

9/21/2017

Franklin Conservation Commission
Minutes of Meeting
September 21, 2017

To: Town Clerk
cc: Members
File

Members Present: B. Batchelor, T. Henrichon, J. Livingstone, J. Milne, Staci Dooney, George Russell, Conservation Agent.

Members Not Present: A. Gelineau, P. Harrington.

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

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

Request to Add Item to Agenda

Mr. Russell requested to add 4 MBZA's for 61, 62, 65 & 66 Bayberry Common to tonight's agenda.

There was a motion made by Tara Henrichon to add 4 MBZA's for 61, 62, 65 & 66 Bayberry Common to tonight's meeting agenda. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

Public Hearing – RFD – 30 Shady Lane - Callahan

Mr. Milne recused himself.

Mr. Marc DePoto, 21 Orchard Street and Hillside Nurseries, and Brian Callahan, homeowner at 30 Shady Lane, addressed the Commission for a 400-sq. ft. patio in the backyard.

Mr. Russell stated the site inspection revealed an issue with vegetative debris. The applicant retained a wetland scientist who prepared a report indicating there is no problem with the grass clippings, etc., that have been placed in the buffer zone and recommended they stay in place. Mr. Russell pointed out that the slope where the vegetative debris is located is approximately 20 percent which goes to a perennial stream as well as a BVW. He stated that to remove the debris would expose soil on a very deep slope causing a bigger problem.

Mr. Callahan stated it was a one-time incident and he is aware he cannot add to the debris. In response to a Commission member's question, he stated that the playground area is an enclosed area with railroad ties and crushed stone on the bottom.

There was a motion made by Tara Henrichon to close the public hearing for 30 Shady Lane. The motion was seconded by Staci Dooney and accepted with a vote of 4-0-0.

There was a motion made by Jeff Livingstone for a negative determination for 30 Shady Lane. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-0.

Mr. Milne re-entered the meeting.

Public Hearing – NOI – 82 Elm Street - Graf

Mr. Brandon Faneuf, representing Gretchen Graf of 82 Elm Street, addressed the Commission.

Mr. Russell stated that an NOI number has not been received.

Chairman Batchelor stated that the applicant may give testimony, but the item will be continued until the next meeting. If testimony is given and any of the Commissioners are absent at the next meeting, it may cause a procedural problem. He stated that two Commission members are absent tonight and there is a potential for one Commission member to be absent at the next meeting. He suggested the applicant hold testimony until the next meeting so the applicant will not run into procedural problems.

Mr. Callahan referenced the Mullin Rule.

Mr. Livingstone stated that the applicant was correct. There is no reason that the Commissioners must wait until the actual meeting to review the material that will have been made available by the public recording of the meeting. The two absent Commissioners can be advised that they should review the material if they want to vote on this item at the next meeting.

Mr. Callahan stated he was of the same mind as Mr. Livingstone; this is the first time he has heard that an applicant must wait for a Commission member to get caught up on the material. It is incumbent upon the Commissioners to become familiar with the proceedings before the meeting; otherwise, they cannot participate. As well, they must sign an affidavit.

Mr. Russell stated that in this case it is a relatively “innocuous” application. He does not anticipate DEP having significant comments. He recommended that the applicant give testimony.

Mr. Batchelor requested it be noted that it is not his choice; it is the choice of the applicant.

Mr. Faneuf stated he would give his testimony. He stated he was before the Commission in 2016 with an RDA for this Title V septic system replacement. Ms. Graf is trying to sell her home and has already moved. The issue with the RDA is that there is a perennial stream in the southern part of the property. Due to the drought last July, he was not able to complete the required four days of photographs. Ms. Graf told him she wanted to wait until the drought was lifted which did not happen until May of this year. She then came before the Commission and a positive determination was issued. The photographs submitted were accepted and the perennial stream was downgraded to an intermittent stream. That changed the jurisdictional boundaries. So, the riverfront area is no longer applicable; now dealing with a buffer-zone project. The leach field of the septic system to be replaced is approximately 70 ft. from the BVW and will be partially in a wooded area that is now outside of jurisdiction. The 100-ft. buffer zone is now around the woodline. The leach field will be just outside 100 ft. There will be grading within the 100-ft. mark. Because of the grading, the driveway needs to be shifted slightly closer to the wetland. But, it will still be within pre-existing lawn. The driveway will be about 60 ft. away from the wetland. No trees need to be taken down within the buffer zone. It is a gravel driveway and will stay that way. There is about 2,100 sq. ft. total disturbance. To mitigate for this disturbance, the applicant has proposed to plant five high bush

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blueberries and five red maples closer to the wetland boundary. The dirt stockpile will be kept in the existing driveway ringed by sediment erosion controls.

Chairman Batchelor confirmed this hearing will have to be continued as there is no DEP number.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for 82 Elm Street to October 5, 2017 at 7:30 PM. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

Public Hearing – Continued - RFD – 129 Conlyn Avenue – Fontana

Mr. Gregory Fontana, 129 Conlyn Avenue, addressed the Commission for a shed. He stated the Building Department said he did not need a permit for his 6 ft. x 9 ft. shed.

