

**RYE CONSERVATION COMMISSION  
MEETING MINUTES  
Thursday, October 13, 2022  
6:30 p.m. – Rye Town Hall**

***Present:* Chair Suzanne McFarland, Vice-Chair Sally King (via Zoom), Susan Shepcaro, Mike Garvan, Jaci Grote, Heather Reed, and Alternate Karen Oliver**

***Also Present:* Land Use Assistant Kara Campbell**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Chair McFarland called the meeting to order at 6:35 p.m. and led the pledge of allegiance.

**II. SEATING OF ALTERNATES**

Alternate Karen Oliver was seated for Danna Truslow.

**III. APPROVAL OF MINUTES**

- **September 8<sup>th</sup>**

The following corrections were noted:

Page 2, last paragraph, 2<sup>nd</sup> sentence should read: **He noted that dirt was removed from a wetland area.**

- Page 7, 3<sup>rd</sup> paragraph from bottom, 4<sup>th</sup> sentence should read: **The owners of 80 Locke Road went with the recommendation of the RCC to have the entire driveway constructed with pervious materials.**

**Motion by Mike Garvan to approve the minutes of September 8, 2022 as amended.  
Seconded by Jaci Grote. All in favor.**

**IV. WETLANDS**

**A. 10 Goss Farm Lane, Tax Map 08, Lot 059-001**

Owners: Francis & Gail DiNuzzo

Attorney: Tim Phoenix

Pool fence in the 75' wetland buffer, Planning Board

**Attorney Tim Phoenix**, representing the property owners, explained that the original building plans included the pool and fence. A full building permit was issued and the property was built according to that plan. The pool was located right along the edge of the extra 25' voluntary

buffer that the Planning Board implemented on some of the lots in the subdivision. In August, the pool was completed and it was determined by the Building Department that the pool need its own fence permit. A permit was not issued because the fence is proposed within the 25' voluntary setback. A letter was submitted to the Planning Board asking for approval of the fence, along with the plantings as proposed by Landscape Architect Robbi Woodburn. He noted that the Planning Board has already met on the case and approved the request with the conditions that are outlined in his email to RCC. The Planning Board approved the fence following the 16' contour, which brings it in approximately 8'. They also authorized plantings 6' deep beyond the outside of the fence. He pointed out that the reason the case went to the Planning Board was because based on the conditions of approval, there is language in the HOA documents that says that for this lot no structures or buildings can be built in that 25'. This is in conflict with the Town's ordinance which says that a fence is a structure, but is exempt from dimensional requirements. There was also some discussion at the Planning Board about permitted uses in tidal marshes, which includes fences, footbridges, and wharves. He pointed out that in the wetlands buffer ordinance there are uses that are permitted, provided there's no surface alteration by the addition of fill, excavation, or dredging. The intent of the buffer is to allow anything that could be done in the marsh.

Chair McFarland noted that a DES wetland permit is still needed to even dig for a fence.

Attorney Phoenix explained that the reason for the location of the fence is to have access around the pool for cleaning. The other reason is esthetics. The owners would like to have nice plantings and be able to look out to the marsh.

**Landscape Architect Robbi Woodburn** pointed out that the grading goes 5' to 10' into the buffer. The grading was done on the original subdivision layout and was approved by the Planning Board. The drawings that were approved show there was grading up to the 25'. There's another document that shows the area up to the 75' buffer being disturbed and that was part of the original approval.

Member Shepcaro noted that this will be the second house out of the three in that subdivision that had to get some kind of variance because they're in violation of the buffer. People knew what they were buying when they bought these lots. A buffer violation is not okay. Why bother having a buffer if people are not going to respect it? She feels strongly about this because it's a very sensitive piece of property.

Attorney Phoenix responded that he understands the sentiments. He reiterated that the fence was built where it was shown on the plans. In his opinion, the problem is that the ordinance doesn't say anything about the extra 25'. Unless someone educates them about the extra 25', it's easy to miss. The builder built according to the plans. He continued that the purpose of the buffer is for protection to the marsh. Fence posts that are 2" with the sunken concrete with the native plantings will accomplish that. The Planning Board, as a whole, felt the same way RCC does. However, they recognized that it's already happened.

Member Garvan asked is they are asking RCC to weigh-in on just the fence. He noted that RCC normally weighs-in on the planting plans as well. RCC would weigh-in on all incursions into the

buffer. He pointed out that the Commission decided that for consistency, a buffer is a buffer whether it's voluntary or not. It was too confusing, as there were no rules constructed around a voluntary buffer. The Commission decided the buffer rules should govern. As a commission member, he would like to weigh-in on the plantings and the fence.

Attorney Phoenix commented that legally, he disagrees with the analysis because there are no rules surrounding a voluntary buffer, other than here it is and the Planning Board has jurisdiction not the Zoning Board. There's nothing stating what the Conservation Commission's jurisdiction is. He continued that the fence is a typical fence.

Ms. Woodburn described the fence as a 4' code compliant aluminum picket black fence.

Attorney Phoenix noted that they can submit the planting plan showing the fence on it and the Commission can then make comments.

Chair McFarland stated that her understanding is that the Planning Board wants RCC's comments even though this went before them already.

After some discussion, the Commission agreed to conduct a site walk. They asked that the area for the fence be staked for the walk. Ms. Woodburn confirmed that the landscape plan will also be ready.

- **Site walk scheduled for Wednesday, October 19<sup>th</sup>, 1:30 p.m.**

- B. 5 Whitehorse Drive, Tax Map 011, Lot 015-002**

- Owners: Patrick Donnelly

- Attorney Tim Phoenix

- Acreage

**Attorney Phoenix, representing Patrick Donnelly**, explained that most of the lot is within the wetland setback. Mr. Donnelly would like to put a pool in. The Conservation Commission agreed conditioned upon Mr. Donnelly giving 3 to 5 acres to conservation. There was some discussion about it being an easement; however, one of the RCC members didn't want an easement. Mr. Donnelly didn't have a problem with deeding 3-acres. However, if the lot is on a septic and less than 5-acres is left, it has to go through State subdivision approval. The exception is if it's not creating another lot that could be deeded with another septic system. This is okay on the area being deeded. However, he is not sure whether that would apply to only the area going to the Conservation Commission or the resulting lot. He noted that if 3-acres are deeded to RCC, there will be about 4-acres remaining. Attorney Phoenix noted that his concern for Mr. Donnelly and his successors in interest is that if the lot is less than 5-acres in size and the septic system fails, they will have to get state subdivision approval.

**Henry Boyd, Millennial Engineering**, explained that creating a lot of less than 5-acres in size from another parcel requires state subdivision approval. If there are less than 5-acres, the owner has to prove there are enough soils on the lot for the lot loading for the septic. He continued that he is not concerned with the piece being gifted, as it's going to conservation and it wouldn't have

a septic. The problem is if Mr. Donnelly's piece of land has a septic failure, or if he wanted to add a bedroom, a septic design would be needed along with state subdivision approval. This requires a significant amount of soils to meet the lot loading requirement. They would also have to fit a well radius of 75' on the lot. His main concern is the wetland line. That whole area would be excluded from the lot loading. It's not known, without doing the soils, whether there is enough land to do a septic system. He believes that once those soils are excluded from the 4-acres, there will not be enough to qualify for subdivision approval.

There was discussion about deeding 2-acres to the Conservation Commission and giving them an easement on 1-acre. There was also discussion about having monumentation along both the property and easement lines.

**In the spirit of working to accomplish the purpose of the original agreement as to 5 Whitehorse Drive, Karen Oliver moved that the property be modified to reflect that the three acres that was discussed to be conservation property be two acres conveyed in fee and the remaining acre be conveyed as an easement, in accordance with the plan submitted by the property owner, with annual pedestrian access across 5 Whitehorse Drive being granted to the Rye Conservation Commission for monitoring. Seconded by Jaci Grote. All in favor.**

**C. 941 Ocean Boulevard, Tax Map 202, Lot 141**

Owner: Charles Potter

Variances from §190-2.4.C(1) for a rear deck/patio 5' from the rear boundary where 30' is required; and from §190-2.4.C(3) for front walkway 15' from the front boundary where 40' is required; and from §190-2.4.C(5)/§190-3.4.F(6) for lot coverage of 24.1% from 27.5% where 30% is allowed. Property is in the General Residence, Coastal Overlay District. **ZBA Case #47-2022.**

**Charles Potter, 941 Ocean Blvd,** explained that in June he submitted for a permit to replace an existing patio on the back of the house. In the process, a new bluestone patio was designed to replace the existing patio. There is a front courtyard next to the driveway and the intent was to replace that with a bluestone patio also. An application was submitted for a building permit in June. The building department came back with a denial letter stating that the projects were inside the rear and front setbacks. This was just the rear and front setbacks for the patios and had nothing to do with the fence. Variances from the ZBA were needed for the setbacks. In addition, calculations for the permeable surfaces on the property were required. He noted that the property is under the allowable 15% for the building and the total allowable with the proposed patios. When this went to the ZBA meeting, that's when Chair McFarland contacted him and asked why it didn't go to RCC first. He noted that the building department didn't ask him to go to RCC. He commented that the only reason he can think of is that the fence is up against the wetland, but the patio is not.

Chair McFarland pointed out that it's within the 75' wetland buffer. She noted that the Commission has been asked to go out and look at this before the ZBA meeting. The ZBA agenda said 5' from the back lot line. She asked for clarification.

Mr. Potter explained there's a slight miscommunication on what was written on the application versus what was transcribed onto the ZBA meeting agenda. He noted that he wrote down that it was 5' into the 30' setback where 30' is required, not 5' away from the property line. He will be speaking with the Zoning/Planning Administrator to get it changed for the ZBA meeting.

Chair McFarland commented the setbacks are not as important to RCC as the wetland delineation lines, which are on the plan.

Mr. Potter stated that he keeps hearing about the 75' buffer, but he has no records to prove the lots next to him are 100% wetlands. He wouldn't be challenging this if there was something in the property folder that says all those five properties are 100% wetlands and they have been tested.

Member Garvan stated those do not exist and probably don't even exist within the State. He noted that a certified wetland scientist is needed to delineate the wetlands.

Chair McFarland pointed out that it's right on the Dylan's septic plan. It says "very poorly drained jurisdictional wetlands freshwater marsh." The wetlands on the plan are flagged which goes right through 941 Ocean Blvd. She explained that RCC is going on past experience and people bringing in applications. A wetland scientist went out for the septic system, flagged the wetlands, and said it was a freshwater jurisdictional marsh, so the 75' buffer would apply to the lot. She is going on the statement from a wetland scientist.

Mr. Potter stated that he would be happy to have the RCC out to the property. However, he's a little frustrated by hearing that 100% of those lots are considered wetlands.

Member Garvan suggested to Mr. Potter that if he is challenging this that he should probably go to the building or planning department. He would think that the process would involve a certified wetland scientist to look at the lots. He pointed out that the Conservation Commission is not the place to get relief.

The Commission reviewed the plan for the rear patio and fence. Mr. Potter spoke to the Commission in regards to the project plans.

- **Site walk scheduled for Monday, October 17<sup>th</sup>, 10:30 a.m.**

- D. 239 Wallis Road, Tax Map 019, Lot 017**

- Owner: Sharon Wadsworth

- Emmanuel Engineering

- Variance from §190-3.1.H.2(a), (g) to replace existing underground propane tank within the 75' wetland buffer

An attorney representing the applicant spoke to the Commission in regards to the proposed variance going before the ZBA to replace an existing underground propane storage tank within the 75' wetland buffer. The current tank has a crack, so it is unsafe to use at this time. Currently, the propane for the property is being provided by a temporary tank. The new tank will be in the

exact same spot as the existing underground tank and will be the same size. It was noted that the wetland buffer basically encompasses the entire property, so there is no alternative location to place the tank. If the tank were to be above ground, there would need to be a concrete slab, which would cause more impervious space and is not as esthetically pleasing.

