

Town of Lakeville  
Conservation Commission  
Tuesday July 13, 2021  
7:00 pm – Remote meeting

Members present: Chairman Bouchard, John LeBlanc, Mark Knox, Joe Chamberlain, Nancy Yeatts and Josh Faherty. This was a remote meeting and recorded by LakeCam.

**Residences at Lebaron Hills** - continued - amend an Order of Resource Area Delineation (ORAD), Goddard Consulting. Mitch Maslanka from Goddard Consulting was present for discussion as well as Mohammed Itani, the applicant. This is to request an amendment to the ORAD from 2018 for Lebaron Boulevard (DEP file #192-790). They received a peer review letter in May from ECR (Environmental Consulting and Restoration) going over their review of the mean annual high-water line for Thompson Brook. They have responded to the peer review and would like to go through a few of the agreements with the comments made by ECR. Their general overview and summary was that the mean annual high-water line from the original ORAD was inaccurate and followed the edge of the red maple swamp and not the mean annual high-water line of the actual bank of the stream. One of ECR's comments was based off the USGS maps. The first map from 1957 was an inaccurate depiction of the stream channel. In 1965 a new USGS map was issued and that is what is believed to be a more accurate depiction of the mean annual high-water line. There was a review of the mean annual high-water line and comparison between the USGS line and ORAD approved line. The second comment from ECR walked about the stream stats and widths calculated based off the drainage area for the stream. The range was 7-10' based on the drainage area calculated at the upstream portion of Thompson Brook and the downstream. The third comment from ECR said the mean annual high water flagging in the current ORAD generally locates the limit of Red Maple swamp. The intermittent streams within the swamp are not part of the Thompson Brook. The drone imagery also shows the annual high-water limit within the bordering vegetated wetland system. Both ECR and Goddard Consulting agree that the ORAD approved line is inaccurate and Goddard would appreciate an amendment to the ORAD. Member Yeatts said she would like to see something from Environmental Partners that says they agree. Member Knox also agreed that it should go back to peer review to agree or disagree with the presentation.

Upon a motion made by Member Yeatts, seconded by Member LeBlanc, it was:

Voted: to continue the Lebaron amended ORAD hearing to July 27<sup>th</sup> at 7pm.

Unanimous approval.

**Lakeville Hospital (43 Main St)** - request for Certificate of Compliance. Brittany Gesner from VHB was present for discussion. She stated there was an open Order of Conditions from 2007 regarding the Stop & Shop project that National Development permitted. The request is to close out the Order of Conditions since that project is no longer proposed and was never executed. There is now a new Order of Conditions for the project.

Upon a motion made by Member Yeatts, seconded by Member Knox, it was:

Voted: to issue a Certificate of Compliance pointing out on the form where the work was not completed on DEP #192-528 from 2007.

Unanimous approval.

**4 Devon Drive** - NOI - Foresight Engineering.

Upon a motion made by Member Yeatts, seconded by Member Knox, it was:

Voted: to continue 4 Devon Drive Notice of Intent to July 27 at 7pm.

Unanimous approval.

**9 Parkhurst Drive** - NOI - Outback Engineering. Jeff Youngquist from Outback Engineering was present for discussion. There is a proposed 225 square foot addition to the rear of the house and to expand the existing deck. Both projects are located within the 100' buffer of boarding vegetated wetlands and the top of bank of Long Pond. A silt fence is proposed for erosion control and will act as a limit of work on the property. Disturbed area will be the limit of work as proposed and will be stabilized with loam and seed. The proposed addition is less than 50% of the footprint of the existing house, it is exempt from filing with Natural Heritage. The project is also located within the outstanding resource water and is exempt from the 401 water quality certification. Chairman Bouchard asked if only the screened porch was going to be replaced. Mr. Youngquist said this would be a 15x15 addition to the right of the garage. And the existing 20x30 deck will be expanded. Member Yeatts asked if they had heard back from Natural Heritage. Mr. Youngquist said a notification was sent but there has been no response yet. Member Yeatts said they have 30 days to respond so they shouldn't write the Order of Conditions until they hear from Natural Heritage. She said they could approve contingent upon receiving something from Natural Heritage and adding any conditions they might ask for.

Upon a motion made by Member Yeatts, seconded by Member LeBlanc, it was:

Voted: to close the hearing and issue an Order of Conditions with the condition that if Natural Heritage were to respond before 7/24, that any conditions they might like additional to the Commission's would be added and that would be with all our standard conditions to start.

Unanimous approval.

**3 & 4 Rachel's Way** - NOI - Zenith Consulting Engineers. Jamie Bissonnette was present for discussion. This is a filing for the roadway and drainage work. Individual Notices of Intent will be filed for each lot. On lots 3&4, Notices of Intent will be required. On lot 2, the 100' buffer is way in the back, so Mr. Bissonnette wasn't sure if they were going to need to file a Notice of Intent. He showed a profile sheet of the roadway and explained the project. They are looking to elongate Rachel's Way and improve it. This project has been in front of the Planning Board and they have a conditional approval based on Conservation approval. The proposal is to construct a 20-foot wide driveable access road with 14-foot paved and six-foot gravel. This will remain a private road covered by some type of homeowner's association. The drainage is cross country, meaning the roadway is going to be pitched to one side and picked up in a grass swale that runs along the side of the roadway all the way down and into a drainage basin at the end of the road. This will maximize infiltration with recharge and an outlet pipe to meter the stormwater out to better than pre-development conditions. There will also be pipes under the

driveways so that the water doesn't get blocked up from being able to flow in the swale-like path. The basin is out of the 100' buffer zone and they are using the earth to keep it natural and building a berm toward the back creating less earth disturbance. What falls under the jurisdiction of the Commission is a bordering vegetated wetland (BVW) that is located on lot 4 and part of lot 3. Member Yeatts asked about maintenance for the above ground swale. Mr. Bissonnette said the Planning Board had a similar concern. What they did was have an attorney write some verbiage that creates a mechanism for if the homeowner's association fails to maintain this, there are emergency situations in which the town could come in, fix it, and then charge the homeowners association for the work. There was a review of the drainage plan. Member Knox said they reviewed this project at the Planning Board and approved the subdivision subject to Conservation review.

Upon a motion made by Member LeBlanc, seconded by Member Yeatts, it was:

Voted: to close the hearing and issue an Order of Conditions, the standard Order of Conditions on Rachel's Way. A copy of the SWPPP (Storm Water Pollution Protection Plan) should be provided two weeks before the start of work.

Unanimous approval.

**Heaven Heights** - dock. Chairman Bouchard said there was a Request for Determination of Applicability (RDA) submitted by the homeowner's association for a dock. Chairman Bouchard this started about two years ago and first filed an RDA about one year ago. Member LeBlanc asked about the dock license. Chairman Bouchard said the Chapter 91 license goes through the Department of Environmental Protection (DEP). There have been discussions with DEP on how to proceed on this and they recommended that they start off with an RDA, find out if the Commission has jurisdiction and if there is an environmental impact. In reviewing this, Chairman Bouchard's opinion was yes, so DEP said to file an RDA and make it a requirement that they go ahead and do a Notice of Intent (NOI) in anticipation of completing the Chapter 91 process. Steven Coache said he was the abutter. He explained that on March 23<sup>rd</sup>, the Commission was told that it was one resident who installed this dock without authorization. He said that it was incorrect and there were five residents and five families from the association that have deeded rights to that beach. Chairman Bouchard said he wanted to stick to the agenda and determine whether or not the Commission has jurisdiction. He asked Mr. Coache if there was a pre-existing dock. He explained that there were docks previously, not owned by these five families that own this one. There have been docks and swim rafts at that same location, on the same beach, within the same homeowner's group. Chairman Bouchard asked how far back in time that would go. The grandfathered is 1984. Mr. Coache said that after the March 23<sup>rd</sup> meeting, he had spoken with the vice-chairman and immediately reached out to DEP. He spoke with the local DEP representative, Carlos Fragata. They have since met with him in person and he has done a site analysis. They have completed the Chapter 91 application license and it is pending at the moment because in addition to the dock being licensed, DEP would like the boat ramp and swim area to be licensed as well. Mr. Fragata stated that from within his site visit, that there was no reason why everything shouldn't be able to be permitted. In his opinion, they were not restricting access to the boat ramp nor were they impeding onto the swim area. In one of his comments on the site visit, Mr. Fragata said they are utilizing about 55% of the maximum allowed square footage and with the Chapter 91 license applied for, that would be upwards of 10 boats. He would prefer that the dock go in front of the swim area to protect the swim area from boats. Boats would not be near the swim area and in his opinion, this would be better than having a big mooring field. Mr. Coache said he believed that the Commission did their

own site analysis around June 9<sup>th</sup> and there was an informal meeting with some of the Freetown neighbors. Chairman Bouchard wanted to clarify that he went out there to see what the status was of the ramp. It was really not a meeting, just going out to get familiar with the layout. The issue of number of boats and what type of mooring and whatnot, that's out of the Commission's jurisdiction. Mr. Coache said that Mr. Fragata's advice to him was that if he had gone the route of working strictly with the Lakeville Conservation Commission, any type of approval that he would receive from the Commission would only be good for one year and they would have to go back every year to re-apply and get re-licensed. By completing the Chapter 91 application, those applications could be good for decades. Mr. Fragata's suggestion was why go through all of this activity, especially where there's a lot of conflict. Chairman Bouchard had several conversations with Mr. Fragata and the bottom line was he wants the Commission to go first and to go through the process, first an RDA and then an NOI. The Commission is not taking sides on this, they are not taking a vote or anything, they are strictly doing an assessment, is there environmental impact and does the Commission have jurisdiction. Mr. Coache said it should be noted that there is a dock that is the next abutter's and that it is fully licensed, however, that dock is permanently fixed to the land and the dock that they have is 95% floating, there are upwards of six pipes securing it, but it is a floating dock. Unlike the dock that has been fully licensed by DEP that is fixed to the land, theirs is 15 feet from the high-water mark. Chairman Bouchard said Mr. Coache brought up a good point, that's something they're lacking and that is a good engineered drawing that shows existing conditions and proposed conditions for this. They are looking at something blindly. Member Chamberlain said he couldn't believe that Mr. Fragata would say that their Order of Conditions (OOC) is only good for a year. The Commission's OOC's are for a minimum of three-years. Chairman Bouchard said he thought he was referring to the Chapter 91 license. The Commission doesn't grant Chapter 91 licenses, DEP does, but the Commission can recommend. Member Chamberlain said that DEP grants them in either 10 or 99 years. Mr. Coache said he believed you could do 10 or 25 years. They're in large increments, beyond a decade. Member Yeatts asked if there was an RDA still outstanding. Chairman Bouchard said yes. Member Yeatts said the Commission needs to vote, they need to ask for a NOI. She didn't think they got one, she thought that they had to act on the RDA first, give them a positive determination and ask for an NOI. Mr. Vivieros from the homeowner's association said they had meetings twice and each time this dock was voted out. The neighborhood doesn't want it, it's creating a hazard because there are probably anywhere between 10 and 15 more people who want to have a dock also. He said these gentlemen have had plenty of time to go about getting the permit and doing everything correctly. It was never intended that way from the beginning, it was dropped in place and that's all there was to it. No one has any property on the beach, that's for all 102 people in the neighborhood, it's not for just five people, it's for everybody. Chairman Bouchard said he reviewed the by-laws for the association, and this isn't any kind of legal interpretation as a matter of fact it's not even our jurisdiction but, he thought it was relevant. It says that it defines what the two beaches are and what activities are allowed and it specifically says no motorized units would be allowed after certain hours and the only place that they were allowed was the boat ramp itself. Mr. Viveiros responded that there are a lot of elderly people and at 10 or 11 o'clock at night, people don't want to hear their vehicles unloading their boats and loading their boats. Ken King said he has lived in the neighborhood for over 30 years and they've never had these kind of problems in the past. He explained that their intention was never to just put the dock in for themselves. They would like to expand the dock and have it encircle the entire swim area and make it open to any resident in the neighborhood that wants to use it. They feel it's safer, it's more aesthetically pleasing than having a dozen moorings hanging off the front of the beach. They are willing to work with DEP and the

Conservation Commission to make sure that they do it right. It has nothing to do with trying to shut other people out of the neighborhood, they would welcome more people into the neighborhood and would prefer to have more boats on the dock than half the moorings out in front of the beach area. They feel it's safer. Member Knox said it seems like there are two different things going on here. One is the request for a dock license and the other is an internal fight within their neighborhood. He did not think the Conservation Commission has any jurisdiction or ruling over that internal matter, they need to work that out themselves. Chairman Bouchard said that's a civil matter. Member Yeatts said they job is to act on the RDA. Pam Carden said she owns two properties in Heaven Heights plus a property on Long Pond. She has lived in the community since 1969 and since she has been here, she doesn't remember a dock on Lakeville side. The dock creates a liability for the association, they have to pay extra for the insurance to cover that dock even though the association voted it out. She had no problems with the dock if it's owned by the association, insured by the association, and registered by the association. Chairman Bouchard said that's not for the Commission to say, they would have to work that out with their attorneys and with DEP. She asked how someone could put an application in when they don't own the property that it's adhered to. Chairman Bouchard said that was perfectly legitimate and goes on all the time. Member Yeatts said they've had that before and what comes back is it's a civil matter. If they're putting in for a dock, it's not for the Commission to decide whether they can have it or not. They are putting in the RDA. The RDA is for the Commission to answer whether it's environmentally sound or not. Chairman Bouchard said they were going to go to a vote. This is whether or not to approve the RDA and to recommend to DEP and that they complete an NOI as the next step towards the Chapter 91 license.

Upon a motion made by Member Yeatts, seconded by Member Knox, it was:

Voted: to issue a positive determination and require a Notice of Intent

*Discussion: Member Chamberlain said he would like to point out that the Commission would want to know whoever it is that files the NOI has the authority to do so for that piece of property. Member Yeatts said she didn't think they could ask that. Member Chamberlain responded that they could. You can file on your neighbor's property, it doesn't mean you're going to build anything, but what you're doing is seeking an opinion for the permitting authority as to whether or not the various parts of the Wetlands Protection Act apply in this case. In this case, he'd like to be sure that whoever they give the Order of Conditions to, if indeed they grant one, actually has the right to do that work on that piece of property. Member Yeatts said as a point of order, when you issue a positive determination and ask for a Notice of Intent, there's no place for conditions. You've just said it's going to affect it and you want a Notice of Intent. You can give them that advice, but she didn't think that could be in a motion. Member Chamberlain said he would withdraw that and they should just seek a Notice of Intent. Member Knox said he thought that was something that would be a condition of the Notice of Intent if it were issued. It wouldn't be a consideration tonight but Member Chamberlain is making a good point that if it does come back for a Notice of Intent, that that would be a condition of the Notice of Intent. Chairman Bouchard said as a recommendation for whoever puts together the Notice of Intent, what this process has lacked is an engineered plan that specifies the dock and any details that go with it that will help in the process. DEP is going to require the same thing so it's to your advantage to provide that information. Member LeBlanc asked if the dock was in. Chairman Bouchard said yes. Member LeBlanc said they put it in without a permit. Chairman Bouchard said it's there without a permit. The dock has been there two years without a permit. There was a dock there a long time ago. Member LeBlanc asked if all the homeowners were part of one association and was the previous dock owned by the association.*

*Mr. Viveiros said all the homeowners are part of the same association and the previous dock was back in the 60's. Mr. Coache said in 2017 the association had allowed unanimously to allow another resident to put a dock on the Freetown side. At that point, the five families that installed this dock were clear they would have also liked a dock on their side but at the time they didn't own one. They then went out and bought a used dock.*

Unanimous approval.

**Meeting Minutes:** March 9, 2021 and March 23, 2021.

Upon a motion made by Member Knox, seconded by Member Chamberlain, it was:

Voted: to approve both the March 9 and March 23<sup>rd</sup> 2021 minutes of the Conservation Commission.

Unanimous approval.

**Continued discussion regarding the Heaven Heights hearing** - Member Knox asked if it would be in the Commission's best interest to get a legal opinion. Member Chamberlain said they've already done that. Chairman Bouchard said they don't have a response but he submitted the request to Town Council. There was a discussion about filing when the applicant does not own the property. Member Knox said if you were going to buy a property and you wanted to know if it was feasible to meet all your needs, you could go through that permitting process without ownership, contingent on buying. Member LeBlanc asked if they could request legal council be at one of their meetings. Chairman Bouchard said he thought it was a good idea.

Adjournment - (8:27pm)

Upon a motion made by Member LeBlanc, seconded by Member Chamberlain, it was:

Voted: to adjourn.

Unanimous approval.