

RYE CONSERVATION COMMISSION

Thursday, April 20, 2017

7:00 p.m.

Rye Town Hall

Members Present: Chair Sally King, Vice-Chair Suzanne McFarland, Clerk Mike Garvan, Jaci Grote, Jeff Gardner, Susan Shepcaro 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. APPROVAL OF MINUTES

- **March 16, 2017**

Motion by Jaci Grote to approve the minutes of March 16, 2017 as amended. Seconded by Mike Garvan. All in favor.

III. WETLANDS:

Note: *The following applications were taken out of posted agenda order. (As shown in minutes). No objections were heard from the public.*

A. 2234 Ocean Blvd., Tax Map 5.3, Lot 67

Owner – Christos Papoutsy

Ambit Engineering – John Chagnon presented for Steve Riker

John Chagnon, Ambit Engineering, presented to the commission. He explained that the applicant would like to submit for a Minimum Impact Expedited Permit to remove some accumulated sand on the beach in front of the seawall. The property fronts on Ocean Boulevard and shares a driveway with the structure in the rear. The sand is in front of the seawall. It would be taken off site and removed per NH DES regulations. The sand has accumulated so it now goes over the wall in to the lawn area. It will be 1552sf of temporary impact to remove the sand. There is no wetland impact. It is all in the tidal buffer zone.

- **Site Walk scheduled for Wednesday, April 26th for the following properties:**
 - **2234 Ocean Boulevard, Tax Map 5.3, Lot 67**
 - **243 Parsons Road, Tax Map 19, Lot 103**
 - **11 Fairhill Ave., Tax Map 20.2, Lot 96**

B. 11 Fairhill Ave., Tax Map 20.2, Lot 96

Owner – Caspian Properties LLC, Katherine Place
Ambit Engineering – John Chagnon
Attorney Tim Phoenix

John Chagnon, Ambit Engineering, spoke to the commission in regards to the proposal to add to the existing structure. The property is a corner lot road with Eagle Rock Road located to the northwest. The addition of a garage to the existing structure will be towards the northwest. There is also a new septic design for an advanced treatment system. Currently, there is a tank with an unknown leach field location. The application has been submitted to the Zoning Board for a variance. He noted that they will not be filling any wetlands and permits are not needed from DES or the Town. However, variances are being requested and the ZBA is looking for an opinion from the Conservation Commission. He continued that there is a fresh water poorly drained wetland to the rear of the property, which has a 75ft setback. The building has been designed to not impact the buffer. The buffer impacts are going to be for the septic tank, the septic pump tank and a corner of the leach field. The leach field was designed with it being located to the southwest. However, there is a water line in the street and the Rye Water District wanted a 25ft setback from the water line. This setback results in a corner of the leach field being within the buffer. Currently, the area is lawn.

Mr. Place, applicant, noted that there is a fence along the property line between his property and the neighbors, which is on the northeast side.

Mr. Chagnon noted that the impervious coverage is 19% existing and is 25% proposed. The existing structure is approximately 12% coverage and increase to 17%. The ordinance allows for 30% coverage in the zone but not more than 15% building coverage. One of the variance requests is for the 17% building coverage. The other variances are for the septic tank and pump chamber to be within the wetland buffer, which are at 65 and 68ft where 75ft is required. The leach field is located at 71ft where 75ft is required. There will also be expansion into the front setback to not impact the buffer, which will need relief from the front setback requirement. There is a request for relief for the septic to be closer to the side property line at 14ft where 20ft is required. Building code relief is also needed for the septic system.

- **Application is being heard at the May 2nd Zoning Board Meeting.**

C. 60 Wentworth Rd., Tax Map 24, Lot 61-26

Restoration of Sanders Poynt – court sanctioned
Wentworth by the Sea Country Club – signed by Robert Diodati
MSC Engineering/TF Moran – Corey Colwell or Brenda Kolbow

Robert Diodati, Wentworth by the Sea Country Club General Manager, spoke to the commission about the court order to restore Sanders Poynt to its previous condition. He noted that the proposed plan has to be approved by the Superior Court judge so it may have to come back to the commission for another review. He continued that the design allows for the parking spaces to be as far away from the water's edge as possible. There will be no grading to the site, other than the removal of the shrubs and the plantings that will be installed near the trodden path. The court order called for regrading to accommodate four parking spaces; however, the site does not need to be

regraded to allow for parking. If it is acceptable by the court, there will be a split-rail fence to designate the parking area with a gate that opens to the trodden path to the beach.

Vice-Chair McFarland asked if the parking is different than what was there before.

Mr. Diodati explained that there were never designated parking spaces on the site before. He noted that the proposal will give people access to the beach but keep the area as natural as possible. The intent is to have the most minimal impact as possible. He reiterated that the plan has to go back before the judge for final approval.

Corey Colwell, MSC Engineering, reviewed the plan for the commission. He noted that there will be a significant reduction in impervious area because that area is going from gravel to landscaping. There is currently a post and rail fence on the site, which was a subject of the court hearing. The court said the fence and the junipers have got to come down. The public has a right to access this place and has a right to park. As a result, those things have to be removed to allow for access. The second part of the court order was that people have the right to park and have access to the sandy beach. The path will remain open from the path to the sandy beach. He pointed out that the N.H. Heritage Bureau requested two signs; one designating the area for parking and the other posted near the path stating “sensitive area, protect seagrass, stay on existing path”. The plan was sent to the N.H. Division of Historical Resources. They had concerns about this being an archeological area. They have requested a Phase 1A Study, which is in the process now. He noted that the whole site was filled with gravel many years ago so it is a prior disturbed site. The proposal will be essentially making the site better by introducing more landscaping. The permit request is for a tidal foot buffer zone disturbance of 2045sf of temporary impact.

The commission reviewed the proposal.

- **Site Walk scheduled for Wednesday, April 26th, time to be determined.**

D. 30 LaMer Drive, Tax Map 14, Lot 044

Owners - Charles and Lindsay Benyon

Attorney – Christopher Mulligan

MCS Engineering/TF Moran – Corey Colwell

*write an update letter for 15’ planting buffer instead of 20’

Corey Colwell, MSC Engineering, explained that 30 LaMer Drive has an existing dwelling on the property. Behind the existing dwelling is grass, which leads to the saltmarsh. The proposal is to raze the house and build a new structure. The new structure and most of the improvements will be in the 100ft tidal buffer zone. Approximately, half the house and deck is in the buffer zone, along with a portion of the driveway. He continued that some members of the commission held a site walk at the property. There were some concerns that were raised by the commission at the site walk. The first concern was the house was originally proposed to be further into the buffer. The reason this was done is to stay out of the side and front setbacks to avoid needing variances. The commission made the request for the house to be moved forward, which the applicants have agreed to. Moving the house forward will require a front yard setback variance and a side yard setback variance, in addition to the 100ft tidal buffer zone variance. The house was moved approximately 10 to 12ft from its former location. The commission also recommended that the propane tank be moved out of the

buffer zone, which has been done. The commission recommended that there be minimal disturbance on the side of the house and driveway nearest the marsh. He noted that they have set it so there will not be a lot of fill necessary so there will be minimal disturbance. The edge of the driveway will be the limit of the disturbance.

Mr. Colwell stated that a concern of the applicants was the request from the commission to provide a 20ft wide landscape buffer. The Benyons would like to keep their lawn and are asking if the landscape buffer could be reduced. They are seeking an alternative plan that might benefit both parties.

Chair King noted that the commission received an abutter's notice for this application. She asked if Southeast Land Trust received one as well.

Mr. Colwell pointed out that the Town of Rye Conservation Commission and the Southeast Land Trust are both listed on the plan, so they should have received one. He stated that once the application goes through the variance process, the application will need to come back before the commission because both a Wetlands and Shoreland Permit is required for this project. This first step is for input to the Zoning Board of Adjustment.

Lindsay Benyon, applicant, stated that the intent when purchasing the property was to plant their roots in Rye and make a home for their family. The existing house is not appealing. The selling point of the property was the backyard. The goal was to maximize the backyard space. She continued that the commission's request restricts the backyard area.

Chair King asked if they are anticipating the installation of a swimming pool.

Mrs. Benyon replied no. This is really about yard space because of the dogs.

Mr. Colwell stated that a tradeoff might be to do a 15ft buffer. At 20ft, it was 7,500sf of landscaping. At 15ft, it would be roughly 5,000sf of landscaping. The Benyons are also willing to use only organic fertilizers within this area.

Mr. Benyon stated that they are trying to bring everything as far away from the marsh as possible. The amount of space that can be used for outdoor activities is limited.

Mr. Colwell summarized that they are requesting a 5,000sf reduction to the landscape buffer or some other compromise that might be acceptable.

Mr. Benyon suggested a treatment swale that would prevent fertilizer from getting into the marsh.

Vice-Chair McFarland stated that the commission looks at the proposals with the idea that the property is going to go through other owners. The commission started at 20ft for a reason. The commission has dealt with encroachment. The town also has to spend thousands of dollars on controlling phragmites. She continued that the whole backyard could be native plantings; however, the commission tries to work with people.

Mr. Colwell reviewed the idea of a swale with a reduction in the buffer adjacent to the swale.

The commission requested a planting and landscape plan.

Mr. Colwell explained the proposed foundation drain to the commission.

- **Site Walk scheduled for Wednesday, April 26th, time to be determined.**

E. 17 Straw's Point Rd., Tax Map 9.1, Lot 8

Owner – Thomas S. Murphy

Alex Ross Engineering – Dan Del Tufo

Dan Del Tufo, representing the applicant, spoke to the commission. He explained that Mr. Murphy purchased the property a year ago and razed the home. He obtained the permits to build a new house and seawall. In 2016, he received the permits for a new septic system. He continued that the original permit did not include the replacement of the clay line, which has been discovered that it needs to be replaced. A wetland permit is needed to replace the line. It not only drains this lot but also the two adjacent lots. The line drains out into the ocean. (He reviewed the areas that drain into the line on the plan for the commission and continued to review the proposal.) Additionally, the owner is looking to improve the landscaping and include native plantings within the 100ft buffer.

Member Grote asked how much of the grass will be removed.

Mr. Del Tufo replied that it is somewhere in the 300 to 400sf range. The entire lot is 1.4 acres. He continued that the applicant would also like to install a 30" tall fieldstone landscaping wall in the front of the lot.

- **Site Walk scheduled for Wednesday, April 26th, time to be determined.**

F. 21 Brackett Rd., Tax Map 22, Lot 70

Owner – Robinson and Kimberly Berry

Alex Ross Engineering

Attorney – Tim Phoenix

Mr. Del Tufo presented for the applicant. He explained that the proposal is for an 8x16 three season porch off the back of the house, half of which will sit within the 100ft buffer. The home is currently under construction and the porch was not part of the original design.

Robinson Berry, applicant, noted that the home is still under construction. When the home was designed, they did not think of adding a porch to the back of the house.

Member Gardner asked for the location of the septic.

Mr. Berry pointed the area out on the plan and noted that it has not been installed yet.

Member Gardner asked the thoughts for plantings along the back of the property near the marsh.

Mr. Berry commented that the idea is to keep it natural the way it is.

The commission reviewed the plan for the porch.

- **Site Walk scheduled for Wednesday, April 26th, time to be determined.**

G. Red Mill Lane Culvert Restoration, Tax Map 005, Lot 028, 033, 039, 042

Project Manager – Lyndsay Butler, Wright Pierce Engineering
Signed by Dennis McCarthy, Public Works Director

The commission received a copy of the proposal for the restoration project for the culvert at Red Mill Lane, which was submitted by the Public Works Director.

IV. BILLS

- **Rye Water District – Goss Farm - \$160.00**

Motion by Jaci Grote to pay Rye Water District in the amount of \$160.00. Seconded by Mike Garvan. All in favor.

- **Green Penguin Landscaping – Sea Glass Lane (plowing for access) - \$50.00**

Motion by Jaci Grote to pay Green Penguin in the amount of \$50.00. Seconded by Suzanne McFarland. All in favor.

- **Chris Keenan – (Question as to whether this has already been paid)**

Motion by Suzanne McFarland to have Chair King research the bill from Attorney Chris Keenan. Seconded by Jaci Grote. All in favor.

V. CORRESPONDENCE

- A letter was received from a resident on Shoal's View Drive who is requesting a greenhead fly trap and some swallow boxes.

Chair King noted that the Mosquito Control Commission is now working with Dragon, Inc. for mosquito control this season. She will speak with Dragon to see if they will be using the swallow boxes this year. She will update the commission.

- A letter was received from Southeast Land Trust requesting the yearly monitoring for the White property.

- A. Response needed – Mail and Email:
26 Appledore – Petralia's response
Miranda Adams, NH DES, email

Member Garvan read a letter from Salvatore Petralia in response to the commission's letter sent to him regarding violations to the Rye Wetland Buffer, which were noted by the commission during their November 23, 2013 site visit.

**Please see attached letter*

Member Grote noted that the commission spoke directly with Mr. Petralia before the last site walk this past December.

Vice-Chair McFarland confirmed. She commented that Mr. Petralia stated that he would do whatever it takes.

Member Grote stated that the letter from 2013 was found and sent to Mr. Petralia again.

Member Garvan stated that the letter was not sent certified in 2013. He is not sure that the commission was as diligent in sending out letters to all landowners at that time; however, he had a representative. He finds it hard to believe that the representative did not inform him of the recommendations. He should have received information from his engineer in 2013. He certainly should have been informed now of the violation.

Member Grote commented that just having the grass grow taller does not return the area to its natural state. The fact that it is not mowed does not return it to its natural state. In fact, it will be worse if it is not mowed.

Member Garvan stated that Mr. Petralia also has a fire pit off of his property and that will need to be removed.

Member Grote stated that she is very disappointed. Mr. Petralia had stated that he was going to take out the fire pit, the chairs and the grass. He said he was going to do whatever it took to get it back.

Vice-Chair McFarland agreed. She continued that it really doesn't matter what happened in 2013. Mr. Petralia is in violation now and he knows it, which is shown at the December meeting. The commission has also filed a formal complaint with NH DES. NH DES informs property owners when a complaint is filed, which was May of 2016.

The commission agreed to draft a letter, recounting the events, and send to Code Enforcement Officer, Peter Rowell, and NH DES, asking for direction.

VI. OTHER BUSINESS

A. Discussion on Warrant Article on the Proposed Trail to Rye Rec

Member Garvan explained that a warrant article was passed by town vote directing the commission to consider a trail from the center of town (near the junior high) to the recreation fields, for the purpose of having an easy access to the rec area for the junior high students. He suggested that the commission consider this idea and take a vote. The commission should also invite in the proposer of the warrant article, Brian Murphy, to discuss his proposal.

Chair King noted that she has reached out to Mr. Murphy a couple of times inviting him to a walk with the commission. It does not seem there is a great deal of interest in this. She thinks it might be appropriate to reach out again.

Motion by Mike Garvan that the Rye Conservation Commission not create a commission to study this trail; however, the commission will reach out to Brian Murphy to let him know that they are open to discussion and would try to accommodate him as best they can. Seconded by Jaci Grote.

Member Grote explained that a commission is not needed. The Town does have trails.

Member Gardner commented that they should encourage Mr. Murphy to speak with them.

The commission agreed.

Member Shepcaro commented that they could suggest yellow dots on the trees for the students to follow. She is sure there are people who would be willing to walk with parents and students to show them the trail from the junior high to the rec area. There are things that can be done to make it easier for students to follow. If there is no interest from Mr. Murphy and his group, then the commission should not bother; however, the commission should reach out.

Amendment to motion:

Motion by Mike Garvan that after consideration, the Rye Conservation Commission rejects establishing a formal Trail Access Feasibility Committee; however, the commission will reach out to those concerned citizens and try its best to accommodate them. Seconded by Jaci Grote. Vote: All in favor.

- Chair King noted that resident Shawn Joyce will be speaking with the Selectmen at one of their future meetings in regards to his concerns with the process of members being appointed to the Conservation Commission. She would like members of the commission to attend the Selectmen's meeting in order to address those concerns.

B. From Peter Rowell – validate work done for:

- 245 Pioneer Rd. – Zadeh
- 243 Parsons Rd. – McCune
- 7 Elizabeth Lane – Werner
- 335 Washington Rd. – Kohlhasse
- Rand Property (added)

Vice-Chair McFarland stated that the commission needs to follow up on the plans for the properties listed for previous violations. The commission has to make sure that the work is actually completed on these properties and a revisit to the site is needed. Photographs will be taken at the follow up site walk and added to the files. At this time, the McCunes, 243 Parsons Road, is scheduled for the May meeting.

C. Town Forrester – Update on Charlie Moreno

Member Shepcaro made contact with Charlie Moreno in regards to the Town Forest. He is available to meet with commission members at the forest on May 9th, 10th, 16th or 17th to discuss concerns with the trails. He will meet at the woods at 4:00 p.m.

Chair King noted that this would be a good time to address the bog bridges in addition to other concerns.

Concerns to address:

- When to close a trail due to poor trail conditions
- Cycling in the woods
- Bog bridges
- Specific sensitive areas of concern

The commission agreed to meet with Charlie Moreno on May 9th meeting at the cemetery. Members of the public are welcome. A notice will be posted for the meeting.

D. Discussion of spreadsheet with properties charting easements and monitoring schedule.

Member Grote spoke in regards to the spreadsheet draft for charting and monitoring easements. The spreadsheet will include who will be responsible for monitoring the property, when it needs to be done and what needs to be done for the monitoring. The spreadsheet should be completed for the May meeting.

Site Walk schedule for April 26th:

- 2234 Ocean Boulevard – 4:00 p.m.
- 17 Straw's Point – 4:20
- 30 LaMer Drive – 4:50
- 11 Fairhill Ave – 5:30
- 234 Parsons Road – 6:00
- 21 Brackett Road – 6:30
- 60 Wentworth Road – 7:00

ADJOURNMENT

Motion by Jaci Grote to adjourn at 9:03 p.m. Seconded by Mike Garvan. All in favor.

Respectfully Submitted,
Dyana F. Ledger

April 3, 2017

Rye Conservation Commission
10 Central Road
Rye, NH 03870

Dear Mr. Garvan:

This letter will serve as a follow-up to your letter dated March 1, 2017 and received by me on March 6, 2017.

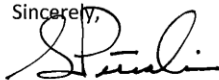
In your letter, you mentioned that the Rye Conservation Commission visited our property on November 23, 2013 and observed violations of the Rye wetland buffer regulations. You further mentioned that at that time, the RCC "recommended that the lawn area be allowed to return to its natural state in order to protect the marsh and the surrounding wetlands resource". As you are aware, I was not present during your November 23, 2013 site visit and was never informed either verbally or in writing of any violation by any representative of the Rye Conservation Commission.

I was present for the December 22, 2016 site walk. At that time I reiterated the fact that no formal notice was ever received by me from your November 23, 2013 site visit. In your March 1, 2017 letter, you reference a copy of the **December 22, 2013** "recommendation". Your "recommendation", dated **November 23, 2013** appears to be a synopsis of your site walk and perhaps an internal RCC document that summarizes your visit. This document is neither addressed to me, nor was it ever sent through the mail, only until recently as an attachment to your March 1, 2017 letter.

Further, I would like to address a section of the Rye Conservation Commission Meeting Minutes from February 16, 2017. The minutes state that "members of the Conservation Commission had visited about a year ago and made suggestions that it be returned to its natural state". Can someone please tell me when exactly that occurred "about a year ago", who made the suggestions, and to whom were the suggestions sent? The minutes further mention that "Mr. Petralia did not recall the first site walk with the commission, although a soils engineer was present on his behalf". Well, I did not recall the first site visit because I was not present. The photograph that RCC took that day proves my point. Lastly, the minutes mention "Also, a letter was sent after that site walk". Once again, that statement is false for the reason previously mentioned above.

Please be informed that on March 31, 2017, I sent DES a copy of a revised "As-Built Plan" prepared by a certified engineer. A restoration plan is not included in that document. However, as previously stated, I will ensure that future maintenance and mowing is conducted within our property boundary to allow the area in question to return to its natural state.

Sincerely,



Salvatore Petralia
25 Appledore Avenue
Rye, NH 03870



**RYE CONSERVATION COMMISSION
10 CENTRAL ROAD
RYE, NH 03870**

March 1, 2017

Salvatore and Kathleen Petralia
25 Appledore Drive
Rye, NH 03870

Dear Mr. and Mrs. Petralia:

On December 22, 2016 the Rye Conservation Commission (RCC) conducted a site walk on your property at 25 Appledore Drive. Suzanne McFarland, Jaci Grote and Mike Garvan were present to represent the RCC and Mr. Petralia was present representing the property owners. The purpose of the visit was to follow up on previous recommendations by the RCC and to address a recent wetland violation notice from the NH Department of Environmental Services (DES).

The Rye Conservation Commission had visited the property on November 23, 2013 and observed violations of the Rye wetland buffer regulations. The owners were using as a grass lawn some 75 feet of land which they did not own and which abuts the adjacent marsh. At that time the RCC recommended that the lawn area be allowed to return to its natural state in order to protect the marsh and the surrounding wetlands resource.

The December 22, 2016 site walk revealed that the area in question is still being maintained and used as a lawn by the Petralias. A fire pit has also been installed in this area. A visual inspection of the adjacent properties showed the wetland boundaries and it is clear that the subject land has been converted to a lawn. During the visit Mr. Petralia indicated that he did not recall receiving anything from the RCC after their 2013 site walk. A copy of the 12/22/2013 recommendation is enclosed here. Mr. Petralia indicated a willingness to do what was necessary to bring the property into compliance.

At this time, the Rye Conservation Commission recommends that the approximately 75 feet of land that is east of the Petralia property line and which has been used and maintained as lawn should be returned to its natural vegetative state by the homeowners. This would require that the lawn be removed and replanted to native ground cover, plants and shrubs. The fire pit as well as any chairs and/or lawn equipment should also be removed. A copy of the DES publication listed native plants is enclosed.

The Rye Conservation Commission looks forward to your cooperation. The RCC would like to reserve the right to revisit the project upon its completion.

Sincerely,

Francis P. (Mike) Garvan II, Clerk

Rye Conservation Commission
November 23, 2013 Site Walk

Commission members present: Jim Raynes, Sally King, Lawton Struble, Suzanne McFarland and Mike Garvan.

The Rye Conservation Commission conducted a site walk at 25 Appledore Avenue to review a proposal to tear down the existing house and garage and rebuild them in basically the same footprint. A breezeway would be added to connect the house and garage and a rear deck would be framed in and become part of the new house. The east deck would be reduced in length by 4 feet. The existing gravel driveway would be torn up and reduced in size. Alan Marshall, representing Ambit Engineering and the owners, said that the impervious area would be almost the same since the driveway reduction would offset the breezeway addition. There would be a new raised septic installed on the east side of the site; this is the only feasible location due to the extensive ledge on the property.

The east side of the property borders on the Parsons Creek Marsh. The entire east side of the property is a treated lawn with a small flower garden near a ledge outcrop. The eastern property line is about 75 feet from the natural edge of the marsh. The owners have made this land into a lawn that runs right up to the marsh border even though it is not their property.

The commission members present felt that the new home and garage would not have an adverse impact on the wetland resource and that a properly designed and constructed septic might be an improvement on the older current septic. However, the commission members felt strongly that the area beyond the eastern property line that has been turned into lawn should be allowed to return to its natural state to protect the marsh and surrounding wetlands resource.

The Rye Conservation Commission would like to be notified when the work has been completed so that we can make a return visit to observe the project in its final phase.