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Conservation Commission Minutes - 09/15/2016

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Franklin Conservation Commission Minutes of Meeting September 15, 2016

To: Town Clerk
cc: Members
File

Members Present: B. Batchelor, T. Henrichon, J. Livingstone, P. Harrington, S. McLean, Angela Gelineau, Nick Shuler, George Russell, Conservation Agent
Members Not Present: None.

Chairman Batchelor announced the meeting would be audio and video recorded.

Mr. George Russell's Agent's Report has been appended to the minutes.

Public Hearing – Public Input for Revised Best Development Practices Manual

Mr. Russell stated this document has been in revision for a number of years. This hearing is a formal step to gather input from the public and Commission members. The document will then be sent to the Planning Board for their review; the document must be formally accepted by both the Conservation Commission and the Planning Board. Tonight the Commission must formally close the hearing; any comments should be provided to Mr. Russell so he can give to the Planning Board.

Chairman Batchelor stated he has reviewed it and finds it to be a terrific working document; he has no additions or extractions.

Ms. Henrichon stated she had some small comments and would send them to Mr. Russell.

Mr. Russell stated after he receives said comments, he would send to the Planning Board.

There was a motion made by Jeff Livingstone to close the public hearing for the public input for Revised Best Development Practices Manual. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

Public Hearing – Continued - NOI – 20 Liberty Way – EDC/Peter Bemis

Mr. Russell stated this hearing was continued due to the incompleteness of the application. The missing application material has been submitted.

Mr. Peter Bemis of Engineering Design Consultants, Inc. addressed the Commission to add approximately 4,400 s.f. of pavement to rear of building. He provided an overview of the original plan and stated this project was permitted in 1989. It is a multi-tenant building owned by Stannah Property, LLC. They are subletting a section of their building to a business currently in the Industrial Park that needs to expand. The current design does not allow for enough truck turning for the larger tractor trailers. He showed and described the drainage network and the man-made detention basins on the plans. As part of the 1996 and 1999 EMC developments, they re-evaluated the entire park and determined there was a better way to treat stormwater being discharged from the park and said improvements were made. The Industrial Park maintained the rights to manage and maintain the basins which the Industrial Park continues to do on an annual basis. He noted that the natural wetlands of Dix Brook have expanded over time and come closer to the detention basin. He stated none of the detention basin is in the buffer zone of the Dix Brook associated wetlands. He showed the proposed location of the 20 parking spaces. They are not new spaces; they are just being pushed out/re-located to allow for truck turning movements. They have proposed the erosion control barrier being set at the limit of work. Details are on the plan. He noted it is a closed-drainage network. He stated timing of this is important as they are trying to get a truck court in for a tenant that has already moved into the building.

Mr. Russell recommended the stipulations noted in his Agent's Report if approved.

Mr. Bemis explained that Mr. Russell had suggested that they file a notice. This is well outside the river buffer zone. There is a written maintenance plan for the basins and they are maintained and kept healthy. He said in each basin they have deliberately planted a wetland with cattails and there is bird activity; so, environmentally they are sensitive areas, but it is where the stormwater is treated.

There was a motion made by Jeff Livingstone to close the public hearing for the NOI for 20 Liberty Way. The motion was seconded by Tara Henrichon and accepted with a vote of 7-0-0.

There was a motion made by Scott McLean to approve the NOI for 20 Liberty Way with stipulations #20, 22, 23, 24, 27-30, 34, 35, 38 and 44. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

Mr. Bemis stated that in the future if they have an activity regarding a basin, he would like to meet with the Conservation Commission first as administratively it may be easier.

Mr. Russell stated that the bylaw specifically states a permit is needed; discussion is encouraged, but a permit must be filed.

GENERAL BUSINESS (items taken out of order from the agenda)

Minor Buffer Zone Activity: 1 Peters Lane

Mr. Randy Davis addressed the Commission for two trees that he would like to remove that may be just in the buffer zone. The trees are about 12 ft. from the house and about 12 ft. before the woods.

Mr. Russell stated he has inspected the site. The trees are at the very edge of the 100 ft. buffer. No erosion control will be necessary. Depending on the direction and strength of the wind, the trees may be an endangerment to property.

There was a motion made by Scott McLean to approve the MBZA for 1 Peters Lane. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

Minor Buffer Zone Activity: 4 Addison Avenue

Ms. Janene Asgeirsson, homeowner, addressed the Commission for an extension on an existing deck. The trees to be removed are outside the buffer zone.

Mr. Russell stated the applicant originally submitted an MBZA application for an extension of a deck. During a site inspection he observed dead trees that were in the buffer. He contacted the applicant suggesting if they were intending to take down the trees that instead of going through the entire process more than once they send a revised narrative that explains they are doing the deck and removing the trees. He had asked the applicant to bring copies of the mapping of the trees to tonight's meeting. Mr. Russell stated that although the map is technically being submitted tonight, he has seen it. He said another reason to remove the trees is that they are in a utility easement.

There was a motion made by Scott McLean to approve the MBZA for 4 Addison Avenue. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

Minor Buffer Zone Activity: 62 Palomino Drive

Mr. Ardhendu Thakur, homeowner, addressed the Commission for removal of two pine trees at the very edge of the buffer zone. He stated the tree company recommended they be taken down.

Mr. Russell stated he had no comments.

There was a motion made by Scott McLean to approve the MBZA for 62 Palomino Drive. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

Permit Modification: 137 Mastro Drive

Mr. Bruce Wilson of Guerriere & Halnon, Inc., representing Danny Lewis on his permit extension, addressed the Commission. Due to the economy he was not able to get the driveway stream crossing constructed and he would like to extend for one year to have the opportunity to get the driveway in.

Mr. Russell stated there has not been any activity on this site since the erosion control was put in. He thinks that prior to any development actually taking place, the erosion control will probably have to be re-laid or at least re-inspected. This should be a condition.

Mr. Wilson stated this was acceptable. Prior to any activity he will contact Mr. Russell for an inspection.

There was a motion made by Scott McLean to approve the extension for 137 Mastro Drive under the condition that any necessary buffering be redone and inspected by Mr. Russell prior to the work. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

Permit Modification: 438 West Central Street

Mr. Russell stated that technically this is not a permit extension; this is a potential modification/new NOI.

Mr. Steven Pedro of Ayoub Engineering on behalf of Nouria Energy addressed the Commission to modify the existing order of conditions. He requested to eliminate special conditions #21, the requirement to provide an as-built for the site. The only work done on the site has been underground storage tanks that were replaced around 2006. There have been no other site improvements and the proposed remodel work will not be undertaken at this time or under this order of conditions. He stated there was an existing fence that was replaced and they would like to amend the existing order of conditions to allow for the replacement of the existing fence.

Mr. Russell stated that the fence in question was a white fence and it was replaced with a brand new fence. The problem was that there were new post holes dug in some locations and it is within 10 ft. of a resource area. But, it did replace a fence that was there. He had recommended that the applicant come forward for the two requested modifications. He opined that it did not rise to the level of a new NOI. One big technical issue is that the applicant in front of the Conservation Commission is not the property owner. Mr. Russell stated he talked to the property owner and has informed the applicant that prior to the Commission action the property owner must give the applicant written permission to go forward. It would not slow up the applicant from moving forward. Mr. Russell stated the Commission must formally vote whether this is a new NOI or an amendment to the existing NOI; he recommended it be an amendment.

Ms. Gelineau question the request to eliminate special condition #21.

Mr. Russell stated they are eliminating the need for the as-built plans.

There was a motion made by Scott McLean that the applicants proposed actions of the replacement fence and removing the previous requirement for an as-built plan rise to the level of an amendment and not an NOI. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

Permit Modification: 31 Hayward Street

Mr. Bruce Wilson of Guerriere & Halnon, Inc., representing 31 Hayward Street, The Moseley Corp., addressed the Commission. This is an after-the-fact modification. The old building had some windows that were at pavement grade. Over the years the window glazing deteriorated and some of the window glass fell into the building. The applicant and Mr. Wilson met with Mr. Russell and determined it was a safety issue. The windows were fixed. There was a small piece of asphalt cut in order to fix and move up the windows so they were no longer at grade level. This opening will be left for drainage. He would like to treat this as a modification even though it is an after-the-fact filing as it was an emergency situation.

Mr. Russell stated the real trigger was the cutting of the pavement and leaving it open as that changes the landscape. But, the windows had to be allowed very quickly to get the water away from the building.

There was a motion made by Scott McLean that the post hoc work approval at 31 Hayward Street rises to the level of an amendment and not a new NOI. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

Permit Modification: Franklin Heights

Chairman Batchelor recused himself; Vice Chair Henrichon chaired this agenda item.

Mr. Russell stated he wanted to make clear that the issue before the Commission has to do with the structures that have been constructed and are occupied, and not anything to do with the units that are being constructed. This is a differentiation that must be made.

Mr. Brian Thompson, employee of The Property Managers, the property managers for Franklin Heights, addressed the Commission and stated there are two trees on Leanne Way that are dead and sway. If they fell the trees could cause damage to both #28 and #43, as well as the new units that are going in. The tree company determined that with a crane to remove the trees they can get to the trees with minimal buffer zone activity. He provided photographs to the Committee members.

Mr. Russell stated that the Commission is being asked if this is an amendment or a new NOI. He recommended that this is not a new NOI. He noted two questions. First, are the trees an immediate health and safety problem? If so, an MBZA may be warranted. However, he thinks the trees may be too close to the resource area to meet the criteria of an MBZA. Second, he asked the applicant if there were any other trees on-site that need to come down. If there are more trees that may need to be removed within the next six to twelve months, it may behoove the Commission to look at this as an amendment and the applicant should include all the trees to be removed in one application.

Mr. Thompson stated he understood the concern and there are probably several trees. However, these are the most prominent trees as they are right on the roadway and it is a time-sensitive issue as the tree company only has access to the crane for the next two weeks or so.

Mr. Russell stated if the Commission decides it is an amendment, it is not going to go forward within the next two weeks because of the legal parameters for advertising which is a statutory requirement. He asked if Mr. Thompson knew how close it was to the resource area as he thinks it is closer than 50 ft.

Mr. Thompson stated he did not know.

Mr. Russell stated the Commission first must make a determination whether the trees pose an immediate health and safety issue. If yes, then an MBZA permit would be warranted if a variance is also obtained from the local buffer zone requirement that it has to be 50 ft. away from the resource area.

Mr. McLean asked if there was time for the Commission to do a site walk to determine if the trees were an immediate threat.

Mr. Thompson stated yes.

Mr. Russell asked Mr. Thompson if he had anything from an arborist or tree company indicating these trees pose an immediate threat.

Mr. Thompson stated no.

Mr. Russell stated the Commission will entertain an amendment to the NOI unless the applicant can demonstrate an immediate threat, then the Commission would entertain an MBZA. The amendment takes longer due to procedural aspects.

Mr. Thompson stated that if the tree company they are working with no longer has access to the crane, they will move forward with another tree company.

Mr. McLean stated in that case it would be better to go the amendment route and have the applicant take the time to determine if any other trees need to come down and do it all at once.

Mr. Russell noted the legal fee and abutter notification requirements for the amendment. He explained the amendment versus MBZA process.

There was a motion made by Scott McLean that on the matter of Franklin Heights, provided that an arborist confirms that the two trees in question pose an immediate threat, this issue rises to the level of an MBZA; if the trees are not an immediate threat, then it rises to the level of an amendment, but never a new NOI. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-0.

Chairman Batchelor re-entered the meeting.

Violation: 23 Longfellow Drive

Mr. Russell stated earlier this week there was a meeting with himself, the property owner, his professional representatives, and his attorney. Mr. Russell stated there appears to have been a mix-up on his part that the positive request for determination that he had in the file upon which he was basing his actions was one thing; the applicant had received an RDA that had a negative determination not requiring an NOI filing. Based on that discrepancy, Mr. Russell stated it is his opinion that the controlling document is the original one signed by the applicant. In light of that, Mr. Russell stated he had planned to write a letter to the applicant's attorney indicating that in terms of the notice of intent, none is required at this point. But, no activity can take place on the property until such time as the notice is filed. In addition, there seems to be a significant title problem on the property that is trying to undergo resolution on the part of the property owner's counsel. When that is resolved it is Mr. Russell's understanding that the NOI will be coming forward. The property owner cannot submit a notice of intent for property that he may not own all of. Therefore, Mr. Russell stated he would consider this item closed/in limbo at this point.

Chairman Batchelor stated this is a significant legal issue and if there is a conflict of title the issue cannot move forward. Mr. Bruce Wilson of Guerriere & Halton, Inc. stated there are overlapping deeds and until that gets resolved they cannot move forward. He stated he believes this will end up in Land Court.

Mr. Russell stated no action is necessary; he just wanted to bring the status to the Commission's attention.

Mr. Wilson stated the applicant has removed the leaf debris and lawn clippings and stabilized the site. The property is posted.

Discussion Item: DelCorte Fishing Policy and Appearance

Chairman Batchelor stated he inspected DelCorte pond and from the drought and the invasive species it is becoming a dead pond. His fear is that there is no oxygenation of the water. He provided an overview of what happens to a body of water in crisis. It is his opinion that north pond is in crisis and the town could easily lose that body of water. The milfoil is extremely thick. He encouraged all Commission members to stop at DelCorte and take a look.

Commission members discussed the condition of DelCorte, the current drought, and whether anything could be done currently to help the pond especially as the milfoil is now more accessible.

Mr. Russell stated that the bids for the herbicide treatment are due one week from tomorrow. He thinks at this point that is all that can be done. If there are no bids, then the Commission will have to find someone to do the herbicide treatment. Depending on bids and if there is no significant rain, they may have to go back to ESS to see what can be recommended. This would have to be paid for.

Chairman Batchelor noted there is still trimming that needs to be done at DelCorte.

Mr. Russell stated that in discussion with staff members, there are a few ways to address the problem of routine maintenance such as trimming and picking up trash. The DPW director informed Mr. Russell they do not have the staff, time or budget to give DelCorte the attention it deserves. Mr. Russell would like to work with DPW to get a contract specification for a landscape contractor on a periodic basis to clean it up in terms of trimming, specifically between Pleasant Street and the water body. Based on the cost, they could request a line-item budget through the Town Council or investigate other sources of funding.

Commission members discussed and questioned many items regarding DelCorte. The discrepancy in appearance between DelCorte and Dacey Fields was noted; Dacey is a recreation resource for athletics. It was noted that all of the signs have been broken and vandalized. Is this what the public wants for DelCorte? Do we need a guiding document? It was noted that DelCorte has never been formally moved back into Conservation. Why don't we put DelCorte back into Conservation to have some sort of control? This would require a vote from Town Council. A longer term strategy is needed for maintenance of DelCorte. We need a body with a charter to oversee it. As well, more diligence by the public is needed in taking care of DelCorte.

Mr. Russell requested time to have discussions with town planner and town administrator for process and procedures on how to best do this. He will put DelCorte on every Conservation Commission meeting agenda as a discussion item.

Chairman Batchelor questioned the current ruling on fishing in DelCorte.

Mr. Russell stated he has checked with Town Council and the provisions of the deed provide one person the right to log the area and four people the right to fish by indicating these four people can never be prevented from fishing. As such, it does not prevent anyone else from fishing. So, the public is allowed to fish.

Chairman Batchelor stated there will be public fishing, but a catch and release regulation can be enacted.

Mr. Russell stated the Commission can do this and the policy can be changed at any time.

Commission members discussed a catch and release plan for fishing. Due to the drought conditions, it was thought best to wait on the catch and release plan and keep it as an ongoing discussion. It may be best to allow the carp to be taken out of the pond through catching at least until the drought is over.

Discussion Item: Advertising Fees

Mr. Russell provided the average amount spent last year for the legal advertising for a public hearing notice and noted the net loss. He recommended the Commission vote to raise the advertising fee from \$100 to \$110 effective with permits being submitted for the October 27, 2016 meeting.

Mr. McLean stated he would be more comfortable moving the date to January 1, 2017 for lead time.

There was a motion made by Scott McLean that starting with the first hearings to be heard after the start of the calendar year, January 1, 2017, the Commission's advertising fee will be raised from \$100 to \$110. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

Discussion Item: Remote Access Protocol

Mr. Russell stated information on the remote access protocol adopted by the Town Council in the event a member wishes to participate in a meeting but cannot be physically present has been included in the Commission members' packets. The Town Council's protocol can be used as a template; the Commission can change it to fit its own requirements. He noted that recently the Commission has been having some quorum issues. Two requirements include that if a member is participating remotely all votes must be roll call votes, and any adoption of the policy must be by the body as a whole.

Mr. Livingstone provided an overview of the effectiveness of remote participation. It is very reliable. He noted he could have participated remotely in the past when he was travelling for business. He would like to have the opportunity to participate remotely.

Mr. Russell questioned if there would be difficulty with remote participation when maps and plans were submitted and pictures were handed out.

Chairman Batchelor stated that cameras could show these items.

Commission members discussed remote participation and how documents could be viewed digitally.

Mr. Russell stated he wants to make sure that whatever the Commission decides to do comports with the open meeting law, and that there are never any questions about the documents and plans not being the same or that the details are too difficult for the remote participant to see.

Chairman Batchelor asked Mr. Russell to look into this.

Minutes:

There was a motion made by Jeff Livingstone to accept the minutes for the September 1, 2016 meeting. The motion was seconded by Scott McLean and accepted with a vote of 4-0-3. (Mr. Harrington, Ms. Henrichon and Mr. Shuler abstained.)

Commission Comments:

Ms. Henrichon thanked Mr. Russell for informing the applicant from 4 Addison Avenue about the dead trees and suggesting the application include both tree removal and deck. In reference to 20 Liberty Way, she asked if the Commission would ever consider any kind of bylaw allowing submittal of a maintenance plan for detention/retention basins so applicant would not need to come before Commission for an NOI.

Mr. Russell stated no.

Signed Minor Buffer Zone Activities, Orders of Conditions & Extension Permit

Extension Permit – 137 Mastro Drive – Lewis – CE159-1058

Minor Buffer Zone Activity – 1 Peters Lane – Davis

Minor Buffer Zone Activity – 62 Palomino Drive – Thakur

Minor Buffer Zone Activity – 4 Addison Avenue – Asgeirsson

Orders of Conditions – 20 Liberty Way – Stannah Property

There was a motion made by Scott McLean to adjourn the meeting. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

The meeting adjourned at 9:14 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary