

RCL notes of December 15th, 2016 Conservation Commission Meeting

A. WETLANDS:

1. Dean Koravos: 92 Old Beach Road, Map 8.4/Lot 119 NHDES Case# 2016-02034. Mark West, West Environmental

The application was tabled until January and until the board would be hearing from the owners and the wetland scientist.

2. Jeffrey Katz: 1146 Ocean Blvd, Map 19.4/Lot 89 Robert Gray, Gray Construction

Bob Gray, Rye Builder, represented the applicant. He stated the proposal is to tear down the house but to keep the foundation, the driveway, and the septic system. Member Susan McFarland asked for the age of the septic system. Mr. Gray replied it dated from 1987 and that the owner was not planning to replace it. He added that there is already a permit in place.

Sam Winebaum, 52 Cable Road, made a comment regarding the age of the septic system. He stated that he had served on the Parson's Creek Committee, and learned that septic systems from the 1980s ought to be examined closely. In his opinion, if somebody is going to tear down a house, they should install a new septic system.

Mr. Gray stated that he had the approval for operation that the owner had given to him. He is going to obtain more information prior to the site walk.

Chairman Sally King stated that it was unusual not to install a new septic system if a house is being torn down.

Mr. Gray stated that he is going to get accurate information regarding the septic system.

Sam Winebaum, 52 Cable Road, suggested that the board should ask the applicant when the septic system was last pumped out. He referred to the pump-out ordinance in the Parsons Creek Watershed. Septic systems have

to be pumped out every three years and a report has to be sent to the building inspector.

Mr. Gray will be looking into the status of the septic system and when it was last pumped out.

A site walk was planned for December Thursday, 22nd at 3:30 PM.

3. Alex & Joanne Zadeh: 245 Pioneer Road, Map 24/Lot 118 Derek Durbin, Attorney

Attorney Derek Durbin, who is representing the applicant, introduced Luke Hurley, from Gove Environmental Services, stating that he would be presenting the revised plan. *(Editor's notes: a site walk was scheduled on October 27th, 2016, however, no meeting minutes of the site walk have been posted/provided. The site walk related to tree-cutting in violation of the wetland buffer and to review of activity and the restoration plan).*

Chairman Sally King read the violation into the record, stating that there was a request from the applicant for an Administrative Appeal of the July 11, 2016 Building Inspector's Notice of Violations of the Rye Zoning Ordinance Section 301.8 (B) 5 and the August 1, 2016 Building Inspector's Notice of Violation II of Section 301.8 (B) 5.

Luke Hurley elaborated on the plan that he has been working on following the site walk. Describing the plan, he stated that the intent is not to overplant and overcrowd the area. He is planning for a variety of bushes and wildflowers. The bushes will cover a 400 square feet area – 40 feet long and 10 feet wide – as part of the restoration plan. There will be wildflowers too.

Member Susan McFarland stated that she was not at the site walk but was concerned that the plan did not include trees. She asked for the location of the trees that were cut on the plan and why the trees that were cut were not being replaced with other trees.

Member Jaci Grote stated that she had not gone on the site walk, but had similar concerns.

Luke Hurley indicated that there was a vegetated buffer.

Attorney Durbin provided some background information as to why two trees were cut.

Member Susan McFarland reiterated her question regarding why they were not replacing the cut trees with other trees.

Luke Hurley stated that he did not want the area to be crowded. He is afraid that it would be too close to the shrubs.

In response to member Susan McFarland's insistence that the Conservation Commission ("CC") should require the applicant to replace trees that were cut with other trees, Chairman Sally King stated that the damage has been done and that it has taken a long time for the applicant to come forward with a remediation plan.

Members agreed to the proposed plan and stated that they intend to follow up. They would like to come back in a year to view the restoration plan in place.

4. John E. McCune Jr.: 234 Parsons Road, Map 19/Lot 013 Steve Riker, Ambit Engineering; Tim Phoenix, Attorney

John Chagnon from Ambit Engineering represented the applicant in lieu of Steve Riker.

Chairman Sally King read into the record the request from the applicant, who is seeking variance relief from the Zoning Board of Adjustment:

John E. McCune, Jr. Revocable Trust, John E. McCune, Jr., Trustee for property owned and located at 243 Parson Road, Tax Map 19, Lot 103 requests a Special Exception from Section 301.7 C and from Section 301.8B.6 for an accessory building 16'+/- from the wetlands where 75' is required. Applicant requests Variances from Section 204.3 A for building 2.2' from the rear yard setback where 30' is required; from Section 204.3B for building 19.2' from the side yard setback where 20' is required and from Section 301.8B. 1 for surface alteration within the 75' buffer. Property is in the General Residence, Coastal Overlay District, SFHA Zone AE (9).

John Chagnon stated historic drawings were submitted to the ZBA. There used to be a barn and now there is a shed. The request is to keep the shed, which is close to the property line and the wetlands.

Chairman Sally King said that she took pictures during the site walk (*Editor's note: no minutes of the November 23rd site walk have been made available to the public*). She displayed the pictures on her I-pad.

Mr. Chagnon mentioned a gravel driveway in the back.

Chair Sally King stated that when the members of the CC went on the site walk, there were no vehicles in that area, then when she went back the next day, they were 4 vehicles parked on the gravel road, which is in the wetlands.

Mr. Chagnon stated that the intent is to keep the shed in its current location as well as the gravel. He referred to some issues with the deed, which states that the area between the tree line and the property line is not being claimed by anybody. The owner thought that it was their land. According to Mr. Chagnon, the applicant may need to do a boundary line agreement with the State.

Chairman Sally King stated that in her opinion the shed is clearly surrounded by wetlands given the presence of phragmites.

Mr. Chagnon stated that the plan is to remove the gravel and to replace it with vegetation. Member Jaci Grote interjected that it should not be grass, but native vegetation.

Member Jeff Gardner stated that usually they have interactions with the homeowner, however, in this case, it sounds like the homeowner is providing a plan with what he intends to do.

Member Jaci Grote stated that she is not going to recommend that the shed be allowed in the same location or that the gravel road be permitted to remain. She feels the applicant can move the shed away from the wetlands.

Member Mike Garvan is going to draft a letter to the ZBA on behalf of the CC with the recommendations that the shed be removed from its existing location and away from the wetlands and that the gravel path be removed and replaced with a native type of vegetation/vegetated buffer.

Sam Winebaum, 52 Cable Road stated that the home is located close to Marsh Road Pond, which has had high bacterial counts and he has seen the phragmites, which are indications of a failed septic systems and/or storm water runoff. He would like to add that they have been high bacterial hits of 200 times the state limit, right at the culvert, which may be caused by animals. *(Editor's note: see Parsons Creek Memorandum, dated September 1, 2016*

http://www.town.rye.nh.us/pages/RyeNH_Environment/Memo_Rye_PrelimWQResults_2016_JuneJulyAugust.pdf

The property is adjacent to Marsh Pond and sampling location BCH 08 at the culvert that saw varying high counts over the summer, ranging from acceptable to twenty times the state limit. Just downstream, sampling locations PC 07 and PC 08 saw samples from acceptable to over 200 times the state limits during the summer.)

5. William & Donna Purdie: 1154 Ocean Blvd., Map 19.4/Lot 90 Steve Riker, Ambit Engineering, NHDES Permit of Notification

Chair Sally King read into the record the applicant's request: variances from Section 202.5 to install a septic system 5' from northeast side setback where 20' is required; from Section 204.3B for a shed 2.6' from the northeast (left) side setback where 20' is required; from Section 204.3C for a shed 2.2' from the front setback where 30' is required; from Sections 301.8 B(7) for a shed 91.4' from tidal marsh where 100' is required. They request relief from the Building Code Section 7.9.2.5 for a septic system 5' from northeast side setback where 20' is required and from Section 7.9.3.2 for a septic system with a bottom bed 3' above the seasonal high water table where 4' is required.

John Chagnon presented on behalf of Steve Riker, from Ambit Engineering. He stated that the owners had a garage, and that the garage was moved and now they want to put a shed in the location of the garage. He informed the CC that if they were to sign the application it would take less time with DES. The board stated that it would like to go on a site walk.

A site walk was planned on Thursday, December 22, at 3:50 PM.

6. Salvatore & Kathleen Petralia: 25 Appledore, Map 19.4/Lot 52

Chairman Sally King stated this was not an application, but a follow-up. They need to set up a date for a site walk to document what has occurred at the site. A house was torn down and rebuilt and the owners were planting beyond what was allowed and on land that they did not own. Member Susan McFarland went on to say that this is on the agenda as the CC filed a formal complaint with DES as the owners had not been complying. The owners have now come forward and agreed to meet with the CC on a site walk to seek a resolution.

A site walk was planned on Thursday, December 22, at 3:10 PM.

B. TRAILS SUBCOMMITTEE – ROLE AND RESPONSIBILITY:

Member Mike Garvan stated that at the October CC meeting, members of the trail subcommittee had been in attendance to discuss their role and responsibilities. He stated that member of the trail subcommittee, Ritchie White, had drafted recommendations, which he had reviewed. He had also written his own version of the recommendations. Another member, Shawn Joyce, sent some comments regarding the two drafts.

Member Mike Garvan asked for comments with regard to the draft recommendations defining the role and responsibilities of the trail subcommittee, by first turning to the public.

Member of the trail subcommittee, Susan Shepcaro, 45 Recreation Road, stated that she had talked to Addie Tarbell, who was unable to attend, as she was sick. They both liked Mike Garvan's recommendations stating that they are not in agreement with Ritchie and Shawn's approach.

Member Mike Garvan stated that both Ritchie and Shawn want to oversee all the land owned by the CC. In his opinion, it was not the original intent for the trail subcommittee to do so. However, he stated, that the CC would be happy to use their help and expertise if they were a need to oversee a particular easement.

Member Jaci Grote stated that the Commission should regroup to define what their expectations are in regards to the trail subcommittee. She said that she thought there was a great deal of drama and was disappointed by the results.

Chairman Sally King agreed that there had been a fair amount of drama, however, she felt that a number of good things had taken place. First, it is important that they tried to figure out what the right balance is between wildlife and the forest versus park and recreation. A number of good items have been addressed, such as the kiosks, she said.

Member Mike Garvan stated he did not mind revisiting it at the next CC meeting. Members agreed.

Sam Winebaum, 52 Cable Road, made a number of comments regarding the acquisition of future conservation lands, emphasizing the need to provide public access to trails on land that can support it. Member Susan McFarland interrupted Sam Winebaum stating the Commission had a very full agenda.

A member from the public [Peter Crawford] agreed with Sam's statements while reminding the CC that the last bond (voted in March 2014) had passed by only seven votes.

C. OTHER BUSINESS:

a). Mindy Messmer: Addressing Water Quality and Rye Well Monitoring

Mindi Messmer, 291 Washington Road, State Representative for Rye and New Castle, and a hydrologist, wanted to inform members of the Commission of the work she has been doing with regard to the Coakley Landfill. She stated that she has been really involved around the Coakley Landfill investigation that came in part as a result of the Pediatric Cancer Cluster that was identified in five towns, including Rye. They have been looking at environmental triggers for those cancers based on reports provided by family members. A Governor's Task Force was formed and they started to look at the Coakley Landfill; subsequently a subcommittee was formed, which she is chairing, to look more closely at environmental factors related to the Coakley Landfill.

In response to a question from member Jim Raynes, Mindi Messmer stated that the major problem is that the bottom of the Coakley Landfill is not lined and that contaminants are being pulled away by pumping from nearby golf courses and surrounding wells. Over time, deed restrictions in lands around

the Coakley Landfill were removed and new developments were built with private wells – accounting for some 120-130 private wells.

Mindi Messmer stated that the current issue is that there are PFCs in the water, which are migrating off site and in all directions, into Rye, Greenland, and North Hampton. It is an ongoing process. They have been identifying additional wells in the area. The town wells in Rye are of concern as one of the wells, the Garland Well, has 12 ppt of PFCs. The other well, the Cedar Run well, has 6 ppt. Those findings are based on the last sampling. (*Editor's note: The state limit is 70 ppt, but New Jersey has a limit of 14 ppt.*) She has been in touch with the Rye Water District (“RWD”) and they are going to continue to sample the wells for PFCs, hopefully early in 2017, and they are planning to sample them twice a year: Fall and Spring. The last testing was done in the Spring of 2016. She would like the RWD to sample the wells for PFCs even earlier than they are planning to. She talked about the third well, which is the Bailey Brook Well, which is connected to the Bailey Brook through the fracture system. She is concerned that contaminants may migrate around the fractures and come down into the well. PFCs have been detected in Little River at a level of 10.8 parts per trillion. Because of her concerns about the migration of PFCs, she went to the Conservation Law Foundation and they conducted three samplings of the surface water: Bailey Brook, Berry Brook, and Little River. It was one snapshot in time. In Berry Brook, they found 195 parts per trillion, which is three times the limit of PFCs, at the end of Breakfast Hill Road. Berry Brook comes all the way down to Rye.

Mindi Messmer went on to say that during the course of her investigation, she found out that there were two additional landfills in Rye: the Rye Landfill and the Grove Road Landfill, which is next to the Garland Well. The State of NH has been requesting many of the towns to sample their wells for PFCs in 2017. (*Editor's notes: read BOS minutes 11/28/16, item H “NHDES Requirement for sampling for PFCs/PFAs at Contaminated Sites” (p. 7)* http://www.town.rye.nh.us/pages/RyeNH_SelectMin/2016/11-28-16%20Minutes.pdf. Also, read Rye Civic League BOS Notes: <http://ryecivicleague.org/wp-content/uploads/2016/12/RyeBOSrclNotes112816revBfinal.htm#spending>)

She has placed a request to the State of NH to ask the town to sample all of the wells surrounding the landfills because of concerns regarding PFCs. She would appreciate it if the Conservation Commission could help with this

process by requesting that the concerned parties to sample all of the wells for PFCs. There are monitoring sites around the landfills and she would like those sites to be sampled. She mentioned a well on Central Road that is part of Aquarion in which PFCs were detected in July 2016.

Members of the CC agreed to write a letter to request that monitoring sites around the landfills in Rye should be sample for PFCs.

b). Susan Shepcaro requesting to be considered for CC Board Membership.

All members were in favor. The Board of Selectmen will ultimately be voting on her appointment as a member of the CC at the next BOS meeting.

c). Wetland Buffer Educational Packets. Tracy Degnan, Rockingham Conservation

Tracy Degnan, Conservation Specialist from the Rockingham County Conservation District (RCCD), discussed ways with members of the CC to educate Rye citizens about protecting the wetlands. Members are planning to gather information and brainstorm as they work on a plan to educate the public in protecting the wetlands.

Tracy Degnan also provided updates regarding marsh restoration.

Tracy Degnan talked about the Brindamour parcel and how they have been battling invasive species/phragmites for over three years. *(Editor's notes; in 2008, the Brindamour conservation easement was purchased for \$1,300,000. Located at 175 Washington Road, the Brindamour easement covers 72.54 acres, of which 25 acres is forest, 30 acres farmland, and 17 acres wetland.)*

She stated that they are running out of funding and that their plan is to remove the biomass of the phragmites by retaining a wetland contractor. Then, the plan would be to treat the re-growth with a herbicide. She referred to the Young easement, stating that it is adjacent and that some of the phragmites are in the Young easement. She stated that remediation might occur during the winter and that it is almost 12 acres of phragmites.

e). Discussion of Bond Requests

Member Jaci Grote talked about the process for putting a bond for this year on the ballot. She stated that their projection provided for a warrant article this March. *(Editor's note: The CIP Plan has provided for a \$3 million Conservation Bond issue in 2017 for a number of years.)* Ms. Grote mentioned a few items that would be on the ballot this year: Town Hall and a study for Rye Recreation. Addressing the members of the Commission, she asked: do we want to submit a warrant article for this year? *(Editor's notes: read BOS minutes 12/12/16 regarding a \$80,000 warrant article to conduct preliminary planning, design, and engineering for a Community Center, of which 40,000 dollars will come from the Recreation Revolving Fund (p.8))*

http://www.town.rye.nh.us/pages/RyeNH_SelectMin/2016/12-12-16%20Minutes.pdf.

Chairman Sally King responded that, from the Commission's perspective, it is not a bad time, and because of concerns about water, she is not sure it is a bad time for the Town. *(Editor's notes: in the CIP 2017-2022 – the CIP Committee recommends the delay of the \$3 million Conservation Bond).*

Member Susan McFarland stated that she would defer to the other members of the Commission, as she has never been involved with a Conservation Bond issue.

Member Jaci Grote stated that they could not do the bond successfully without the support of a subcommittee, to provide education. She said that she was unsure as to the deadline for the submission of the warrant article.

Chairman Sally King referred to the proposed South Road development stating that people would like the CC to be able to protect land that is in the wellhead protection district.

Member Jaci Grote stated that they should go for it [to have a warrant article for a bond on the ballot in March] and that she will get it started.

Member Jeff Gardner stated that he is concerned that it is too late to get started given the deadline for submission.

Member Jim Raynes agreed with Jeff Gardner that it was too late to get started.

Chair Sally King stated that it is good to always have money in place.

A member of the public [Peter Crawford] asked a question regarding the remaining 1.7 million. He expressed surprise at an earlier comment that indicated that the remaining funds are already spoken for. He stated that an additional \$3 million bond issue would be unlikely to pass unless the property that the \$1.7 million is earmarked for could be identified prior to the Deliberative Session.

Chairman Sally King replied that it is obligated – the Commission would like to do something with the money. She stated that the timing is tight given a Purchase and Sale Agreement has not yet been signed, so the potential acquisition cannot be identified.

Member Jim Raynes stated that he against it as it was too late in the year.

Chair Sally King agreed that it was a little late.

Following member Mike Garvan's suggestion, member Jaci Grote said that she would "put up some feelers."

Member Susan McFarland raised her concerns regarding the fact that there is no subcommittee in place to make this feasible for this year.

Chairman Sally King stated they would table it for now.

D. NON-PUBLIC SESSION per RSA 91-A:3 (d) Acquisition