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Conservation Commission Minutes - 07/07/2016

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Franklin Conservation Commission Minutes of Meeting July 7, 2016

To: Town Clerk
cc: Members
File

Present: J. Livingstone, P. Harrington, S. McLean, R. Pendkar, B. Batchelor, T. Henrichon, George Russell, Conservation Agent

Absent: A. Gelineau

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

Public Hearing – Election of Officers

There was a motion made by Bill Batchelor to nominate himself for the position of Chairman. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0. Mr. Livingstone stated he was not running for the position of Chairman.

There was a motion made by Bill Batchelor to nominate Tara Henrichon for the position of Vice Chairman. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

Public Hearing – ANRAD – 0 Pond Street – Baystone Franklin

Mr. Russell recommended this item go to peer review for the delineation of bordering vegetated wetlands given that there could be 99 plus units on the site. He believed the applicant would not be attending the meeting as they knew peer review would be recommended.

There was a motion made by Scott McLean that the ANRAD for 0 Pond Street go to BETA for peer review. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

There was a motion made by Scott McLean to continue the public hearing for the ANRAD for 0 Pond Street to July 21, 2016 at 7:35 PM. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Public Hearing – NOI – 7 Briarwood Road - Aquino

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., representing the applicant addressed the Commission to restore the buffer zone due to filling of debris and tree cutting. He stated the applicant had deposited vegetative debris and cut trees in a jurisdictional area. It is a natural heritage area.

Mr. Russell stated that part of the tree clearing took place in a priority/estimated habitat area. The application has been sent to Mass Fish and Wildlife (MF&W), but nothing has been received back. He recommended the Commission extend the hearing to the next meeting to allow MF&W the 30-day window allowed under regulations to comment. He noted the NOI is for restoration and cleanup only; it is not to extend any portion of the yard or lawn area.

Mr. Wilson stated he received an email indicating there were not any issues; he will forward the information to Mr. Russell.

Mr. Russell stated he would like an opportunity to read and discuss the email with MF&W.

Mr. Edward McBride, 2 Blueberry Lane, abutter to 7 Briarwood Road, expressed concern about the waterway/wetland area and wanted to make sure the intermittent streambed was not diverted in any way. Water currently drains well through his property; if water goes outside the streambed, it will flood his backyard.

Mr. Batchelor confirmed with Mr. Wilson that there would be no interruption of the streambed.

Mr. Russell confirmed the applicant was made aware of the inconsistencies in the plan raised by Ms. Kristin Kaczmarek, Town Planner.

There was a motion made by Bill Batchelor to continue the public hearing for the NOI for 7 Briarwood Road to July 21, 2016 at 7:40 PM. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

Public Hearing – NOI – 31 Hayward Street – Moselev Realty

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., representing the applicant addressed the Commission for removal of debris and branch pile by hand and reseed. He stated there has been enforcement action as the groundskeeper had placed some branches and debris in the resource area. There was also a sump pump that went directly into the wetlands. The sump pump now has been directed into the detention basin. They took all the debris out and reseeded with a wildflower mix.

Mr. Russell stated this is the conclusion of a two-year project. The wetland scientist recommended the removal of the vegetation. Mr. Russell stated that during a site inspection this week, he noticed more vegetated debris was placed in the resource area, possibly by the landscaper. The landscaper should be made aware to not put any more material there.

Chairman Livingstone asked if the landscaper was aware of what is going on.

Mr. Wilson stated he would be in touch with the landscaper right away.

Mr. Russell recommended the NOI be approved with special conditions as noted in his Agent's Report.

There was a motion made by Scott McLean to close the public hearing for the NOI for 31 Hayward Street. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

There was a motion made by Bill Batchelor to approve the NOI for 31 Hayward Street with special conditions #20, 23, 27-30, 34, 41 and 44. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

Public Hearing – RFD – 82 Elm Street – Graf

Mr. Brandon Faneuf, Professional Wetland Scientist, and homeowner Gretchen Graf addressed the Commission for septic system repair. Mr. Faneuf stated the owner is selling the house and after Title 5 inspection found out existing septic system needed replacement. He reviewed a plan created by Borderland Engineering, Inc. for the septic repair. He noted the existing septic system is in the front of the house. For the location of the new septic system they tried to find a place that was as far away from the wetland as possible and would also perc. The best place was on the north side of the existing dwelling and at the edge of the wood line. It is about halfway into the existing driveway and halfway into the wood line, which will necessitate a little shifting of the gravel driveway. Twenty-four trees ranging from 2 to 20 inches in diameter will have to be removed. There is a 200 ft. riverfront area. The leach field will be at least 50 ft. away from BVW and 200 ft. from the perennial stream. This is a Title 5 upgrade and not an enlargement. He stated there is no alternative location available on the lot to better protect the wetland. He stated he did not know if the existing system failure was due to ground water, although there are high water tables on the property. He has proposed mitigation plan for tree removal. He requested a negative determination.

Ms. Graf stated the trees have overgrown over the years and she is now cutting them back.

Mr. Russell stated that based on the response to his comments received from the applicant's representatives, it appears that a significant amount of fill is coming in (280 cu. yd.) and a significant amount of soil is being removed (130 cu. yd.). That, along with the removal of 24 trees, lends itself to an NOI. He noted the Commission has had NOIs for less impact. There is a possibility that the stream is not perennial, but intermittent. If so, the 200 ft. buffer is eliminated which takes a great deal of the work out of jurisdiction. He recommended the hearing be continued to allow the applicant time to determine the intermittency of the stream, and therefore, amend the maps to eliminate the 200 ft. buffer, or issue a positive determination for the NOI.

Mr. Faneuf stated there is much material going out and coming in, but it is for Title 5 compliance, therefore, there is no choice.

Chairman Livingstone stated the comment was not directed at justification of the procedure, it is for consistency. He noted that consistency across the five years he has been on the Commission is for an NOI for this type of project, without exception, not an RDA.

Mr. Faneuf stated this is a mandatory Title 5 upgrade situation; the final product is going to better protect the environment. The fill is necessary for the 4 ft. separation. He believes it meets the criteria under 310 CMR 10 for Title 5. Also, regarding riverfront area, there are no specific setbacks required other than there is not a better alternative on the lot to better protect the interests of the act. The system could be put further into the forest, but more trees would have to be cut. He noted the stream is dry. He stated the plan reasonably meets the criteria for negative determination for Title 5 upgrade.

Chairman Livingstone duly noted Mr. Faneuf's comments. However, based on precedent, the project itself and the reasons for the project are independent. The fact remains the work is being done in a jurisdictional area. The level of work being done requires an NOI to continue a level of control and monitoring by the Commission.

Ms. Graf asked what her options are at this point.

Mr. Harrington stated the choice is fine, it is the NOI process that allows for additional monitoring.

Mr. Batchelor clarified that it is not the septic system being put in, it is because the moving of the system, the amount of material, and how it is infringing on woodlands that it rises to the level of an NOI.

Mr. Faneuf asked the reason for the additional control.

Mr. Batchelor stated because it may alter the existing resource area.

Mr. Russell reiterated that the issue of whether it is a perennial or intermittent stream may change this to an RDA.

Chairman Livingstone stated the easiest way to determine this is to get a wetland scientist to look at it.

Mr. Russell stated there must be documented evidence that the stream is dry four times in a calendar year. He noted that if the documented evidence is obtained, the plan must be changed to take out the 200 ft. riverfront. Then the RDA would be based on the revised plan.

There was a motion made by Scott McLean to continue the public hearing for the RFD for 82 Elm Street to July 21, 2016 at 7:45 PM. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Public Hearing – NOI – Culvert Replacement MP 27.00 – Keolis Commuter

Mr. Russell noted a procedural change; the applicant has been changed from Keolis Commuter to MBTA. The NOI number has been received.

Mr. Dave Gordon, Wetland Scientist, representing Keolis Commuter/MBTA addressed the Commission for replacement of existing granite box culvert. He stated this is another failed culvert; they would like to replace it in fall 2016 or spring 2017. He stated DEP issued no comments. He reviewed the site and project details providing photographs of the culvert and location. He pointed out an intermittent stream about 2 to 3 ft. wide. Proposal is to replace culvert with 36 in. reinforced concrete pipe; this is about the same size as the existing culvert. He would like to get Commission's approval in order to put out to bid.

Mr. Pendkar noted there was a similar upgrade a few months ago. It is obvious from the pictures it needs to be fixed.

Mr. Russell stated he had no comments except to note the special conditions in his Agent's Report.

There was a motion made by Scott McLean to close the public hearing for the NOI for the Culvert Replacement MP 27.00 for Keolis Commuter/MBTA. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

There was a motion made by Bill Batchelor to approve the NOI for the Culvert Replacement MP 27.00 for Keolis Commuter/MBTA with special conditions #20, 22, 24, 27-30, 33, 34, 41 and 44. The motion was seconded by Ravi Pendkar and accepted with a vote of 6-0-0.

Public Hearing – RDA – 727 Lincoln Street - Kindred

Mr. Russell stated the applicant is at the meeting as a result of violation notices. During an inspection at the request of the town on land in back of the applicant's property, the piling of vegetative debris was noticed. The applicant has retained the services of a wetland scientist as per the Commission's normal policy. The wetland scientist provided a report indicating the debris was placed in a resource area; however, given its placement and the amount and type of material, the wetland scientist recommended it remain because there would be more damage to the bank from removing it. Mr. Russell stated he took issue with this as he believes the lumber boards across the stream channel should be removed. He stated options include: Commission could grant as presented, Commission could have a positive determination requesting the NOI with a remediation plan to take it out, or Commission could have the wetland scientist's report from the applicant reviewed by BETA Engineering/WSI which would be an additional expense to the applicant. He noted they have never had a wetland scientist indicate material should stay.

Mr. Ralph Kindred, 727 Lincoln Street, addressed the Commission for deposition of yard debris. He stated he did not know the property behind his property was wetland area. He had emptied his lawn clippings at the back of his property. Once this was brought to his attention, he stopped doing this. He hired a wetland scientist. It is a very small pile of lawn clippings that have decomposed. He stated he did not put the wood there; most likely it was put there by kids in the area. He had the wood pieces removed already. He noted leaves fall naturally in the area; leaves on his property are removed by a landscaper.

Mr. Pendkar stated he agreed the material should stay there as grass clipping decompose quickly.

Chairman Livingstone noted the photographs show a large pile of debris and some lumber that looks like pieces of fencing.

Mr. Kindred stated he stored the fencing pieces there to use as firewood, but he would remove them if requested. He noted there are some tires on the town property that washed there from further up.

Mr. Russell stated that when he was there, his best determination was that there was some material in the stream and some on the bank along with picket fencing piled there. It was difficult to tell if the grade was going up which would make the piles look bigger as he was only on the town-owned property. He recommended the fencing pieces be removed.

Chairman Livingstone confirmed with applicant that the wood across the stream has been removed. He recommended the fencing pieces be removed, but the grass clippings stay as they will decay.

There was a motion made by Bill Batchelor to close the public hearing for the RDA for 727 Lincoln Street. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

There was a motion made by Bill Batchelor for a negative determination for the RDA for 727 Lincoln Street with the position that the sections of 4 ft. picket fence be removed by the owner. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

Public Hearing – NOI – 11 Evergreen Drive - Chaudhury

Mr. Paul DeSimone, Colonial Engineering, Inc., representing the owners in attendance, addressed the Commission for construction of retaining wall and regrading. He reviewed the project and stated the contractor who was supposed to do the grading around the pool, install the fence, and move the shed did not do it correctly. The pool company noticed this and reported what had been done to Mr. Russell. Mr. DeSimone filed a plan to fix the grading by installing a retaining wall and install the fence. The electrical has been fixed. The NOI was filed as required as there were significant deviations from the original NOI. He stated the plantings have not changed as proposing nine bushes in the back; the 2 ft. high retaining wall has changed; no trees have been cut in the 25 ft. buffer; a machine was used to get the shed out, ground cover has started to grow back; and erosion control was placed. A letter of permission was provided by the abutting owner to fix the mess on his yard. There is a new contractor waiting to finish the grading. There is still a temporary fence around the pool.

Mr. Russell recommended all original stipulations get carried over to the new order.

There was a motion made by Bill Batchelor to close the public hearing for the NOI for 11 Evergreen Drive. The motion was seconded by Ravi Pendkar and accepted with a vote of 6-0-0.

There was a motion made by Scott McLean to release the current Certificate of Compliance for 11 Evergreen Drive as invalid. The motion was seconded by Ravi Pendkar and accepted with a vote of 6-0-0.

There was a motion made by Bill Batchelor to approve the NOI for 11 Evergreen Drive with all of the stipulations on the original NOI in place. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

Public Hearing – NOI – Stone Ridge Road – Stoneridge Condos

Mr. Bruce Wilson, Principal of Guerriere & Halton, Inc., and Mr. Steven Younis, 47 Stone Ridge Road, addressed the Commission for construction of 4 ft. wide sidewalk. Mr. Wilson stated the roadway needs to be resurfaced from wear and tear and would like to put in a 4 ft. sidewalk adjacent to the roadway as part of that. A sign will need to be repositioned and two trees will need to be removed and replaced with red maple trees. There is a wet retention pond with some vegetation within jurisdiction.

Mr. Russell recommended the stipulations indicated in his Agent's Report.

There was a motion made by Bill Batchelor to close the public hearing for the NOI for Stone Ridge Road. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

There was a motion made by Scott McLean to approve the NOI for Stone Ridge Road with special conditions #19, 20, 27-30, 34, 41, 43 and 44. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Public Hearing – Continued - NOI – 100 Financial Drive – Ben Franklin Charter School

Mr. Russell noted that all items in the peer review have been complied with and it is ready to go forward.

Mr. Andy Truman of Samiotes Consultants, Inc. addressed the Commission for the construction of 70,000 sq. ft. academic building facility, parking, play areas and a soccer field for the Ben Franklin Charter School. He stated the hearing was continued from the last meeting as there were a few outstanding issues from the peer review. All issues have been resolved. He stated the project is out to bid right now.

Mr. Russell recommended Mr. Truman call his office next Tuesday to get a status on the actual paper copy of the orders.

There was a motion made by Bill Batchelor to close the public hearing for the NOI for 100 Financial Drive, Ben Franklin Charter School. The motion was seconded by Scott McLean and accepted with a vote of 4-0-0.

There was a motion made by Bill Batchelor to approve the NOI for 100 Financial Drive, Ben Franklin Charter School with special conditions #19-44. The motion was seconded by Scott McLean and accepted with a vote of 4-0-0.

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

Mr. Russell stated final approval from the peer reviewers has not been received on this application. He recommended continuation of the hearing. He stated that two members of the Commission are recusing themselves and one member is not present. It is the applicant's call if they wish to present, hoping these four members will be at the continuation.

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 they have received the peer review letter. The wetland line has been delineated and located as part of one of the conditions which is shown on the plan. They will be providing the other responses and submitting them next week in advance of the deadline in order to be heard at the meeting on July 21, 2016.

There was a motion made by Scott McLean to continue the public hearing for the NOI for 100 Financial Drive to July 21, 2016 at 7:50 PM. The motion was seconded by Bill Batchelor and accepted with a vote of 4-0-0.

Public Hearing – Continued - NOI – Map 233, Lots 3, 4 & 5 Lincoln Street

Mr. Russell stated this is a continued application, presentations have been made, have received approval from peer reviewers, and all is in order. He stated a letter from Highpoint Engineering with two sections highlighted was handed out to Commission members. Based on the field conditions, the review by BETA Engineering, and discussions between Mr. Russell's office and the applicant, he recommended that these two items be added as special stipulations. He noted they will allow the applicant to do some final flood storage capacity determination in the field, but there is also a 1,000 cu. ft. threshold and if applicant exceeds that to meet their flood storage capacity, they have to come for an amendment to the NOI. This has been discussed with the applicant.

Mr. Eric Dias, Strong Point Engineering, Inc., addressed the Commission for construction of residential subdivision. He stated he has discussed these conditions with Mr. Russell and does not take any exception to them.

There was a motion made by Scott McLean to close the public hearing for the NOI for Map 233, Lots 3, 4 & 5 Lincoln Street. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

There was a motion made by Scott McLean to approve the NOI for Map 233, Lots 3, 4 & 5 Lincoln Street, Rolling Brook Estates, with special conditions #19-44 and 44, and additional special conditions that the CSA should remain in the area proposed and the final design should be determined in the field and should strive to provide compensatory storage at a ratio of 1:1 to the greatest extent practical based on field conditions and that any earth removal required by construction of the CSA in excess of 1,000 cu. ft.. need be further approved by the Commission prior to creation of the CSA. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Public Hearing – Continued - NOI – 300 Fisher Street – Site Specific, LLC

Mr. Russell stated this is a continued NOI hearing. There have been some issues between BETA/WSI and the applicant. All those issues have been resolved. He stated the application is ready to go forward with the stipulations outlined in his Agent's Report.

Ms. Margaret Stolfa, Attorney of Gordon & Rees, representing the owner of 300 Fisher Street, and Mr. Charlie Shepherd of CDW Consultants, Inc., addressed the Commission for the demolition of an existing industrial building. Ms. Stolfa stated they did receive BETA's report that addressed all the prior topics. They did not have any additional changes or discussions after that with them.

There was a motion made by Bill Batchelor to close the public hearing for the NOI for 300 Fisher Street. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

There was a motion made by Bill Batchelor to approve the NOI for 300 Fisher Street with special conditions #19-40 and 44. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

GENERAL BUSINESS

Permit Modification: End of Garnet Drive

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., addressed the Commission for the permit modification for the extension of the roadway. The applicant requested waivers from the Planning Board; they were not all granted. He discussed the location of a sidewalk that was not on the plan. For the approval that was done in 2005, the Planning Board had the sidewalk located on the westerly side of the road. He would petition the Board to have it on the easterly side of the road in order to not impact the abutters and make the grading a little less. There are two sets of plans: one shows the sidewalks with a 3:1 slope and a retaining wall, and one with a 2:1 slope and no retaining wall. The 2:1 slope would be less impact. He stated he was before the Commission to get determination if this can be treated as a minor modification or does a new Notice have to be filed. He stated he hoped Commission would support the 2:1 slope and provide letter to Planning Board as such.

Chairman Livingstone stated that this seems like it is a relatively minor modification going back to a pre-approved plan. The original plan was to put the sidewalks in. This is independent of the violation.

Mr. Russell stated there is a stop-work order on this site. The applicant has completely clear-cut the road with the explanation that it was the only way they could get in the erosion control barriers. He provided photographs of the site and the clear-cutting, as well as photographs of a similar site showing larger erosion control barriers that wrap around trees. He does not accept that approximately 1,000 ft. of forest had to be eliminated to put in erosion control.

Chairman Livingstone questioned the applicant as to why the clear-cutting was done as it was not done for the erosion control. He stated this was unacceptable.

Mr. Wilson stated the erosion control product used is slightly different weighing 35 lbs. per linear ft. It cannot be filled curbside and dragged in. It requires a very large truck with a 100 ft. hose. He stated the tree clearer probably cleared much more than necessary to get the truck in there. He stated he does not usually get involved until the silt barrier is already in place.

Chairman Livingstone remarked on the distinction between an NOI and RDA noting this is why NOIs are required so situations like this can be controlled before they happen.

Mr. Wilson stated he was upset about the tree cutting process. All of the compost sock is now in place. He stated that if issuing a fine to the contractor will send a message, so be it.

Mr. Russell stated he wanted to avoid getting into enforcement orders and fines in this particular case. He recommended that the most equitable solution, taking into consideration that to clear cut that vast forest area when it did not have to be done, is that the changes to the NOI should be a new NOI.

Mr. Wilson stated this is the area that would have been cleared anyway; it is the sequencing that got out of sync.

Mr. Russell disagreed. He stated the limit of the clearing for the roadway is 26 ft.

Mr. Wilson stated that the full right-of-way gets cleared; the 26 ft. of asphalt for the roadway, the shoulders and the sidewalk get cleared. He showed what would be cleared on the plan and stated the tree clearer came in ahead of the compost team and cleared everything for the project.

Mr. Pendkar asked how long it was between the clearing of the trees and installing the erosion control.

Mr. Wilson stated about two days.

Chairman Livingstone confirmed that as the project progressed, the area would have been cleared anyway, although the sequence was not correct. They should have waited for the erosion control to be put down first.

Mr. McLean stated he is concerned about the precedent.

Mr. Russell stated after the stop-work order was issued, the contractor continued to work.

Mr. Wilson stated this is a gray area. The contractor could have continued to work in Wrentham without impacting Franklin, but he continued to clear Franklin to get the logs out of Wrentham.

Chairman Livingstone confirmed Mr. Russell recommended the applicant file a new NOI based on the egregious cutting, non-follow through and incorrect sequencing; the applicant should now file a new NOI and get an invalid order for the first one.

Mr. Pendkar stated that to require a new NOI as a means of retribution or penalty sets a bad precedent. There was no wetland impact with what was done, although it was not done in correct sequence. He recommended no penalty.

Mr. McLean stated that the applicant did not follow the original NOI so the Commission cannot release it as valid.

Chairman Livingstone stated he understands Mr. Pendkar's perspective, but thinks there is an argument to say that because the NOI was not followed, it can be invalidated or can be modified. The end result to the wetlands was negligible. The Commission has in the past accepted a modification to put applicant in compliance with what they did. He asked if there was a modification that can be made.

Mr. McLean asked about all future projects if work is done out of order.

Mr. Richard Schafer, Attorney for the owner, stated this has taken the owner by surprise. Everyone feels awful about this transgression. There is a mechanism of fining for transgressions like this rather than using it as a punitive measure for these folks that are innocent, although ultimately responsible for their contractor.

Mr. Batchelor stated the Commission deals with laws and procedures. There is a reasonable expectation that the rules should be followed.

Mr. Pendkar stated the wetlands protection law does not provide for using an NOI as a punitive measure.

Mr. Russell explained concerns regarding the resource area with having clear cutting done before the erosion control barriers were installed. In this instance it was very fortunate there was not a thunder storm as it would have been a great problem.

Chairman Livingstone stated to be fair to all applicants, the Commission is trying to treat them all with the same procedural oversight and trying not to dilute that ability to oversee. This is independent of the outcome of the action. Commission tries to set a consistent precedent. In this case, the NOI would be invalidated and new NOI required.

Mr. Russell recommended that this NOI not be invalidated until a new one is approved. He recommended the Commission vote as to whether the sidewalk proposal is an amendment, or based on the totality of the project it rises to the level of a new NOI. He also recommended that until the Commission approves an amendment or a new NOI that the stop-work order remains in force.

There was a motion made by Scott McLean that it is the position of the Commission that the South Village Estates applicants need to submit a new NOI for the sidewalks to address both the inconsistency in the slope and the clear-cutting, and a stop-work order remain in effect until said new NOI is submitted. The motion was seconded by Bill Batchelor and accepted with a vote of 5-1-0. (Mr. Pendkar vote No.)

Permit Modification: Villages at Oak Hill

Mr. Russell referenced his Agent's Report and stated the applicant has submitted a request for an extension of time.

Mr. Eric Bazzet of Heritage Design Group addressed the Commission on behalf of the Villages at Oak Hill. He stated they requested an extension of the order of conditions due to expire at the end of the month. They are requesting a one-year extension.

Mr. Russell stated this was not on the agenda; the Villages at Oak Hill were at the meeting to discuss an amendment to the project, not an extension. But, if it were to be discussed, he recommended against the extension because the reporting requirements are not being met.

Mr. Bazzet stated it was his mistake; he thought the permit extension was on for this meeting.

Mr. Russell stated since it was brought up, applicant is missing reports, therefore, he cannot recommend an extension until the reports are completed.

Mr. Bazzet stated ok and left the meeting.

Mr. Mark McGlynn, the correct applicant for this agenda item, addressed the Commission for the removal of a dead tree that is in danger of damaging personal property or injuring someone. The tree is within the 25 ft. wetland offset. He provided photographs showing the angle of the leaning tree. He stated they would use the same tree company used in the past.

Mr. Russell stated that procedurally the Commission has made it a policy that they will not consider a minor buffer zone activity permit as an amendment to an NOI. The applicant has what would qualify as an MBZA, with a variance from the Commission, however there is an active NOI on the site. The tree is within 25 ft. of a resource area. Section 5.1 of the Rules and Regulations states, "the Commission may grant a variance from these regulations upon showing the applicant..." Therefore, an applicant can get an MBZA within 25 ft. if applicant gets a variance. The procedural problem is that if it is an amendment to the NOI it becomes a public hearing with abutter notifications. The project will get expensive. It comes down to the policy of the Commission.

Mr. McLean stated based on other cases, this falls into the MBZA category.

Chairman Livingstone stated that to be practical, it would make sense for the Commission to make special exceptions; there is an immediate risk. And, it is clear that the applicant is not using the MBZA process in an abusive way. There is a real need; it is not an expansion of the project.

Mr. Russell recommended the Commission vote to allow the filing of the MBZA based on the imminent threat to public health, safety and welfare.

There was a motion made by Scott McLean that it is the position of the Commission in the case of the Villages at Oak Hill the applicant can submit an MBZA in the area of an active NOI to remove a dead tree because said removal meets the requirements of an MBZA variance and does not contradict the precedent of using an MBZA to expand NOIs and there is an imminent safety risk. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Certificate of Compliance: 63 A Street Extension

Mr. Russell stated all is ready for the release to be granted.

Certificate of Compliance: 31 James Street

Mr. Russell stated all is ready for the release to be granted.

There was a motion made by Scott McLean to release the Certificates of Compliance for both 63 A Street Extension and 31 James Street. The motion was seconded by Ravi Pendkar and accepted with a vote of 6-0-0.

Certificate of Compliance: 11 Evergreen Drive

Please see agenda item Public Hearing – NOI – 11 Evergreen Drive – Chaudhury.

Discussion Item: Education and Outreach

Mr. Russell stated additional sites for the Rypos group were found.

Mr. Mike Perrin, Conservation Intern, stated at Dacey there are some sections of wood that can be taken out and two traffic barrels. He noted possible damage downstream that Mr. Jay Mello should look at and possibly be cleaned up. There is also trail cleanup that can be done.

Ms. Henrichon stated they would like to occupy approximately 20 people for two to three hours. She noted that the original coordinator of this activity at Rypos is no longer in that role, but she made an introduction to the new coordinator.

Mr. Pendkar stated that in the past volunteers have sometimes thought it acceptable to remove small plants and brush. As this is conservation land everything must be conserved; so, please supervise and make sure volunteers do not remove anything, even the small plants.

Discussion Item: DelCarte

Mr. Russell stated it was determined where the second pile of wood chips came from. The town hired a tree contractor to work on some trees in town; the contractor then hired a subcontractor. DPW told both the contractor and subcontractor to not put any wood chips in DelCarte. However, the subcontractor dumped wood chips in DelCarte. The DPW has removed these recent wood chips, but not the original mulch that was dumped there.

Mr. Batchelor asked how this could be prevented from happening again.

Mr. Russell stated DPW has recommended that they are going to install large rocks at intervals between the trees starting at the fence in the back of the parking lot, but not going between the last tree and the water to still allow people to get canoes to the launch. Hopefully, this will prevent trucks from backing up over it. DPW has told their tree contractors not to do this. Mr. Russell has spoken to the police department, documented what is there, and discussed the issue with the town attorney. The Commission should consider having the peer review wetland scientist look at what is there, determine if there is anything there that should not be there, and make a report to the Commission.

The Commission members informally agreed.

Mr. Russell stated a vote by the Commission was not needed. He would notify DPW and speak with Wetland Strategies, Inc. regarding costs and what they can do. He also noted that invasives are growing again. The Commission may consider that when the technical specifications are put together for treating the invasives in the pond, maybe the applicant of the pesticides should also look at the mulch area to see if there is a need for treatment. After speaking with WSI, if warranted a restoration plan would be the next step.

Mr. Batchelor remarked that the upkeep of Dacey is much better than that of DelCarte.

Mr. Russell stated there is a combination of departments involved: Recreation Department and DPW. There will be a presentation on DeICarte at the next meeting. He mentioned DPW does maintain it; they are stretched with the amount of work they do. Mr. Russell stated he will request, in writing, from the Director of Public Works a maintenance schedule and an update on what they are going to do.

Ms. Henrichon asked if there is an active land use and management plan for DeICarte.

Mr. Russell stated No.

Chairman Livingstone stated there should be such a plan made.

Minutes:

There was a motion made by Scott McLean to accept the minutes from the June 9, 2016 meeting. The motion was seconded by Bill Batchelor and accepted with a vote of 5-0-1.

Violations: 723 Lincoln Street & 6 Domenica Way

Mr. Russell stated he would like to take violations for 723 Lincoln Street and 6 Domenica Way at the same time. He has been working with the owner at 723 Lincoln Street who said they have hired a wetland scientist to look at the problem, which is almost the exact same thing as at 727 Lincoln Street. Mr. Russell has not received anything from them yet. The issue at 6 Domenica Way is the result of a neighborhood complaint. This involves two property owners: the one at 6 Domenica Way and the next door neighbor. The next door neighbor has hired a professional and there will be an application at the next meeting to take care of their issues. At 6 Domenica Way, the activity has stopped, but no permits have been forthcoming. There are big holes dug in the buffer zone full of beer cans. There is a dirt track in the BVW. He recommended the Commission vote to request the applications be filed by both parties no later than September 1, 2016, and if they are not filed, enforcement orders will be issued and fines started. He stated he told the property owners at 723 Lincoln Street that an RDA and the wetland scientist's report should be filed, and at 6 Domenica Way it will probably be an NOI. Mr. Russell stated they were supposed to be here tonight; they were notified of the hearing.

There was a motion made by Scott McLean that the property owners of 723 Lincoln Street and the property owners of 6 Domenica Way need to have their applications for an RDA and NOI, respectively, into the Commission by September 1, 2016, otherwise enforcement orders will be issued. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Signed Certificates of Compliances, Orders of Conditions & Determination of Applicability

Certificate of Compliance – 63A Street Extension – Grillo – CE159-1103
 Certificate of Compliance – 11 Evergreen Drive – Chaudhury – CE159-1109
 Certificate of Compliance – 31 James Street – Rosen – CE159-1079
 Orders of Conditions – Stone Ridge Condos – Sidewalks – CE159-1135
 Orders of Conditions – Rolling Brook Estates – TNT – CE159-1124
 Orders of Conditions – 300 Fisher Street – Site Specific – CE159-1128
 Orders of Conditions – 11 Evergreen Drive – Chaudhury – CE159-1134
 Determination of Applicability – 727 Lincoln Street – Kindred
 Orders of Conditions – Franklin Branch Railroad – MBTA – CE159-1130
 Orders of Conditions – 31 Hayward Street – CE159-1132

There was a motion made by Scott McLean to adjourn the meeting. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

The meeting adjourned at 9:43 PM.

Respectfully submitted,

Judith Lizardi
 Recording Secretary