



## City of Rochester Conservation Commission Meeting Minutes

**Wednesday December 28, 2022**

Rochester Police Department (2<sup>nd</sup> Floor)  
23 Wakefield Street, Rochester, NH

(These minutes were approved on February 1, 2023)

### Attendance

Presence	Commission Member	Notes	Members of the Public
Present	Mike Dionne, <i>Chair</i>		Those offering comment are listed in the meeting minutes.
Absent	Kevin Sullivan, <i>Vice Chair</i>	excused	
Present	Mark Jennings		
Present	Mike Kirwan		
Absent	Merry Lineweber	excused	
Present	Dan Nickerson		
Absent	Barbara Soley	excused	
Present	Renée McIsaac, <i>Planner I</i>		
Present	Ryan O'Connor, <i>Senior Planner</i>		
Present	Shanna B. Saunders, <i>Planning Director</i>		

### I. Call to Order:

Mike Dionne called the meeting to order at 6:30pm.

### II. Approval of Minutes: Discussion tabled to next meeting.

### III. Conservation Overlay District:

#### a. 797 Portland Street; Tax Map 108 Lot 50

Review of wetland and wetland buffer impacts for a proposed 16 lot subdivision. 4,693 of permanent wetland impacts is proposed.

Mike Dionne explained that since Mike Kirwan was recusing himself from decisions for the subject property that the Commission did not have a quorum present. With the public interest in the proposal, he requested the applicant present the proposal so the Commission could hear the public input. However, it was clear this was a non-meeting.

Chris Berry of Berry Surveying & Engineering presented an overview of the project. He explained that some of the documents were reviewed by third-party consultants. For the Drainage Analysis he received the comment letter from the 3<sup>rd</sup> Party reviewer and will make revisions that address the concerns raised. Once this update is completed, he will submit these records for a complete review.

Chris explained that the purpose of the meeting was to discuss the proposed wetlands impacts. The applicant is proposing a roadway that would provide access to a subdivision of duplexes. He stated that much of the area near the proposed entrance from Crowhill Road has been impacted by human activity. Across the properties on Crowhill Road there is a channel that carries a considerable amount of water flow. There is also water flow from Salmon Falls Road that comes across the backside of these properties. To address the water flow the proposal intends to capture much of this water and divert it into a gravel wetland system. As part of the requested Conditional Use Permit, this drainage structure would be partially located in the wetland buffer. All flow conditions are estimated to have a reduction in flow to abutting properties with this proposal.

Chris indicated that the proposal for the crossing uses two culverts with 0.5' bury depth, and there is 1% - 0.5% slope in each of the pipes associated with the culvert for the wetland crossing. He described the wetland crossing area as wide, flat and expansive.

Chris stated that the pipes are oversized for the actual site conditions. He stated that a Certified Wetland Scientist keyed out the wetland systems present on the property. The project would require an Alteration of Terrain permit and a Wetlands permit. He stated that the applicant worked through wetland impact minimization considerations for the site. He stated that all drainage pipes were designed for the 100-yr storm event.

Mike Dionne asked if there was any channelization present in the area of the wetland crossing.

Chris Berry responded "no".

Mark Jennings stated the site conditions did not lend itself to channelization. The area was wet and flat.

Mike Dionne expressed concern about limiting equalization at the crossing of the wetland.

Mark Jennings described the area as a large swale.

Dan Nickerson confirmed no stream present, that the land was just wet and flat, with very little movement.

Chris Berry indicated that the designed culverts are well sized for the project conditions.

Mike Dionne questioned whether the separate wetland areas located near the cul-de-sac were contiguous.

Chris Berry responded that they were classified as not being contiguous.

*Mike Dionne opened the session for public comment.*

Zachary Pallas of 118 Crowhill Rd. Brought in pictures of the flooded area of road towards Old Ox Road. There are 2 ditches besides Crowhill Rd that feed the culvert. The capacity of the culvert is insufficient and results in flooding across the property. He stated that he had lived at the property for 44 years and feels that flooding events are now more frequent than in the past.

Dottie McLain of 63 Crowhill Rd. Brought in pictures taken on 12/23/22 that depicted flooded yards. Pictures included conditions of 61, 63 and 67 Crowhill Rd properties. She indicated that 61 Crowhill Rd is where the water enters the brook. She expressed concern that the drainage systems would not be sufficient to deal with the flooding.

Mike Dionne asked Chris Berry if the gravel wetland overtopped where would the water go. Chris responded that the spillway does not direct water towards abutters.

John McLain of 63 Crowhill Rd. Showed pictures of the project site with standing water. He indicated that anytime there is a storm, the property is flooded, but there is always water on the site. He expressed concern about the use of leach fields in this type of landscape.

Susan Correia of 9 Bronze Ct. Stated that the condition of the Salmon Falls River is a concern. She recalled in 2006 the area was evacuated due to flooding. She is concerned that too much development has been allowed in the past and this has resulted in some of the current flooding issues. She is concerned that species diversity has also been impacted due to construction. She is concerned that increases in run-off will pollute the Salmon Falls River. She stated that she feels we have an obligation to take care of the Salmon Falls River. She spoke with people in neighboring Maine and expects that they will reach out with similar concerns. She believes that the property was not properly classified for wetlands and vernal pools. She saw significant amounts of sphagnum moss, which is a wetland indicator.

Mike Dionne asked Mike Kirwan if he had seen any vernal pools on the site. Mike Kirwan indicated he recalled there being some, but could not locate one recently.

Susan Correia thought the naming of the project (with a Portland Street address) was not appropriate and was misleading.

Mike Dionne asked if a Natural Heritage Bureau (NHB) review had been conducted. Chris replied "yes".

Mike Dionne acknowledged that the NHB data does partially rely on volunteer reporting.

Zachary Pallas stated there are black snakes in the area. Mike Dionne asked if he meant Northern Racer and Zachary replied "yes".

Mark Jennings asked what was intended for the remaining undeveloped land. Chris Berry indicated it would be deeded as common open space.

John McLain indicated that the detention ponds across from the elementary school on Portland Street were not working properly. There is water and ice in the area that has not been addressed since the storm. He expressed concern that this would also happen with the proposed project.

Dottie McLain indicated this flooding was associated with Carole Court which is a private road, where the water flowed out onto the street and is now ice that is 4" thick in some places.

Susan Corriea asked for examples of where similar drainage systems have been used successfully.

Chris Berry stated that he would provide a list to the Planning Department for distribution and review.

Mark Jennings made a motion to continue the application to date certain for lack of a quorum. The proposal will be considered at the next Commission meeting scheduled for January 25, 2022. Dan Nickerson seconded the motion; the motion passed unanimously.

b. 146 Old Dover Road; Tax Map 140 Lot 72

Review plan to restore 50' of wetland buffer that was disturbed during logging.

Joe Berry of Berry Surveying & Engineering presented the proposal to reclaim the 50' wetland buffer that was disturbed during recent logging activity. The area will require some regrading.

Renée McIsaac requested that native plant species be used to seed the area and offered to provide a seed mix. Joe agreed to update the seed mix.

Mark Jennings made a motion to support the project, with the use of native plant species for the reclamation. Mike Kirwan seconded the motion; the motion passed unanimously.

c. Packys Investment Properties, LLC; 17 Sterling Drive - Map 208, Lot 18

Review of conditional use permit for temporary and permanent wetlands buffer disturbance as part of a solar tracker installation project.

Scott Lawler of Norway Plains and Associates presented an overview of the project. He indicated the applicant is seeking a conditional use permit to allow for construction of additional solar trackers on the project site. He explained that primarily the Conservation Overlay District impacts are for a maintenance pathway and tree maintenance. He stated that tree removal was essential to the project and there are trees located in the wetland buffer. He described the tree growth as sparse. The project would follow a tree management plan similar to the one submitted for the Shaw Drive project.

Mike Dionne asked about the impacts of the foundation installation in the infiltration basin. Scott explained that there is sufficient depth for the basin to function. He also stated that he has never seen the infiltration basin exceed its capacity.

Scott indicated that once through the Planning Board process the applicant would then submit the necessary permits to the State. Scott feels that it would be better for the applicant if the City approved their portion of the project prior to going to the State for permits.

Mark Jennings asked if the State is likely to approve such a project.

Packy Campbell stated he felt confident the project would be approved, as there are minimal impacts.

Mark Jennings stated interest in the project and possible application on other properties.

Packy stated he sees these as part of the routine permitting process. He feels these are reasonable impacts for the size of the lot and thinks there would be very little impact to the wetland. He stated the trees in the wetland and the buffer would need to be cut. He plans to grind the stumps of trees cut. He explained the site would not require An Intent to Cut due to the amount of board feet. He wants to cut in February when things are cold and frozen. He is targeting the February 6<sup>th</sup> Planning Board meeting for approval. Packy would file a permit by notification for the forestry.

Scott indicated that another NHB review is being done for the site. The last inquiry resulted in findings for Blanding's and Wood turtles.

Mike Dionne stated to his knowledge NHDES has not approved solar installations in the wetlands. He is concerned that this would be the start of a precedent for developing wetlands.

Packy believes this is below the standard for denial of a wetlands permit and this project is a reasonable use of land.

Ryan O'Connor suggested reviewing the Conditional Use Permit criteria for the project.

*Criteria (i) - The proposed construction is essential to the productive use of land not in the COD.*

Mark Jennings thinks this makes wetlands land productive and expressed interest in doing this on his own property if allowed by the Commission. Mike Dionne expressed concern about panels placed in wetlands as a precedent.

*Criteria (ii) - Design and construction methods will be such as to minimize impact upon the wetlands and will include restoration of the site consistent with the permitted use.*

Mike Dionne stated the presence of foundations in the wetlands is not minimizing.

Packy Campbell stated he could use precast concrete for the project or could pump the concrete over the buffer from a truck as options. He is confident that the trackers can be supported in the wetlands because he had a consultant (John Turner) who did some soil test pits and compaction tests on site.

Dan Nickerson is interested in the results of the NHB report for the site. He believes that the presence of turtles would prohibit summer construction on the site. He is also concerned about potentially exposing hibernating turtles if digging were to occur during the winter. He indicated that fall would likely be the best time to not disturb turtles.

Mike Dionne confirmed that the access path would need to be temporary.

*Criteria (iii) - There is no feasible alternative route on land controlled by the applicant that does not cross the CO District nor has less detrimental impact on the wetlands. Nothing in this Section shall limit the applicant from exploring alternatives with abutting property owners.*

Scott Lawler indicated that there are trees towards the front of the property that are off site that does not make it a good location for solar tracker placement.

*Criteria (iv) - Economic advantage is not the sole reason for the proposed location of work.*

Mike Dionne stated that economic advantage is the reason for the proposed work.

*Mike Dionne opened the session for public comment.*

Larry Spector stated that he does not like the idea of putting solar trackers in the wetlands. He also expressed a concern regarding potential conflict of interest for a Commission member who may be interested in pursuing development of wetlands.

The Board discussed the criteria and possible recommended conditions of approval. Dan Nickerson made a motion to recommend approval of the proposal with the following recommended conditions. Mike Kirwan seconded the motion; the motion passed unanimously.

Recommended Precedent Conditions:

1. Project is conditional upon approval of all necessary State of New Hampshire and federal permits.
2. A vegetation management plan shall be submitted for the project.
3. The applicant must update the plan to use native plant species in the seed mix for revegetation of the temporary wetland and buffer impacts.
4. The applicant must adhere to the recommendations to protect wildlife following the NHB review. Final plans and documents must be updated to reflect such.
5. Concrete is pumped from a truck over the buffer for the tracker "foundations" Please update final plans and documents to reflect such.

Recommended Subsequent Conditions:

6. Future cutting in the wetland buffer to limit vegetative height for the solar panels is permitted no more than once every 4 years. A notification letter of vegetative cutting in the wetland buffer must be submitted to the Conservation Commission. Any more frequent cutting would require a Conditional Use Permit request.
- d. GNM Solar 17, LLC; 60 Shaw Drive - Tax Map 240, Lot 49  
Review of conditional use permit for permanent wetlands buffer disturbance as part of a solar tracker installation project.

Scott Lawler of Norway Plains and Associates gave an overview of the project and stated that the applicant is seeking a conditional use permit for the impacts to the road upgrades.

Damon Burt of Fraggie Rock Environmental provided an overview of the restoration plan and stated it had been updated with the current correct species names for the shrubs to be planted.

The applicant is not currently proposing to restore the buffer and is looking to manage the vegetation in the buffer. The applicant wants to limit vegetative growth to shrubby and low plants. They are proposing to evaluate vegetative growth every 2 years in case there is something that needs to be addressed.

Mike Dionne stated a concern about invasive species and felt it should be noted in the site reports.

Shanna Saunders explained that previously she had recused herself for a perceived conflict of interest but after discussing the matter with legal counsel, she does not need to recuse herself. She stated that the restoration plan only refers to the wetlands and is missing a plan for the buffer.

Packy Campbell stated he is okay with restoration in the buffer as long as the growth is compatible with the intended use of the land.

The Board discussed the criteria and possible recommended conditions of approval. Mike Dionne made a motion to approve of the proposal with the recommended conditions listed below. The motion was seconded by Dan Nickerson, the motion carried unanimously.

#### Recommended Precedent Conditions

1. Submission of a revised restoration plan that incorporates:
  - a. Restoration of the 50' buffer with plant species compatible for the intended use of the site.
  - b. The use of native plant species which will include locally collected seeds and may include commercial supply of New England wetland seed species. The list of acceptable plant species to be used will be cited in the final plan.
2. The standard of performance for the restoration will mimic the expectations from NHDES.
3. An Invasive Species Management Plan will be included as part of the Vegetation Management Plan.

#### Recommended Subsequent Conditions

4. Annual monitoring reports evaluating the restoration will be provided to the City as long as reports are being provided to NHDES.
5. Future cutting in the wetland buffer to limit vegetative height for the solar panels is permitted no more than once every 4 years. A notification letter of vegetative cutting in the wetland buffer must be submitted to the Conservation Commission. Any more frequent cutting would require a Conditional Use Permit request.

#### **IV. NH DES Wetland / Shoreland Applications: Discussion tabled to next meeting.**

#### **V. Notice of Intent to Cut Wood or Timber / Intent to Excavate: Discussion tabled to next meeting.**

#### **VI. New Business:**

- a. Cocheco River Clean-up

Peter Bruckner presented a photo showing a section of the Cocheco River that had significant amounts of trash and debris. He explained that he had talked with different entities in an effort to address the issue. The riverbank leading to the area has a steep slope. In addition to the debris, there are fallen trees that in some cases run bank to bank.

Peter stated that he would continue to forward any information he thinks may be helpful and plans to attend the February Commission meeting.

Mike Dionne wondered if the clean-up effort could be a part of the Gonic dam area remediation effort. He indicated he would reach out to NHDES to see if there were resources available. He will also consult with John Magee.

Renée McIsaac will reach out to other City departments about furthering this effort.

The Commission will discuss these efforts at the meeting scheduled for February.

b. Master Plan Natural Resources Chapter Review and Update

Renée McIsaac stated that the Natural Resources chapter of the Master Plan is being updated. She requested that members review the current chapter and report back to her if there are elements that are missing or should be changed.

c. Mike Dionne's current term as Chair is ending. Renée McIsaac asked if current members would like to nominate Mike Dionne for another term. Mark Jennings made a motion that Mike Dionne continue as chair. Dan Nickerson seconded. The other members present agreed unanimously.

**VII. Reports: Discussion tabled to next meeting.**

**VIII. Old Business: Discussion tabled to next meeting.**

**IX. Non-Public Session: None**

**X. Adjournment:**

A motion to adjourn at 0951pm was made by Mike Dionne and seconded by Mark Jennings; the motion was carried unanimously.

Respectfully submitted,  
Renee McIsaac  
Planner I