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## Conservation Commission Minutes - 06/09/2016

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### Franklin Conservation Commission Minutes of Meeting June 9, 2016

To: Town Clerk  
cc: Members  
File

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

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

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

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

Mr. Andy Truman of Samiotes Consultants, Inc., and Mr. Peter Wood 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 provided an update of the project and stated this project is tied together with the warehouse building project also at 100 Financial Drive. He explained that the current project for permitting is one of the lots that the school is in negotiations with CRE to do a land swap; that is why the applicant is CRE and not the school. The school is currently downtown. They have approximately 450 students; they have been looking for a location to accommodate 900 students. The 70,000 sq. ft. building at 100 Financial Drive is two and one-half stories. The access is Grove Street. The site is abutted on all four sides by resource areas. Dick's Brook, a riverfront, is to the north and associated wetlands are to the south, west and east. The work proposed for the parking is in the riverfront area; a small area of the access drive is in the riparian. Everything else is located in the buffer zones, not in the do-not-disturb zone. Concurrently, they are meeting with Planning Board for drainage and in process of submitting revised set of plans; they did soil testing today. They have received peer review comments. He stated they submitted four alternatives analysis. He noted there is approximately 2,100 linear ft. more riverfront beyond Financial Drive, so they are at approximately at 7 ½ percent. The corrected filing fee has been submitted.

Mr. Russell stated he is most troubled with comment two from the peer review consultant. Whether the proposed alteration exceeds the 10 percent permissible on a riverfront area should be a question of fact. The applicant is stating they are under 10 percent; the wetlands review scientist says they are over 10 percent. It has to be one or the other. He recommended WSI should provide information that agrees with the applicant's calculations or not. He agreed with WSI's comments about the erosion control barrier, but that can be corrected on the plans. The alternatives analysis has been presented. Regarding the filing fee concern, he recommended the applicant contact, through BETA, WSI to work out issues.

Mr. Truman stated the NOI indicated 206+ linear feet of riverfront; it was delineated. The square footage disturbance was based on that which makes it over 10 percent. Did not take into consideration that Dick's Brook continues for the full length of the property with at least another 2,500 linear feet or riverfront; it has not been flagged.

Chairman Livingstone stated these calculations are not consistent and this needs to be resolved by the applicant working with the Conservation Commission's agent to rectify.

Mr. Russell reiterated that applicant indicated they would be revising the plans for the Planning Board; part of the revisions concerns areas within jurisdiction. He does not have any problem with revised plans, but it is incumbent on the Commission and applicant that all land use bodies and the peer review consultants are looking at the same plans.

Mr. Truman stated revised plans would be submitted on Monday; Planning Board and Commission would be approving same set of drawings.

Mr. Russell recommended the hearing be continued; this will give applicant time to work with WSI to resolve items two and four.

Mr. Truman stated they have already paid the fee; they just have to get copies of the checks. Whether the riverfront has to be delineated and the riverfront buffer zone concerns both have to be addressed. He requested a two-week continuance.

There was a motion made by Scott McLean to continue the public hearing for the NOI for 100 Financial Drive, Ben Franklin Charter School, to June 23, 2016 at 7:35 PM. The motion was seconded by Bill Batchelor and accepted with a vote of 5-0-0.

#### Public Hearing – NOI – 7 Briarwood Road - Russo

Mr. Russell stated there is a procedural defect in the application to restore the buffer zone due to filling of landscape debris and tree cutting, in that the abutter notices were not sent out according to regulations. His opinion that the hearing cannot go forward and should be continued; re-advertising is recommended.

Commission members discussed and agreed hearing should be re-advertised to protect public interest.

Mr. Bruce Wilson of Guerriere & Halnon, Inc. stated he will send out the notifications when he has a hearing date and time.

Mr. Russell stated this hearing was never opened due to the application defect. He recommended the Commission vote that the application is procedurally defective and new advertising is required.

There was a motion made by Scott McLean that the application for the NOI for 7 Briarwood Road was defective and therefore there was no hearing, and that it should be re-advertised and abutter notifications sent out. The motion was seconded by Bill Batchelor and accepted with a vote of 7-0-0.

#### Public Hearing – NOI – Moseley Realty – 31 Hayward Street

Mr. Russell stated there is a procedural defect in the application to remove a debris and branch pile by hand and reseed, in that the abutter notices were not sent out according to regulations.

There was a motion made by Scott McLean that the application for the NOI for 31 Hayward Street was defective and therefore there was no hearing, and that it should be re-advertised and abutter notifications sent out. The motion was seconded by Bill Batchelor and accepted with a vote of 7-0-0.

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

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 provided an overview of the plan. He showed an aerial photograph of existing conditions and described the

existing buildings and parking within the 122 acres. Lot 1 supports the existing office building and warehouse; Lot 2 is for the school. He stated the Charter School and CRE have reached a tentative agreement for a land swap; they are working on concurrent approvals for their individual projects. He noted the original development done by Digital planned for a 60,000 sq. ft. warehouse expansion, but it was never done. The footprint of the warehouse was reduced to 28,000 sq. ft. to accommodate new driveway locations and parking. The resource areas include Dick's Brook and its related riverfront and wetlands area, isolated vegetated wetlands and possible vernal pools sites. The programming goal was always for a 300,000 sq. ft. for building in order to make the land swap work. The building layout is due to accommodation of the wetland area. He noted the shared parking area between the office building and warehouse. He stated the potential vernal pool areas were not studied this spring to determine if there were any species in those zones. They pulled the paving away from the potential vernal pool area and will revegetate that area. He noted their client does not have a tenant for the warehouse currently, it is being marketed as warehouse distribution and not necessarily manufacturing. Regarding the Dick's Brook area, the riverfront impact area is about 188,000 sq. ft. The total disturbed area excluding stormwater management is about 6,000 sq. ft. Therefore, it is about 3.2 percent for riverfront disturbance in that zone. The building footprint was pulled away from an environmental protection standpoint. There is a wetland area associated with Mine Brook that was not delineated by the consultant. Did not originally anticipate the driveway coming up into this zone. Currently, having it surveyed and delineated by the same wetland consultant and this will be reflected on the revised plan. Applicant currently in front of Planning Board. It is both the school's and CRE's goal to permit this project in tandem. Both approvals need to be in place in order for the land swap to occur. School is the critical time frame as they have the desire to begin in August. Currently working on responses to peer review and making plan revisions.

Mr. Russell stated the Commission has authorized peer review; fee has just been received. Peer review has not yet commenced. Recommended continuation of the hearing until information is received from peer review.

There was a motion made by Scott McLean to continue the public hearing for the NOI for 100 Financial Drive, to June 23, 2016 at 7:40 PM. The motion was seconded by Bill Batchelor and accepted with a vote of 5-0-0.

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

Mr. Russell stated there was a request from the applicant for continuation as there are still significant issues being worked out between the peer reviewer, Planning Board, Conservation Commission and the applicant for the NOI for the residential subdivision.

There was a motion made by Scott McLean to continue the public hearing for the NOI for Map 233, Lots 3, 4 & 5 Lincoln Street to June 23, 2016 at 7:45 PM. The motion was seconded by Bill Batchelor and accepted with a vote of 7-0-0.

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

Mr. Russell asked if the applicant was going to present any plans that have been revised since peer review as he has not seen any.

Ms. Margaret Stolfa, Attorney of Gordon & Rees, representing the owner of 300 Fisher Street, addressed the Commission for the demolition of an existing industrial building. She stated they received a copy of the consultant's report and have addressed all of the issues. She stated they have accepted the flag changes which are reflected on this plan. One area that the applicant had identified as riverfront, BETA concluded it was not riverfront, so it has been removed. That changes the fee calculation; they will follow up with Mr. Russell. She stated BETA suggested it could perhaps be processed as a limited project; This is not really a great fit as the building demolition is for safety purposes as opposed to being a response action to address the historical release there. There will not be any excavation of soils.

Mr. Russell stated neither he nor the peer reviewers have seen any revised plans and he is not prepared to make any recommendations. If the plans have been revised without review, he recommended the Commission not approve anything without review by the consultant. He stated the concerns raised by WSI in their review are significant. He explained this was an NOI that included wetlands delineations so it was more than an ANRAD. He noted that even if peer review was for verifying the wetlands lines only, the wetlands lines are so significantly different between the peer review consultant and the applicant, the plans must be revised.

Chairman Livingstone summarized that the peer reviewer is the Commission's agent, and as they have not had a chance to review and sign off, the Commission cannot sign off. He requested the applicant review the significant changes that have been made so the Commission is aware of them; then BETA can review the plan.

Mr. Charlie Shepherd of CDW Consultants stated there were nine items. He provided an overview of the significant changes which included four wetlands flags adjusted on the field. They removed 1-24 riverfront flags as consultant disagreed they were riverfront. This takes the building out of the riverfront, which will also reduce the fee.

Ms. Stolfa stated this narrows the scope of the Commission's jurisdiction. BETA had suggested this project could be under a limited project, but she reiterated she does not think that is a good fit.

Mr. Shepherd continued to outline applicant's responses to BETA's comments. He stated they thought the project was exempt from stormwater regulations because there was no change in impervious and no excavation. BETA disagreed. So, applicant responded to each of the ten stormwater standards. They are not taking out trees, but will trim anything over two inches to get the vehicles in. They added truck wash for asbestos removal. They took all references off for silt fence and hay bales and put in acceptable erosion control barrier.

Mr. Russell stated the Commission's policy is that any revisions are to be submitted 48 hours in advance of the meeting. Due to the timing of BETA's review and submitted letter, the 48 hours could not be met. He wished he had seen the packet yesterday as it adequately addresses many of BETA's comments. He stated he has a problem with the wetlands lines. This will be the only opportunity to clearly delineate the wetlands lines as this is the NOI filing. He said that all the concerns, except the wetlands delineation issues, have been addressed in their letter and can be handled in terms of stipulations of approval. He recommended the plans go back for a quick review by WSI to determine if they agree with the lines. If they do, these plans can be referenced in the NOI which can probably happen two weeks from tonight. He recommended applicant provide a copy of the plans to WSI tomorrow. He believed that Ms. Lenore White could turn that around in two or three days depending on workload.

Chairman Livingstone stated that Mr. Russell will let BETA know that time is of the essence.

There was a motion made by Bill Batchelor to continue the public hearing for the NOI for 300 Fisher Street to June 23, 2016 at 7:50 PM. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

**Public Hearing – Continued - ANRAD – Map 242, Parcel 12 Maple Street**

Mr. Russell stated the ANRAD is ready to be approved. He received comments from the peer reviewer and everyone is in agreement with the line.

Ms. Lauren Gluck of Pare Corporation addressed the Commission to confirm the delineation of bordering vegetated wetlands. She provided Commission members copies of the revised plan and reviewed the wetlands line delineation.

There was a motion made by Scott McLean to close the public hearing for the ANRAD for Map 242, Parcel 12 Maple Street. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

There was a motion made by Bill Batchelor to accept the ANRAD for Map 242, Parcel 12 Maple Street. The motion was seconded by Scott McLean and accepted with a vote of 7-0-0.

**GENERAL BUSINESS**

**Certificate of Compliance: 529 West Central Street – Midas**

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

There was a motion made by Scott McLean to release the Certificate of Compliance for 529 West Central Street. The motion was seconded by Bill Batchelor and accepted with a vote of 7-0-0.

**Certificate of Compliance: 9 Molly Lane – SE159-682, CE159-1123**

Mr. Russell stated there are actually two certificate requests for this address: one for the original NOI (SE159-682) which should be granted as invalid, and one for the new NOI (CE159-1123) which should be approved given that all is ready for the granting of the certificate.

There was a motion made by Scott McLean to approve as invalid the Certificate of Compliance for 9 Molly Lane, SE159-682. The motion was seconded by Bill Batchelor and accepted with a vote of 7-0-0.

There was a motion made by Scott McLean to release the Certificate of Compliance for 9 Molly Lane, CE159-1123. The motion was seconded by Bill Batchelor and accepted with a vote of 7-0-0.

**Discussion Item: Education and Outreach**

Ms. Henrichon stated on Saturday, June 11, 2016, at 8:00 AM, starting at the Summer Street entrance, Jack Lash, former ecologist for the State of Massachusetts for 35 years, is partnering with Franklin Conservation Commission and Stony Brook Wildlife Sanctuary to host a walk in the town forest. The event has been advertised. The police department has been notified regarding parking. Also, she stated Lisa Ahern of Rypos, a clean-air company in Franklin, had contacted the Conservation Commission asking if the Commission had a volunteer project which they could partner. Mr. Russell has been working with the new intern to design a project at Dacey fields to remove some piled debris and logs across the wetlands in that area. Rypos has a group of 30-35 people coming out Tuesday afternoon, 12:30 to 3:30 PM, to do trail work on the trail network behind Dacey.

Mr. Russell stated the new intern will be supervising and directing the project.

**Discussion Item: Annual Report**

Mr. Russell stated all Commission members have received a copy. All comments received have been incorporated. The final number of permits, etc. will be added at the end of the month. Any additional comments must be submitted and added as this needs to go to Town Clerk by mid-July.

**Discussion Item: DelCarte**

Mr. Russell stated there are two issues concerning DelCarte. First, the wood chips being deposited there are being deposited by unknown parties. It is not the DPW. Police have been asked to check the area during routine patrols. Will try to find out who is putting them there. It has been put on the social media site.

Mr. Batchelor stated he looked at the area. He saw one load of material had been dumped on Friday. By Saturday afternoon two additional loads had been dumped.

Chairman Livingstone remarked that the Commission has no idea what could be in the dumped material, bittersweet, poison ivy, chemicals.

Mr. Russell stated they could ask DPW to remove it, but not sure if they have the manpower.

Mr. Pendkar asked why this issue is not being discussed as a violation. Why is this exempt from a violation? This issue has been ongoing and Commission has not even stated that an erosion control barrier must be installed to make sure mulch does not get into the pond. He first made Mr. Russell aware of the dumped material on Earth Day. The Commission is not holding itself to the same standards.

Committee members questioned who would the violation be against; the violation is being done against the town. The Conservation Commission is not the owner of the land, just take care of it.

Mr. Russell stated that in a legal sense, the Commission could issue a violation against the town.

Chairman Livingstone stated the town is taking steps to stop it and trying to determine the perpetrators.

Commission members discussed issuing a violation against the town and discussed what actions would be taken if it this were a private property owner.

Mr. Russell stated he would consult with the town attorney. Essentially, Commission would be issuing an enforcement order against themselves. The technical owner of the property is the Town of Franklin. He does not know the legal ramifications if the Commission files a violation against the town. Ultimately, it would end up in front of the Commission. He noted that when a private property owner is discovered in violation, it usually takes three to six months to end up in front of the Commission.

Commission members discussed if this item should be put under the violations section on the agenda.

Chairman Livingstone said Commission is trying to find out more information before they go down the procedural route. He questioned how no one sees it in a public place and if the abutters have been talked to. He would be happy to post and write a commentary on social media and ask if anyone has any information. Commission would expect police to investigate; there has been a crime committed. Mr. Russell should follow up with the police. The usual way of dealing with this is working with the property owner before issuing a violation or fine. What is being done with the town, through the agent Mr. Russell, is no different than usual procedure. He acknowledged the concern that the process is not going very fast, but does not procedurally believe this is a double standard as Mr. Russell is doing the best he can in this situation as there is not really any information.

Mr. Pendkar stated finding out who did it is one matter. Remediating the situation is another matter, and he would like that addressed as this is a violation.

Commission Livingstone asked if Mr. Pendkar was indicating this should be an emergency order to have the town remove the material or come up with a plan to remove it.

Mr. Pendkar stated they should come up with a plan to remove it or contain it; there has been heavy rain and it is being washed into the pond. He asked why it is not being contained.

Chairman Livingstone hypothetically asked if this were somewhere else what would Commission typically do in an emergency situation.

Mr. Russell stated he would first consult with the town attorney to determine the options. The second step would be based on the town attorney's options. If it got to the point where DPW was going to remove it, they would have to file an RDA. Removal of the material will take an RDA, NOI, or an emergency order. He stated he does not know which way to go yet.

Chairman Livingstone suggested Mr. Russell talk to Town Attorney Mark Cerel before the next meeting and determine legal standing and options. Mr. Russell should make a site visit to determine if it looks like there is an impact from the rain.

Mr. Russell stated he made a site visit yesterday and determined the mulch is not moving. He stated DPW is going to post no dumping signs and police are looking at it. Next step is how to get it removed.

Chairman Livingstone reiterated he would post this as a public citizen on the Only About Franklin page to get word out.

Ms. Henrichon suggested Mr. Russell send a letter to the abutters along Pleasant Street to ask for their help as a neighborhood watch. She stated she would also send the letter via email to the volunteer group. She asked if there is anything that should be done to stabilize/protect the wetland immediately such as barriers.

Mr. Russell stated he looks at this once or twice a week and so far has not seen any movement of the material. Do not know if there are any seeds in it; that will be determined if things start growing.

Mr. Pendkar stated the material is right up to the water.

Mr. Russell stated that in regards to the pond treatment, one of the two herbicide chemicals recommended cannot be used in DelCarte pond; DEP and EPA will not permit it. There is a new chemical that is permitted. The NOI is being prepared for the original chemical and the new one, and then will go out to bid. Although slow, this is moving forward.

**Discussion Item: Filing Fees**

Mr. Russell stated Commission members have received additional information on filing fees. Town of Norfolk information was previously included, but mislabeled as Norton. There is disparity between towns on fees. He recommended some increases, specifically under the RDAs; currently, get \$0. RDAs require review and staff time. Permitting fees are being reviewed by all departments in the town. If Commission wants to increase fees, a formal vote is needed to be then sent to the administration.

Chairman Livingstone stated he has done his own investigation and determined that the recommended fees are very fair in keeping with other towns. He is in favor of these recommendations.

Mr. Pendkar questioned the proposed ANRAD fee of \$.50 per linear foot per resource area. If done by peer review, what is the processing cost, and should the cost be waived as peer review is paid for by applicant.

Mr. Russell stated if it does not go to peer review, he is doing the work to verify the soil types and vegetation. He stated it could put in the proposed fees that if not done by peer review, then \$.50 per linear foot per resource area. The problem is that peer review cannot be done until Conservation Commission authorizes it, so what type of filing fee does applicant pay?

Chairman Livingstone suggested that fee is paid upfront and if Conservation Commission authorizes peer review, fee can be refunded. Or, amount already paid can be put toward the peer review.

Mr. Russell suggested leave the cost a \$0 and have all ANRADs go for peer review as a policy. Therefore, every NOI that comes in that has a wetland line on it for the first time whether ANRAD or NOI goes to peer review. He noted ANRADs require more work.

Commission members discussed the practicality of having no fee, a standard fee, all ANRADs requiring peer review, size of ANRAD, upfront costs, need for consistency, and why NOI and RDA have a set fee, and ANRAD based is on linear foot.

There was a motion made by Bill Batchelor to accept and give the Town Council the proposed fee schedule put before the Commission by Mr. Russell. The motion was seconded by Scott McLean and accepted with a vote of 6-1-0 (Mr. Pendkar vote No).

**Signed Order of Resource Area Delineation & Certificates of Compliance**

Map 242, Parcel 012 Maple Street – Carroll Construction – CE159-1126  
Certificate of Compliance – 529 West Central Street – Midas – CE159-1087  
Certificate of Compliance – 9 Molly Lane - Drewry – SE159-682  
Certificate of Compliance – 9 Molly Lane – Drewry – CE159-1123

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 7-0-0.

The meeting adjourned at 9:08 PM.

Respectfully submitted,

Judith Lizardi  
Recording Secretary