced with a permeable paving system. The total impervious surface is currently 9.6% of the total lot coverage. This will be decreased to 8.7%, which is about a 4,000sf reduction in impervious surface. He noted that the 100ft buffer is already a disturbed site. It has already been disturbed. From the stonewall in, there is fill with a lawn built on top. He pointed out that what is being proposed is actually more beneficial to the wetlands than what currently exists.

Chair King noted that the Conservation Commission is also an abutter to this property.

Attorney Mulligan pointed out that the septic system was recently upgraded. This is not changing and is outside the buffer. The system is adequate for the four bedroom home that is being proposed. He also pointed out that the existing home has an accessory apartment, which will be eliminated with the new proposal. He continued that the proposal calls for a foundation drain. The foundation drain will not be taking runoff from the roof or driveway. It will be used for pulling clean groundwater away from the foundation.

Chair King asked if the property is being regraded.

Attorney Mulligan explained that the existing driveway that slopes towards the wetlands will be somewhat disturbed to improve the grade and install the permeable driveway. Other than that, he is not aware of other regrading that is necessary.

- **Site Walk scheduled for Friday, March 24<sup>th</sup>, 4:30 p.m.**

**Note:** *The following was taken out of posted agenda order.*

- **John Chiaramito: Goss Farm Easement and Hunting**

**John Chiaramito** spoke to the commission in regards to his concerns of the prohibition of hunting at Goss Farm. The entire Goss Farm property is posted as “All Hunting is Prohibited”, which is contrary to his understanding of the Goss Farm Conservation Easement Deed, Item K, which states hunting is permitted in areas not utilized during the growing season. He asks that the commission reconsider posting areas outside of the growing season and growing areas as “no hunting” and permitting hunting at the Farm. He spoke to the commission about bow hunting during turkey season.

Chair King stated that when the property was purchased, it was purchased with 49% Farm and Ranch Land Protection. Agriculture and forestry uses are paramount to how the commission was able to purchase the land for the Town. She noted that there is a barn and blueberries that were planted by students in June. There is a beekeeper who is on and off the property all year long. There is a hoop house with an adjacent field that is used by the resident farmer for farming. In

addition to the community gardens, there is a school garden and a pollinator garden near the wetlands. There is a viewing platform overlooking Awcomin' Marsh. She noted that there is a lot of activity that takes place on the farm throughout the year. She reiterated that the commission is obligated to use the property for agriculture. She continued that there is education history that happens at the farm through the school, at least two or three times per year. People will visit the site to help with invasive species removal periodically during the year. Earth Day Activities and UNH Cooperative Extension have done projects during the year on the site. There are many uses to the farm, other than just during the growing season. She agreed that the easement does say that hunting is allowed; however, they need to make it all work.

John explained that a fair compromise would be to allow bow hunting, given that it is much safer than firearms. This would be a safe way to allow people access to another recreational use.

Chair King asked if the hunting would take place during early morning hours.

John replied that it begins a half hour before sunrise and has to be done before 12 noon.

Member McFarland asked why this land is being chosen.

John explained that it seems fair because half the money used to purchase the property was given by taxpayers and it could be used for recreational uses that they want.

Member McFarland asked if other land in Rye has been considered for turkey hunting.

John noted that turkeys tend to migrate to one area.

Member McFarland explained that there is a lot of activity going on at the farm. There are constantly people on the farm and others who walk their dogs on the property. She is looking at this from a safety standpoint, not necessarily what is allowed or not allowed. She wonders if there are other properties that are less populated that could be used for bow hunting. She would recommend another property because of how many people use the Goss Farm on a daily basis.

Speaking to John, Member Garvan stated that the proposal and the presentation was very meticulous. He is sure that John is also a meticulous hunter. In regards to the hunting, he does not think the commission can prohibit hunting because the lease allows it. He has checked with Fish and Game and none of the structures on the property would be considered permanently occupied. He thinks the commission has to allow the hunting. Also, he is not sure it can be restricted to just bow hunting.

Chair King stated that there is a provision in the easement that speaks to the "growing season". The commission could possibly make a case for the extended growing season. She is going to speak with the Town Attorney for clarification on the "growing season" and posting. She wants to be sure that people are as safe as possible when they are using and visiting the Goss Farm.

Member Grote noted that her concern is that even though this is legally allowed, it is not necessarily a smart thing to do. She is concerned as to how many people will want to hunt. The

Conservation Commission is not going to be able to restrict it just to bow hunting. Then the commission will be looking at hunting in general. She commended John for coming before the commission to discuss this issue.

John commented that he does not think it is fair to punish some people who want to hunt responsibly.

Chair King replied that they are not. The commission will be taking down the “No Hunting” signs. She will also be following up with the Town Attorney about what would be considered a valid growing season. The commission will keep this conversation open with John.

Member Garvan suggested asking the Town Attorney if the commission can post the property “hunting by permission only”. That way the commission will have the opportunity to hand out a map to people that show the type of activities that take place on the property.

Chair King stated that the easement can be amended to not allow hunting because agriculture is the primary use. This has to be amended through the Rockingham Conservation District or the Department of Agriculture. She is not saying that the commission is doing that; however, it is another avenue if they cannot come to a resolution. She thanked John for coming before the commission. The only contention is the amount of use that takes place on the property. She will follow up with him after she speaks with the Town Attorney.

**E. Salvatore & Kathleen Petralia: 25 Appledore, Map 19.4/Lot 52  
Update**

Member Garvan noted that he sent a certified letter to the Petralias on March 2<sup>nd</sup>. The letter was signed for and picked up on March 6<sup>th</sup>. The commission will wait to hear if they are willing to comply with the commission’s request. The commission has requested that the parcel be put back to its natural state, revegetated and the fire pit be removed. The DES is following up on the case.

**F. Lucia Moura: 1681 Ocean Blvd.  
Update**

Member McFarland noted that the commission received a citizen complaint just before January 12<sup>th</sup>. She and Chair King visited Lucia Moura and listened to what her complaints were about Ray’s Seafood Restaurant. At that visit, photos were taken which were sent to NH DES. She continued that she spoke with Peter Rowell, Code Enforcement Officer, about what was going on and he was aware. In July of 2016, there was E-Coli testing done behind the restaurant and 1681 Ocean Boulevard. Richard deSeve, NH DES, confirmed that there was E-Coli present. Mrs. Moura has proceeded with a lawsuit against Ray’s Seafood for allegedly dumping on her land. Eben Lewis and Miranda Adams, NH DES, visited the site on January 25<sup>th</sup>. She pointed out that the commission did not receive copies of the letters from Lucia Moura’s attorney or the Attorney General, which were sent through the town hall but not turned into the commission. She continued that three members of the Conservation Commission (Sally, Suzanne and Mike)

attended a meeting on March 13<sup>th</sup>, as requested by Mrs. Moura, at her property, along with the attorneys.

Member Garvan noted that it was not a Conservation Commission meeting. They were at the meeting to investigate a citizen complaint.

Member McFarland pointed out that the members did not go onto the property of Ray's Seafood during the meeting. They stayed on Mrs. Moura's property. The attorneys and Mrs. Moura had permission from Mr. Widen to go onto his property. She continued that she has recently seen an excavator at Ray's Seafood. Mr. Rowell has confirmed that they are digging for test pits to put in a septic system for this property. She emailed this information onto Eben Lewis at DES, who has asked to be kept informed of the situation.

**G. 421 South Road – Abutter's Notice rec'd for ZBA meeting (request for wetlands crossing)**

Chair King noted that Joe Falzone, Developer, will be before the ZBA on April 5<sup>th</sup> for the property at 421 South Road. The proposal has changed several times since it has been before the Planning Board. She has received a proposal from Joseph Falzone with a request for comments from the Conservation Commission. She replied that the commission will not be commenting at this time because it has not been presented to the members and it will probably not be the last rendition. She suggests that the commission contact the ZBA and tell them that will not comment on something that is not finished. The commission does not have enough information to take a position at this time.

Member Grote stated it is difficult to have a position when the design keeps changing. Every time there is a change, there has to be a reevaluation of the plan. She continued the Conservation Commission has been extremely cooperative with Mr. Falzone. It gets to the point where it feels like the commission is being played. It is frustrating because it minimizes the value that the commission can bring to the table. The effort the commission puts into it is constantly evaporated by the changes.

The commission agreed that a letter should be sent to the ZBA stating that they do not have enough information to comment at this time; however, as a matter of course the commission does not approve of this type of encroachment. A copy will be sent to the Planning Board. The commission reviewed the relief being requested to the ZBA for 421 South Road.

**H. Michael Mittleman Revocable Trust – 130 Harbor Road**

Chair King read the approval from NH DES for the dock at 130 Harbor Road.

#### IV. BILLS

- Eversource - \$54.45 – Goss Farm

**Motion by Mike Garvan to pay Eversource in the amount of \$54.45. Seconded by Jaci Grote. All in favor.**

- Beals Associates - \$520.00

**Motion by Jaci Grote to pay Beals Associates in the amount of \$520.00. Seconded by Mike Garvan. All in favor.**

#### V. CORRESPONDENCE

- A. John Chiaramito: Goss Farm Easement and Hunting  
*(Please see above)*
- B. Certificate of Liability Insurance was received for the cell tower.
- C. Correspondence was received from Southeast Land Trust regarding educational programs being held.
- D. The final report was received from the N.H. Coastal Risks and Hazards Commission.

#### VI. OTHER BUSINESS

- Chair King noted that resident Kevin Connell passed away last month. The Conservation Commission has an easement on his property, which abuts the marsh. The commission is receiving donations in his memory, as was his wish. She is sending thank you letters to the people who have sent donations.

**Motion by Jaci Grote that the donations received in memory of Kevin Connell be placed in the Rye Conservation Commission Acquisition Fund. Seconded by Suzanne McFarland. All in favor.**

- A. Organization of Members

- Chair

Chair King noted that she would like other members to consider sitting as chair in the near future. She plans to stay on the commission and would help anyone who is in that position. She would like to see the position rotate.

Member Garvan stated that the position should be held for a minimum of two years because it takes a while to become fully acclimated.

**Motion by Jaci Grote to nominate Sally King as the Chair of the Rye Conservation Commission. Seconded by James Raynes. All in favor.**

Sally King accepted the nomination as chair.

- **Vice-Chair**

**Motion by Sally King to nominate Suzanne McFarland as vice-chair. Seconded by Mike Garvan. All in favor.**

Suzanne McFarland accepted the nomination as vice-chair.

- **Clerk**

**Motion by Suzanne McFarland to nominate Mike Garvan as clerk. Seconded by Jaci Grote. All in favor.**

Mike Garvan accepted the nomination as clerk.

- James Raynes asked the commission to consider him for an alternate position instead of a full commission member.

The commission agreed that the knowledge, history and experience that Mr. Raynes brings to the commission is something that can't be measured. They would like to see him stay on as a member; however, will take his request into consideration and will address it at the next meeting.

## B. Budget Update

Member Grote stated that she would like a list of all work to be done on the properties for review at the next meeting. The list should be as detailed as possible with recommendations for contractors for the work. An email will be sent before the next meeting and Member Grote will create the list.

## ADJOURNMENT

**Motion by Jaci Grote to adjourn at 8:35 p.m. Seconded by Suzanne McFarland. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger