

CONSERVATION COMMISSION MINUTES

July 10, 2018 - Richmond Town Hall - 1529 State Road

PRESENT: Ms. Freya Segal, Co-Chair; Mr. Adam Weinberg; Mr. Nick Martinelli; Mr. John Scorpa, Associate; Mr. Patrick Seckler; Mr. Shepley Evans, Conservation Agent; Mr. Daniel Scorpa, Associate

ABSENT: Mr. Ron Veillette, Co-Chair; Mr. Robert Dahlen

APPLICANTS AND OTHERS: Peter & Preciosa Krause; Neal Pilson; Paul Supranowitz; Erick Schmehl; David Dee; Carol Stephens; Patricia Malnati; Francis Malnati; Christine Hanson; Ray Hanson; Ina Wilkelin; Ron Barron; Suzanne Dombkowski; Rocco Cirigliano; Carol Cirigliano; Louise Maron; Roger Manzolini; Susan Sacher; Joel Sacher; Suzanne King; Richard Berlin; Marc Volk of Foresight Land Services; Stedman Stephens; John Mason; Terrill Pless; Theresa Fasano; Holly Stover; Richard Stover; Sandra Flannery; William Flannery; Leigh Merlini; Fred Merritt; Dan Brook; Lauriane Caswell; Bill Caswell, Atty.; Alexandra Glover of Lazan, Glover & Puciloski

Ms. Segal opened the meeting at 7:05 PM and requested that anyone making an audio or video recording of the meeting to please identify themselves: Mr. Evans and Ms. Glover acknowledged that they were recording.

1. Review and Approval of Previous Minutes: The minutes of the June 12, 2018 and June 27, 2018 meetings had been previously circulated for review. Motion by Ms. Segal, seconded by Mr. Scorpa to approve the minutes of the June 12, 2018 and June 27, 2018 meetings as circulated. Motion carried by unanimous approval.

2. Notice of Intent (DEP File #271-0197) amended and resubmitted by Foresight Land Services, Inc. on June 22, 2018 on behalf of Alan Kluger & Amy Dean, property at 1151 East Road, Map 408, Lots 109 and 110. The proposed work consists of dam repairs and outlet structure replacement at Rose Pond. This is a continuation from January 8, 2018. A map of the property was displayed, and Mr. Marc Volk of foresight Land Services outlined the details of the project, which included all the work that might possibly be required to improve the dam structure. He cautioned that the actual extent of the work required will not be known until an inspection revealed the true condition of the entire outlet structure and the existing drain pipe through the dam. He also noted that plans were in place to de-water the small beaver pond downstream that impounded water from Rose Pond. He said that the Notice of Intent covers the full replacement of that pipe, if that becomes necessary, which may alter a wetlands resource area. Another part of the project is access to the site, which is anticipated as needing only light machinery. There is no heavy construction that needs to be done and no gravel access road needs to be installed. Mr. Volk did note that the Notice of Intent does include the use of heavy machinery, should it be necessary. In that case

Foresight Land Services would restore the meadow to its natural condition once work is completed.

In response to a question concerning the reason for such a complete (“worst case scenario”) NOI, Mr. Volk explained that by making the NOI inclusive of any possible additional work beyond what is immediately obvious, it eliminates the need for multiple approval processes and extensive delays to complete the project, which could result in the project site being in worse shape once work restarts than it was at the beginning.

A member of the Commission? asked whether that meant that Mr. Volk will be updating the Commission on each additional step as the project proceeds. Mr. Volk was agreeable to reporting back at each phase of the work to Mr. Shep Evans as the Commission’s Agent and that moving on to the next phase would be conditional on the Commission’s approval. Mr. Volk also noted that once the impounded water is removed from the pipe and the video inspection is completed, he should know what the extent of the project will be. After some discussion of the details of the amount of water that will have to be removed and the specifics of the video system, Ms. Segal turned the question over to the audience for questions:

Mr. Bill Flannery had a question as to what the impact of lowering the water level would be to his property, which already experiences damage from silt buildup. Mr. Volk explained the process and assured him that there should not be any extensive impact as a result of the work. He noted that the whole point of doing the work is to avoid impacting surrounding properties.

Mr. Richard Stover spoke about the existence of two natural overflow channels (one out of the original quarry and the other at the east end of the earthen dam), which in his opinion made the failing outlet structure and drain pipe redundant. Mr. Volk advised Mr. Stover that the natural overflow channels are irrelevant and should not be relied upon for drainage of the pond. Ms. Segal assured Mr. Stover that after the engineers review the situation and the video is reviewed, the Conservation Commission will review every step of the project.

Ms. Holly Stover addressed the Commission to “shed some light” on the issue. She provided a lengthy presentation of the history of the quarry that was the source of the water impounded when Rose Pond was created. She noted that there has always been a spillway and it was over that spillway that Mr. Gordon Rose had to build a bridge to gain access to the quarry to create the pond. Rose Pond has a 35-40-foot spillway, which has always been the outsource for Rose Pond. Ms. Stover detailed exactly where the spillway is located relative to the dam. She noted that the spillway has had lowered levels of water lately, due in part to felled trees lying across the spillway. She spoke about beaver dams that raise the level of water and the deterioration of the spillway, which she believed needed to be replaced with one of similar or smaller size. She distributed photos to illustrate the information she provided. Ms.

Stover also provided photos taken during the snow storm in January that showed the sediment deposited on the overflow riser. Another photograph taken that same day in January, illustrated the tree that is blocking the spillway, causing water to flow over it. Ms. Stover concluded that there is no reason why the dam should breach. Water pressure against the dam is never sufficient to cause the dam to collapse, nor would such a collapse mean a catastrophic event. Ms. Stover provided the Commission with an article she copied from a website entitled, "Living the Country Life," which she felt was more informative and appropriate in relation to such a small pond as Rose Pond. To illustrate the shallow depths of the pond and the quarry, Ms. Stover provided some exact measurements of the water levels. She said that the goal of the current landowners must be to maintain the hydrology in the Pond and the quarry and minimize environmental impact. Rose Pond is a valuable wetland resource area for wildlife. She asked the applicant to explain their objective in reducing the water level in Rose Pond, which she felt would have dire consequences for the Pond, the Quarry, the wetlands and the wildlife dependent upon them. Ms. Stover went on to state that lowering the elevation of the pond by decreasing the riser elevation and lowering or raising the spillway would alter the existing hydrology and water carrying capacity of Rose Pond and quarry. This would drastically reduce the environmental resource and fail to comply with Massachusetts environmental laws. Any repair or replacement to the water carrying capacity of Rose Pond must be made of the same kind of passive structure of equal or lesser capacity and made with more durable materials with no valves and no mechanics.

The next issue Ms. Stover raised was the proposed removal of trees along the edges of the Pond and shrubbery along the face of the dam. The trees' roots were helpful, she noted, in preserving the integrity of the shoreline and the shrubbery has been maintained by the homeowners on that site and have historically been aesthetically pleasing and useful. Ms. Stover reiterated that repair and replacement work proposed in this Notice of Intent contains work greater than necessary to preserve the Pond and the dam and will result in extensive environmental impact. The simpler repair of the dam outlet structure could be accomplished with a smaller diameter pipe that could be slipped inside the outlet pipe. The applicant has not examined or offered other alternatives that could produce the desired correction with minimal environmental impact. Ms. Stover submitted all the documents and photographs having to do with her research to the Commission. Ms. Segal pointed out to the assembled audience that Ms. Stover had been the Chair of the Conservation Commission for 24 or 25 years.

Mr. Roger Manzolini addressed a question to Ms. Stover: He noted that the Notice of Intent talked about an outlet structure for the Pond. He pointed out the difference between the emergency overflow and the outlet structure in the Pond. If the natural overflow were completely blocked off, the Pond would naturally open the spillway and the water would go to the natural overflow and end up in the beaver pond, which would do little to no damage. He noted that there is another natural overflow point

and a proposal to block that off completely would be inexpensive and non-intrusive to the environment, would restore the Pond to its original, intended function and would be a reasonable solution that would not change the elevation of the Pond, which the work cited in the Notice of Intent does.

A member of the Commission?? asked what had happened at the Pond to precipitate all this. Ms. Segal felt the question was irrelevant at this time. A member of the Commission?? asked if there is a beaver dam below, Ms. Stover said the beaver pond is on the back side of the pond and is backing up the water in that area.

Ms. Segal asked Mr. Mark Volk of Foresight Land Services to respond to Ms. Stover. He noted his agreement with a lot of the information she provided and that the intent of the whole project is the replacement of the rotting galvanized culvert and nothing else. A member of the Commission said that once excavation begins you could be opening a Pandora's box and where would it end for the homeowners. Ms. Segal asked if the proposal is the least invasive first step that must be done to determine the extent of the project. Mr. Volk reiterated that the first step is to video the area in question. Ms. Stover and Mr. Volk discussed the possible scenarios and the proper ways to achieve the desired end. Ms. Segal said that it was her understanding that the Conservation Commission would all be notified when the video-taping was scheduled to be done and be advised of the results of that action, before anything else is approved. There was a discussion of what approval of the NOI means. Ms. Segal understood it to mean that once the video is done, the Commission will meet to discuss what further action needs to be taken. Mr. Volk did not agree with that interpretation. He said that once the video has been done, his company meets with engineers who will discuss plans for the next step to be taken. Mr. Volk said he could then present that proposal to the Commission and it may be that the proposal would be to leave things as they are, or it may be to repair certain areas, or it may be to replace the whole structure.

Continued discussion about whether any action to repair or replace is needed at this time and a caveat that no replacement structure has any mechanical gates or included draining of the pond. Ms. Segal requested a motion to continue the hearing at the next regularly scheduled meeting on August 14, 2018 and to conduct a site visit during the interim period. Mr. Weinberg so moved, seconded by Mr. Scorpa and passed by unanimous approval. Mr. Evans will find a date for the site visit.

3. Request for Determination of Applicability submitted by John Scorpa, property located at #300 Shore Road, Map 101, Lot 146. The proposed work consists of removing an old small deck and replacing it with a larger deck, looking out onto Richmond Pond. Mr. Scorpa referenced the plan that was included with the request that showed the difference between the old deck and the proposed new deck. There was a short discussion of the Plan and a question from the floor as to whether changes in the zoning would need to be addressed. That question would properly be addressed to the Zoning Board. The Commission conducted a site visit the previous afternoon.

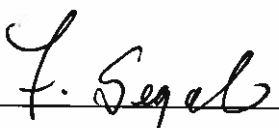
As all conditions and requirements were satisfied, there was a motion by Mr. Weinberg, seconded by Mr. Scorpa, to issue a Negative Determination #3, with standard Richmond conditions. The motion was adopted by unanimous consent.

4. Discussion of a proposed Enforcement Order to be issued under the Berkshire Scenic Mountains Act (MGL. CH.131 Sec. 39A) concerning the on-going residential construction project and Lenox & Lenox Branch Roads, Map 411 Lots 57 & 81. The permit for the subject project under Scenic Mountain regulations has expired, the site work is not completed and continues without a permit. Mr. Evans read the requirements in this case, which included cessation of all work under the protected areas and the application for a new permit on or before a date to be determined by the Commission. Mr. Evans also noted when the Enforcement Order has been recorded at the Registry of Deeds, the owner will have difficulty getting a mortgage from any bank or conveying the property until he clears the order from the chain of title. Mr. Weinberg moved to issue an Enforcement Order dated July 11, 2018, requiring immediate application for a new permit. He was seconded by Mr. Scorpa and the motion was adopted by unanimous vote. The date by which the homeowner is required to produce an application for a permit was determined to be on or before August 14th, the date of the next meeting of the Commission.

5. Topics Not Reasonably Anticipated by the Chair: No issues were before the Commission

There being no further business before the Commission, Mr. Evans moved that the meeting be adjourned. The motion was seconded and carried by unanimous approval. The meeting was adjourned at 9:05 PM.

Signed:



Ms. Freya Segal, Chair

Con Com approved
Oct 10, 2018

NOTE: This version contains the changes made as of 10/3/18

LIST of DOCUMENTS AND EXHIBITS

PER OML 940 CMR 29.00: M.G.L. c. 30A, & 25(a) and (b)

**AGENDA ITEM #2: DEP File # 271-0197 / Amended Notice of Intent, Proposed Repairs/
Replacement of Rose Pond Outlet Structure and Related Site Work, June 2018**

- A. Document cited above submitted by Foresight Land Services
- B. Full Size Drawings # E2442D02.dwg, Tabs SP-1 & SP-2, SP-1 Dated June 8, 2017(SP-1 should be 2018) and SP-2 dated June 8, 2017, Provided by Foresight Land Services
- C. H. Stover write up of presentation given of history of the quarry and recent status. Provided July 10, 2018
- D. H. Stover photo exhibits illustrating status of dam and eastern spillway in January 2018
- E. H. Stover sketch showing Drop Outlet Principle dated July 2018
- F. H. Stover handout of article from Living the Country Life, Subject being: "Creating and fixing pond spillways"
- G. Typical Dam Maintenance Guidelines, Rose Pond Dam excerpted from Ref A above
- H. etc.

_____ oo _____

Note: Above for each item provided by agenda item. List filled in by agent or selected member of ConCom and provided with recording and agenda to Town Administrator for processing.

r