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- Hours of Operation
- Forms & Documents
- Trash & Recycling

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Conservation Commission Minutes - 07/21/2016

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Franklin Conservation Commission Minutes of Meeting July 21, 2016

To: Town Clerk
cc: Members
File

Present: B. Batchelor, T. Henrichon, R. Pendkar, A. Gelineau, George Russell, Conservation Agent, Kathleen Celorier, Secretary.

Chairman Batchelor stated there would be a delay in the start of the meeting as the Conservation Commission was waiting for a Commission member to arrive, without whom a quorum would not be available for tonight's meeting. The meeting commenced when the Commission member arrived at 7:25 PM.

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

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

Mr. George Russell requested to add an item to the agenda that was inadvertently left off: ***Agenda Item 2.2.2 Permit Extension – Oak Hill Village.***

There was a motion made by Angela Gelineau to accept Agenda Item 2.2.2 - Oak Hill Village. The motion was seconded by Ravi Pendkar and accepted with a vote of 4-0-0.

Public Hearing – Continued - NOI – 100 Financial Drive – CRE Management

Chairman Batchelor announced there would not be a quorum available tonight for this public hearing as one Commission member present must recuse himself from this specific NOI issue; therefore, a continuance is needed.

Mr. Doug Hartnett of Highpoint Engineering, representing CRE Management, addressed the Commission for the construction of 300,000 sq. ft. warehouse building and 28,000 sq. ft. building expansion. He stated a continuance was acceptable.

There was a motion made by Angela Gelineau to continue the public hearing for the NOI for 100 Financial Drive, Warehouse, to August 4, 2016 at 7:40 PM. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Public Hearing – NOI – DelCarte Pond Treatment

Mr. Joseph Freeman of BETA Group addressed the Commission for aquatic plant management. He discussed the nuisance vegetation in DelCarte Pond. ESS prepared a report which outlined both short-

term and long-term options to manage this invasive vegetation and restore the habitat for the fisheries in the ponds. This NOI regards the preferred short-term option of chemical treatment. It was discovered that ESS incorrectly stated that the ponds are not within Zone II of the town's water supply wells; however, they are in Zone II of the wells. The use of chemical 2,4-D is not permitted by DEP for the treatment of surface water sources in this zone. He recommended the use of a newer chemical. They have included the use of three different herbicides in this NOI, selected in consultation with DEP, for the treatment of the milfoil and water chestnut. The contractor could use one or all three chemicals. The contractor must be licensed to apply said herbicides. He is aware of only two companies in the state that do this work. As there are 18.85 acres that have been affected by the invasive species, the herbicide will be applied to approximately 5 acres at a time. Late spring/early summer is usually the preferred application time. Typically, there would be restricted use of the pond during the application.

Mr. Russell stated he had no comments. The NOI is based on the ESS report that the Commission authorized. Once approved, the next step is to prepare the bid specs and go out to bid. The initiation of the project will probably not be until next spring/summer.

Mr. Pendkar stated he had expressed concerns about this project at a previous meeting. He believes putting herbicide in a pond will have a significant impact on the wetlands. This pond is not in isolation; it has water that feeds into it and drains through a long stream with many meadows all the way to Charles River. All the herbicide will feed downstream and could adversely affect residents' well-water as well as plants and wildlife. He would rather look at the problem from a mechanical harvesting perspective prior to chemical application. The positive effect of this project is very tenuous; once herbicides are used, the next year the invasive vegetation will come back and the herbicides will be needed again.

Chairman Batchelor stated he was involved with the restoration of Lake Winthrop in Holliston and mechanical harvesting was the first step. The mechanical harvesting did not work and the town had to use herbicide. Franklin is at a point that if they do not react to the invasive species the result could be a dead pond. He does not want to delay.

Mr. Russell stated he believes if the town does not take the short-term measures to treat the invasive vegetation, there will be a green body of water within a year.

Ms. Henrichon stated combining herbicide with mechanical pulling is the most effective way to treat the pond. She questioned if the optimal time to treat is next spring, could some mechanical removal be done this summer.

Mr. Freeman stated the mechanical harvesting is listed as a second stage for water chestnut in the NOI.

Mr. Edward Szymanski, 529 Pleasant Street, abutter to the third pond which is now a marsh, stated he is a beekeeper with bees on his property and the President of the Norfolk County Beekeepers Association. He is aware this is not a pesticide and it will not be applied on flowering plants, but bees forage for nectar, pollen and water. Bees bring the water back to the hive for cooling and the creation of food for young bees. Honeybees forage for about 1 ½ miles. He wants to ensure that the herbicide chemicals being used are proven safe for honeybees, birds and other pollinators. He requested that the application be done at night when the bees are in the hive. He would like to know which of the three chemicals will be used. He noted there are many chemicals with EPA approval that still kill bees. How and when the chemicals are applied is critical. He requested that it be written in to the requirements of the contract that this chemical treatment be done in a pollinator safe manner.

Mr. Russell stated this already has been done. DEP evaluates the chemicals and impact on bees, etc. When the permit is issued by DEP, this will be handled by the applicator. There will be notification of when it will be applied. It has not yet been ascertained which chemical will be used.

Mr. Freeman stated he could provide the studies performed by DEP for each of the three chemicals.

Mr. Pendkar stated that as a beekeeper he shares the same concerns.

Ms. Marian Szymanski, 529 Pleasant Street, stated that as a beekeeper she is concerned about the bees, the water, and the sustainability of the project. When the work was done on the upper dams, the body of water that touched her property became a marsh because the water was dammed. This problem was created from this project. What is the long-term plan to keep the invasive vegetation from returning? How can the environment be brought into balance so it does not end up that chemicals are required every year?

Mr. Russell stated that the report done by ESS Group does include maintenance. All that is being permitted now is for the short-term. Long-term implications have been studied.

Chairman Batchelor stated it is at a point now that if no action is taken it will be very difficult to solve. Oxygenation of the water is being affected. Need to react in a sound and responsible manner. The report is available for the public to view.

There was a motion made by Angela Gelineau to close the public hearing for the NOI for DelCarte Pond Treatment. The motion was seconded by Ravi Pendkar and accepted with a vote of 4-0-0.

There was a motion made by Angela Gelineau to accept the NOI for DelCarte Pond Treatment. The motion was seconded by Tara Henrichon and accepted with a vote of 3-1-0. (Mr. Pendkar voted no.)

Public Hearing – NOI – 14 Oxford Drive - Underwood

Mr. Russell stated DEP has not issued a file number. Therefore, the hearing will have to be continued. Given that there are only four Commission members present, it is the applicant's decision whether to provide testimony now or at the continued hearing when additional Commission members may be present or current Commission members may be absent.

Mr. William Halsing, Land Planning, Inc., stated it would make the most sense to give testimony when the hearing is continued.

There was a motion made by Ravi Pendkar to continue the public hearing for the NOI for 14 Oxford Drive to August 4, 2016 at 7:45 PM. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Public Hearing – NOI – 35 Meadowlark Lane - Balcus

Mr. Russell stated DEP has not issued a file number. Therefore, the hearing will have to be continued. Given that there are only four Commission members present, it is the applicant's decision whether to provide testimony now or at the continued hearing when additional Commission members may be present or current Commission members may be absent.

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., representing the applicant, stated he would like to continue.

There was a motion made by Ravi Pendkar to continue the public hearing for the NOI for 35 Meadowlark Lane to August 4, 2016 at 7:50 PM. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Public Hearing – RFD – 723 Washington Street - Modak

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., and Mr. Sushan Modak, applicant of 723 Washington Street, addressed the Commission for construction of fence and wetland delineation. Mr. Wilson stated a neighbor had cut trees and made a motorcycle trail without the homeowner's permission. In order to discontinue that use, the applicant would like to install a fence and let the small saplings revegetate and grow back on their own. He had provided supplemental information to determine the resource area and associated buffer zones as shown on the plans. He requested the Commission issue a negative determination so the fence could be installed. He stated there had been no action with police or other town departments. He believed there had been action to have the abutter to come in for the work needing to be done on that property. He would like to be kept advised on this. Possibly the Commission in the order of conditions could provide some relief and restitution for some plantings that were disturbed on the Modak's property.

Mr. Russell stated that which the applicant outlined is accurate. A complaint was received. His investigation showed that there were three properties involved, this being one of them. Letters were generated to the affected property owners. There are pictures showing an orange flag as the property boundary. Most of the damage to the resource areas and buffer zones is on the adjoining property; the least impact is on this property. He stated the applicant is being very cooperative and would like to erect fence and allow vegetation to regrow. He recommended a negative #3 determination. He noted on the adjoining property there was a hole made in the ground filled with shovels and beer cans, and piles of vegetative debris.

There was a motion made by Angela Gelineau to close the public hearing for the RFD for 723 Washington Street. The motion was seconded by Ravi Pendkar and accepted with a vote of 4-0-0.

There was a motion made by Angela Gelineau for a negative #3 determination for the RFD for 723 Washington Street. The motion was seconded by Ravi Pendkar and accepted with a vote of 4-0-0.

Public Hearing – Continued - ANRAD – 0 Pond Street – Baystone Franklin

Mr. Russell stated this is a continued public hearing awaiting the final report from Wetland Strategies Inc. on the peer review of the wetlands line. Wetland Strategies Inc. agrees with the line as laid out on the most recent maps by the applicant. This public hearing is strictly for approval of the wetlands line. The ANRAD is ready to go forward as amended.

Mr. John Kucich of Bohler Engineering addressed the Commission to confirm the delineation of bordering vegetated wetlands and stated he had no comments.

There was a motion made by Ravi Pendkar to close the public hearing for the ANRAD for 0 Pond Street, Baystone Franklin. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

There was a motion made by Ravi Pendkar to accept the ANRAD for 0 Pond Street, Baystone Franklin. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Public Hearing – Continued - NOI – 7 Briarwood Road - Aquino

Mr. Russell stated this public hearing was continued strictly to receive comments from Mass Fish and Wildlife to see if they had any issues concerning the priority estimated habitat. Correspondence has been received from them and there is no issue from their perspective. He noted the NOI is strictly for the restoration and cleanup and not for any expansion of the lawn or to cut down any more trees, etc.

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., representing the applicant, Mr. Ivan Aquino, stated if the Commission has no further comments, they rest their case.

There was a motion made by Angela Gelineau to close the public hearing for the NOI for 7 Briarwood Road. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

There was a motion made by Angela Gelineau to approve the NOI for 7 Briarwood Road, with special conditions #19, 20, 23, 24, 27-30, 33, 34, 39, 40, 44 and 47. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Public Hearing – Continued - RFD – 82 Elm Street - Graf

Mr. Russell stated he has received communication from the applicant and the applicant's representative. Based on the drought declaration from the state, the applicant can no longer prove intermittent stream status. Therefore, they have requested a continuance to the first meeting in September, 2016.

There was a motion made by Angela Gelineau to continue the public hearing for the RFD for 82 Elm Street to September 1, 2016 at 7:15 PM. The motion was seconded by Ravi Pendkar and accepted with a vote of 4-0-0.

GENERAL BUSINESS

Minor Buffer Zone Activities: 70 Dante Avenue

Mr. Russell stated this permit is for the removal of a tree which is a risk to public safety. Thus, it is being allowed to be removed under an MBZA even though it is an active NOI. Prior to voting, he recommended the Commission vote on the Permit Extension for Oak Hill Village and proceed to that agenda item.

Mr. Mark McGlynn, 21 Cassandra Avenue, appeared before the Commission.

There was a motion made by Ravi Pendkar to approve the MBZA application for 70 Dante Avenue. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Permit Extension: Oak Hill Village

Mr. Russell stated the applicant requested a continuation for three years, but under local bylaw it can only be continued for one year.

Mr. Eric Bazzett, Heritage Design Group, addressed the Commission. He stated he thinks a one-year extension would be sufficient as they are down to the last building out of 39 buildings.

There was a motion made by Ravi Pendkar to extend the NOI for Oak Hill Village for one year. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Permit Extension: 55 Constitution Boulevard

Mr. Russell stated this is strictly an extension of the permit for a one-year time frame.

There was a motion made by Angela Gelineau to extend the NOI permit for 55 Constitution Boulevard for one year. The motion was seconded by Ravi Pendkar and accepted with a vote of 4-0-0.

Certificate of Compliance: 45 Kenwood Circle – Strategic Materials

Mr. Russell stated this is an extremely unique request for a Certificate of Compliance in that the work was approved under an RDA, not an NOI. A Certificate of Compliance is not needed under state regulations for an RDA. However, given the involvement of DEP, the fines that were issued, the findings by DEP, the Commission's involvement, and the installation of the work, a certification statement was received from the engineer stating that everything has been done according to plan. The applicant is requesting the Commission approve the Certificate of Compliance so they can close the loop. It will not be recorded in the title chain, but it will give DEP, the property owner, and the Commission a closure in that they are formally accepting the engineer's certificate of completion that the work is finished.

Mr. Pendkar stated concern about what the Commission is actually approving.

Mr. Russell stated the Commission authorized through the RDA two underground stormwater installations. At the time the permits were approved, all those in consultation agreed an RDA was appropriate. All the work was underground and in the buffer zone. The Commission is under no obligation to approve this because it is not required. He stated that as he did not witness the underground construction, he could not certify all was done. The risk of signing is that the Commission would be accepting that the work was done and taking the applicant at their word.

Commission members discussed and agreed that the Commission should not approve.

There was a motion made by Ravi Pendkar to not issue a Certificate of Compliance for 45 Kenwood Circle, Strategic Materials, since the Commission has determined that it is not necessary. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Certificate of Compliance: 14 Cotton Tail Lane

Mr. Russell stated all is ready to go forward.

There was a motion made by Ravi Pendkar to release the Certificate of Compliance for 14 Cotton Tail Lane. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Certificate of Compliance: 35 Meadowlark Lane

Mr. Russell stated there was an NOI that had expired. There was a problem with the title. The public hearing earlier at this meeting for the NOI at this address was continued due to the lack of a DEP number, which was a new NOI which would require a new Certificate of Compliance. Therefore, this NOI should be issued as invalid.

There was a motion made by Ravi Pendkar to issue a Certificate of Compliance for 35 Meadowlark Lane as invalid. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Discussion Item: Open Space & Recreation Plan

Mr. Russell stated all Commission members received a copy of the plan at the last meeting. Currently, final touches are being put on the final document. There are some typos which must be corrected and an additional paragraph to be added. Commission needs to go on record as endorsing the plan.

There was a motion made by Angela Gelineau to approve the 2016 Open Space Plan. The motion was seconded by Ravi Pendkar and accepted with a vote of 4-0-0.

Discussion Item: MACC Meeting on Pipeline

Mr. Russell stated the Commission was contacted by MACC. They are requesting that a meeting be held in this region of the state on the proposed pipeline which will come through Franklin. The meeting would be held by MACC, not by the Commission. This has significant implications on public meeting law. The Commission would be invited to attend, but as it is not the Commission's meeting, it does not have to be advertised. It is strictly an informational meeting. MACC wants to know if the Commission would be interested in having the meeting here, and if so, could the Commission provide a room. He believes they would like to have the meeting in August. He stated he had no issue with having an informational meeting; the legal issue is if the Commission members are eventually going to seek permits for this pipeline, which they are, because it is going through resource areas. Information is fine, but Commission members should not comment on anything. The meeting is to explain to the public the regulatory process the pipeline will have to go through with federal and state regulatory agencies. Local approvals are critical. It would be a public meeting.

Chairman Batchelor stated agreement with Mr. Russell. There may be a perception that if the Commission has invited them in the Commission is in agreement.

Mr. Pendkar stated there are strong views on both sides of this issue and the Commission does not want to be seen as taking a side.

Commission members asked if there is any reason why the Commission should not allow MACC to have the meeting here.

Mr. Russell stated there was no legal reason. The biggest issue is that the Commission does not want to give either side the appearance that the Commission has already made a decision or judgment.

Chairman Batchelor stated his opinion is that he would like to go into that situation without any information until they address the Commission. He recommended the meeting not take place in Franklin and the space not be given to them.

Discussion Item: DelCorte

Mr. Russell updated the Commission on the mulch issue. Numerous truckloads of mulch have been removed. Some boulders have been placed in front of the area to make it difficult for trucks to enter. A few more boulders will be added; the signs for no dumping and keeping dogs on leashes have been ordered. The Director of Public Works is open to any formal request for maintenance such as weeds trimmed, etc. He discussed with Wetland Strategies Inc. about the possibility of investigating what is in the mulch. They said there was no valid reason to investigate it. The issue now is if DPW should be asked to do the trimming.

Chairman Batchelor stated that he was there yesterday and the grooming of the grounds look shaggy. He would like to have the invasive weeds trimmed.

Mr. Russell stated he would ask DPW to do that.

Ms. Henrichon stated the Commission had talked about having a bigger land use plan for the site.

Mr. Russell stated he has not had time to do this.

Mr. Pendkar asked if there was any alternative to the wood mulch.

Mr. Russell stated that was something that could be looked at.

Chairman Batchelor stated that for the longer term the entire concept of wood chips, maintenance and grooming at DelCorte, as well as a bigger plan of land use, should be looked at.

Discussion Item: Education & Outreach

Mr. Russell noted that Mike Perrin, Intern, was putting together a plan which might be used to conduct educational classes at DelCorte. Mr. Perrin will make a presentation at the next meeting.

Minutes:

There was a motion made by Ravi Pendkar to accept the minutes from the April 28, 2016, meeting. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

There was a motion made by Angela Gelineau to accept the minutes from the May 26, 2016 meeting. The motion was seconded by Tara Henrichon and accepted with a vote of 3-0-1 (Mr. Pendkar abstained).

There was a motion made by Tara Henrichon to accept the minutes from the July 7, 2016 meeting. The motion was seconded by Ravi Pendkar and accepted with a vote of 3-0-1 (Ms. Gelineau abstained).

Violations: 656 King Street

Mr. Russell stated that as indicated in his Agent's Report the issue outlined regards the drainage at this location. He noted that Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., could discuss this issue. The final drainage report requested by the Commission to find out what is wrong was not received by the date the Commission requested. However, in discussing the issue with the town attorney and town engineer, Mr. Russell generated a supplemental Agent's Report. He stated it is his opinion at this point that the Commission is out of the loop. The stormwater issue is really under the purview of DPW under stormwater regulations. The issue would become something that has to be worked out by the applicant and DPW if they find that there is a problem. Preliminary indications are that there are no drainage issues in the warmer weather, but some in the winter. Once the problem is identified and a solution arrived at, it then becomes an issue for the Commission as it has to be permitted. He recommended a letter be drafted to the property owner indicating that they have to work with engineering as it is a stormwater bylaw issue. But any work to be done to correct any identified issues is the Commission's permitting purview. He recommended the Commission take a formal vote due to the potential issues with the legal tracking to turn the stormwater issue over to the proper enforcement authority which is the DPW, with the understanding that any work to be done will require permits through the Conservation Commission.

There was a motion made by Ravi Pendkar that the Commission has decided that the current stormwater problems at 656 King Street have to be resolved with the DPW and any corrective action that would be needed and any work that ensues would need to be permitted by the Conservation Commission. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

CHAIR AND COMMISSION COMMENTS

Mr. Russell stated Mr. Nick Shuler is a potential candidate for the Commission should a vacancy occur. A vote from the Commission to formally recommend Mr. Shuler to the Town Administration is needed.

There was a motion made by Angela Gelineau that should an opening occur, the Commission will accept Nick Shuler as a member. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Chairman Batchelor stated he continues to be amazed at how well-groomed the opening to Dacey Park is. Yet, the fence by the field that faces Lincoln Street is a mess. He would think the DPW could fix that. There are so many weeds that need to be groomed.

Mr. Russell stated he would mention that to the DPW.

Signed Minor Buffer Zone Activity, Orders of Conditions, Determination of Applicability, Extension Permit, Certificate of Compliance & Order of Resource Area Delineation

Orders of Conditions – 7 Briarwood Road – Aquino – CE159-1133
 Extension Permit – 50 Constitution Boulevard – EMC Corp. – CE159-1052
 Certificate of Compliance – 14 Cotton Tail Lane – Maple Sands – CE159-1081
 Minor Buffer Zone Activity – 21 Cassandra Avenue – McGlynn
 Certificate of Compliance – 35 Meadowlark Lane – Balcius – SE159-723
 ORAD – 0 Pond Street – Baystone Franklin LLC – CE159-1138
 Extension Permit – Oak Hill Villages – CE159-921
 Determination of Applicability (Negative) 723 Washington Street – Modak
 Orders of Conditions – DelCorte Pond – Off Pleasant Street – CE159-1137

There was a motion made by Ravi Pendkar to adjourn the meeting. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

The meeting adjourned at 8:53 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary

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