- **Site walk scheduled for Wednesday, October 19<sup>th</sup>, 2:15 p.m.**

**Motion by Jaci Grote to take the RCCD update out of posted agenda order. Seconded by Karen Oliver. All in favor.**

## **V. RCCD UPDATE – Tracy Degnan**

**Tracy Degnan, Rockingham County Conservation District**, met with the Commission to give an update on projects RCCD has been working on over the past year. RCCD was tasked with three projects for this year involving habitat management and invasive plant control. The Town Forest has been ongoing and phase 5 has been completed, which includes the area near recreation. RCCD worked on the Wallis Marsh, which is part of the Scully property off Wallis Road and Pioneer Road. They then moved across the street to Wallis east, which is adjacent to where Kook's is located. RCCD also worked on the property located off Brackett Road and Pioneer Road.

Ms. Degnan noted that she may have an estimate for the Awcomin' Marsh for the next RCC meeting. The Awcomin' Marsh hasn't been done in three years. She suggested that they look at some areas where they can do some native buffer plantings to enhance the edge of the saltmarsh. This will be included in the proposal for next year's work.

Ms. Degnan spoke about the upcoming meeting for the N.H. Associations for Conservation Districts with the State Legislatures. The first day is the meeting and the second day is the legislative tour. The Goss Farm is going to be toured, along with Odiorne. The tour day is November 15<sup>th</sup>.

## **VI. PENDING SITE WALKS AND REVIEWS**

### **A. 23 Harborview Drive – Planting Buffer**

- Site walk scheduled for Wednesday, October 19<sup>th</sup>, 2:45 p.m. to review the buffer plantings. Chair McFarland will follow up with the property owner to confirm the date.

### **B. 1 & 3 Cable Road – Planting**

Member Garvan, Member Shepcaro and Land Use Assistant Kara Campbell visited the site. The property is right on the beach. The Commission requested that the property owners put 3' of buffer plantings. The landscape architect was at the site walk to discuss the details for the plantings. There's a flagpole in the northeast corner of the property and an old concrete patio. These items were not shown on the project plans. This was discussed at the site walk. However, the commission members present at the site walk didn't feel they could make the owners remove

the patio, as these items were not part of the notice of decision. They made the decision to have the plantings 3' from the patio in case they wanted to keep it. Since that time, correspondence has been received from the landscaper stating that the property owners will be removing the patio. The whole area where the patio is located should be planted.

Member Shepcaro noted that she had a discussion with the landscaper. They had agreed that if the patio was to be removed that whole area would be planted. Her letter said 3' out and the whole patio area to be planted.

### **C. 377 Brackett Road - Fence**

Vice-Chair King reported that the Building Inspector sent a letter to the property owners of 377 Brackett Road. The letter stated that the fence was unpermitted and the portion that is on conservation property has to be removed. The property owners agree. They have submitted for a permit and have said that they will remove the conservation piece.

### **D. 179 Love Lane – tree cutting**

Member Garvan noted that a letter was received from Dave Robbins the property owner of 179 Love Lane. The gentleman wanted to do some tree cutting. There are some wetlands on the sides of the property, but they are marked with wetland boundary signs. Member Garvan walked the property with the owner, who is just looking to take down some dead trees and do some cleanup. The property owner was given a copy of the wetland regulations and the tree cutting permit application. The request seemed reasonable.

## **VII. OTHER BUSINESS**

### **A. DPW – Goss Farm Rock**

Member Grote ordered the plaque for the rock at Goss Farm. Greg Bauer went back to Goss Farm and repositioned the rock after someone hit it with their vehicle. DPW has agreed to put the plaque on the rock. Chair McFarland will email the Public Works Director to see if they can do this before the tour taking place at Goss Farm on November 15<sup>th</sup>.

### **B. CIP and Budget 2023**

Chair McFarland reviewed the information submitted to the Capital Improvements Plan Committee. A bond request of 3.5 million was kept as a project for 2024. There is now a barn maintenance fund for the Goss Farm. The CIP for the barn sheathing and clapboards is no longer needed. CIP information was submitted for 0 Pioneer Road in the amount of \$45,540. Chair McFarland noted that she spoke with Finance Director Becky Bergeron about how this would be done. She said it would probably be done like a capital outlay. It wouldn't be in the budget.

Chair McFarland reviewed the proposed 2023 budget for the Conservation Commission, which is in the amount of \$109,425. There were not a lot of changes to the budget from 2022.

**C. Bog Bridges Permits, Town Forest – Susan, Brown Lane Farm – Heather**

*No further updates at this time.*

**D. 18 Whitehorse Water Issue – Danna & Kara**

*No further updates as Danna Truslow was not in attendance at the meeting.*

**E. ZBA Meeting Update**

*Jeff Gardner was not present to give an update. The Commission spoke briefly about a couple of the cases that were before the ZBA.*

**VIII. CORRESPONDENCE**

**A. SBA communications**

**B. Rye Fire Department** – annual Rye holiday parade December 4, 2022 at 3:00 p.m.  
entry form

**C. Mr. Joyce email from 8.24.2022**-tabled until October meeting & email from  
10.05.2022

*\*See emails attached 8.24.22 and 10.05.22*

Chair McFarland explained that at last month's meeting, she thought that Member Garvan wanted to say something about the email that Mr. Joyce sent to the Commission on August 24<sup>th</sup>. The letter is concerning the same enforcement issues that have been brought up before. The email has also gone to enforcement, the police department, and the animal control officer. She assumes they have read the same email.

Alternate Oliver pointed out that people should be aware that there are cameras on them in the Town Forest.

Member Shepcaro noted there are two signs that say there are cameras throughout the green trail.

**D. 2022.09.06 Rye Planning Board notice**, minor site development plan by Grail Zone for property located at 2 & 6 Airfield Drive, Tax Map 10, Lot 15, to construct a paved loading zone & propane tank access area.

**E. 2022.09.06 Rye ZBA, 11 Hunterville Ave**, Tax Map 8.1, Lot 109, for variances 190-2.4C(1) & 190-2.4C(2), shed

**F. 2022.10.24 NHDOT** 6:30 pm meeting, culvert on Route 1A north of Locke Road

**G. Town Administrator Matt Scruton** – email rec'd 10.13.22 in regards to Parsons Field being under the management of the Select Board. Parsons Field is not part of the Town Forest.



Vice-Chair King explained that Tom Sherman's campaign called and asked if they could film in the Town Forest. She was not aware of anything in the easement that would prevent them from filming. They didn't understand the difference between the Town Forest and Parsons Field. They apparently blocked off some of the parking lot and filmed at Parsons Field. It wasn't anything out of turn by the Conservation Commission.

## **IX. BILLS**

- \$352.50 Comprehensive Environmental Inc.
- \$119.40 reimburse Susan Shepcaro, Goss Farm, Town Forest
- \$25.94 Seacoast Hardware, Susan
- \$249.80 Alan Bucklin
- \$625.00 NHACC dues
- \$360.00 BCM Environmental and Land Law #8913
- \$4,470.00 BCM Environmental and Land Law #8910

**Motion by Jaci Grote to pay the seven bills listed on the agenda. Seconded by Susan Shepcaro. All in favor.**

### Rec'd before meeting:

- \$800.00 to Ambit Engineering for site development of 0 Pioneer Road

**Motion by Jaci Grote to pay Ambit Engineering in the amount of \$800.00. Seconded by Susan Shepcaro. All in favor.**

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

**At 9:08 p.m., Jaci Grote made a motion to move into non-public session per RSA 91-A:3, II, (d) Acquisition and RSA 91-A:3, II (e) Legal. Seconded by Susan Shepcaro.**

**Roll Call: Jaci Grote – Aye; Mike Garvan – Aye; Karen Oliver – Aye; Suzanne McFarland – Aye; Susan Shepcaro – Aye; Heather Reed – Aye; Sally King – Aye**

The Commission came out of non-public session at 9:32 p.m.

## **ADJOURNMENT**

**Motion by Jaci Grote to adjourn at 9:35 p.m. Seconded by Karen Oliver. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger

**From:** Shawn Joyce <[sjoyce@nerallc.com](mailto:sjoyce@nerallc.com)>  
**Sent:** Wednesday, August 24, 2022 9:56 AM  
**Subject:** Protecting Wildlife & Supporting Leash Zone Compliance

Dear RCC & BOS Members:

In follow up to our email below dated 2/23/22, wildlife inventory cameras were deployed in the Town Forest from 6/14/22 through 8/18/22 in an area that is protected by the Town of Rye Selectmen Ordinance No 35 - Town Forest Leash Ordinance.

[https://www.town.rye.nh.us/sites/g/files/vyhliif3751/f/uploads/35\\_bos\\_dog\\_leash\\_ordinance\\_town\\_forest.pdf](https://www.town.rye.nh.us/sites/g/files/vyhliif3751/f/uploads/35_bos_dog_leash_ordinance_town_forest.pdf)

The same area the cameras were deployed is also protected by the RCC green trail leash zone during the breeding season. RCC Meeting Minutes B. Dog leash requirements in section of Town Forest

[https://www.town.rye.nh.us/sites/g/files/vyhliif3751/f/minutes/02-10-22\\_cc\\_minutes.pdf](https://www.town.rye.nh.us/sites/g/files/vyhliif3751/f/minutes/02-10-22_cc_minutes.pdf)

There are 206 images of people with dogs. 23% of them had their dogs leashed which is great. The other 77%, many repeat offenders, including an RCC member and their partner, did not. There were only a few wildlife images in very early morning hours and/or at night when off leash dogs were not present.

The poor compliance adversely impacts the wildlife reserve area. It also leads to off leash dogs running wildlife through adjacent private property and over Washington Rd, reasons for Ordinance No. 35. With the fall approaching and more dogs coming off beaches into the forest, we ask the BOS and Rye PD to enforce the leash zones covered by Ordinance No 35.

In closing, we respectfully request that this email be noted as received on the next RCC and BOS meeting agendas and included with the public minutes that are circulated by email and posted on the town's website. We would also like to continue to extend that if the RCC and BOS would like any help from us with conservation efforts, please let us know. We are very willing to do the work and glad to help. Above all, we sincerely appreciate folks doing the right thing for conservation, protecting wildlife and habitat, and ensuring that all uses are compatible.

Sincerely – Shawn & Dave

Shawn Joyce

David Tilton

PO Box 5

390 Washington Rd

270 Washington Rd

Rye, NH 03870

Rye, NH 03870

**From:** Shawn Joyce <sjoyce@nerallc.com>  
**Sent:** Wednesday, October 5, 2022 9:51 AM  
**Subject:** Ensuring RCC Follows Fair/Ethical Protocols

Dear BOS:

Please see the following letter that was sent to the RCC on 8/24/22.

It was never acknowledged on the RCC's public agenda, nor was it included with the public minutes of the meeting, even though it was clearly requested.

This is a reoccurring issue with matters RCC leadership would rather not objectively address. It is unethical, suppresses fair process, transparency and distorts the public record. As stewards of the town, RCC leadership should embrace working with the public and not have the ability to disregard public communication.

The practice allows residents to question the integrity of Rye's government. Considering several RCC members take part in Rye's election process, and one is a State Representative, it's even more important they be required to follow ethical protocols. We ask that the BOS consult with the town attorney to ensure this happens.

In closing, we respectfully request that this email be noted as received on the 10/17/22 meeting agenda and included with the public minutes that are circulated by email and posted on the town's website.

Respectfully – Shawn & Dave

Shawn Joyce

David Tilton

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