Mr. Russell stated that he observed a pile of vegetative debris within the wetlands buffer. He notified the property owner. The property owner complied and obtained a wetland scientist who evaluated the debris pile and indicated that as the debris pile is in jurisdiction it should not be expanded, but to remove it would cause more damage than to leave it.

Mr. Fontana stated he agreed to not add to the debris pile. He asked about some pine trees that are about 100 ft. tall and are a danger to the home. He stated Mr. Russell told him he would need to obtain a permit if he wanted to remove them.

Mr. Russell confirmed the applicant would need a permit to remove the trees as a threat to health and safety, but this is a separate item from tonight's RFD.

There was a motion made by Staci Dooney to close the public hearing for the RFD for 129 Conlyn Avenue. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

There was a motion made by Jeff Livingstone for a negative determination for the RFD for 129 Conlyn Avenue. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

Public Hearing – Continued - NOI –31 Hayward Street – G & H

Mr. Russell stated that this application is being revised and the revised plans are being sent back to the peer reviewers. There has been no correspondence received from BETA and the wetlands scientist. He recommended the hearing be continued to October 5, 2017.

There was a motion made by Tara Henrichon to continue the public hearing for the NOI for 31 Hayward Street to October 5, 2017 at 7:35 PM. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

GENERAL BUSINESS

Minor Buffer Zone Activity: 61, 62, 65 & 66 Bayberry Common

Mr. Chris Campbell addressed the Commission to replace four existing decks in the same footprint with composite decking at Spruce Pond Village.

Mr. Russell recommended approval of the MBZAs. He stated that there are four MBZAs and all four can be approved in one motion.

There was a motion made by Staci Dooney to approve the four MBZAs for 61, 62, 65 & 66 Bayberry Common. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

Permit Modification: Garelick Farms

Mr. Jesse Arroyo, 1199 West Central Street, addressed the Commission and stated he was before the Commission on June 21, 2017 for an NOI associated with the Garelick Farms facility. At that time, they were requesting permission to remove the fuel oil tanks. An Order of Conditions was approved. It was dated June 23, 2017, recorded in the Registry of Deeds, and the work was conducted. Upon completion of the work, samples were collected in accordance with DEP. The water sample came back showing exceedances possibly associated with the fuel oil tanks. He noted that the tanks were inspected when they were removed and there was no evidence of leaks. He stated they are within the 120 days to notify the DEP. The proposal is to install three groundwater monitoring wells. To install said wells, they are required to notify the Commission. They already have an open Order of Conditions; he is here on the advice of Mr. Russell.

Mr. Russell stated that it appears that the monitoring wells were never anticipated to be needed. He stated that he thinks it is in the purview of the Commission to assume that the removal of underground fuel storage tanks may lead to what is now happening. As part of the underground storage tank removal, the installation of monitoring wells would be a normal course of business if the said conditions are showing up. He does not think it would require a formal modification to the NOI. He thinks the Commission needs to go on record indicating that it is part of the normal process of removing tanks should an environmental factor show up that would indicate monitoring wells are necessary. He stated that should the monitoring wells indicate that additional excavation work becomes necessary to find out the source of this "pollutant," that would definitely be a modification of the Notice.

Mr. Arroyo stated that if they show that the impacts were not from the removed fuel oil tanks, they would try to determine who was responsible. If they find that the impacts are related to the removed fuel oil tanks, then they will return to the Commission. In response to a Commission member's question, he stated that he does not know if these underground tanks were replacements for other previous tanks.

Mr. Russell recommended a motion that indicates that the monitoring wells at the site be considered a normal part of the tank removal and therefore under the purview of the existing NOI.

Mr. Arroyo stated he is only installing three monitoring wells; if it is determined that more are needed, he will return to the Commission.

There was a motion made by Jeff Livingstone that the installation of the monitoring wells falls under the normal course of the process of removing the tanks and should be so considered for the permit modification for Garelick Farms. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

Permit Modification: Dean Avenue – Fairfield Residential

Mr. John Shipe, consultant on behalf of Fairfield Residential, stated that Fairfield Residential is the developer proposing to build the residential community at Dean Avenue. He stated they were before the Commission in June/July for an NOI and an Order of Conditions was issued. Since that time, they realized they needed to modify the proposed program. They added a noise wall between the project and the railroad, and endeavored to take the majority of the residential community and move it away from the railroad. That is also pushing it away from the wetlands. He stated they have removed all the pavement and buildings previously in the 100-ft. buffer. They now have less work proposed in the entire buffer. He

stated they wanted to acknowledge this change before the Commission. It has been reviewed by the peer review consultant, BETA; they were fine with it. He stated the proposed noise wall as shown on the plans goes up to the 50-ft. buffer zone.

Mr. Brian McCarthy of RJ O'Connell & Associates, the civil engineers for the project, summarized the reconfiguration of the site and the revisions of the layout in order to move the buildings back from the railroad tracks due to noise concerns. Within the buffer zone, the only thing happening now is the storm water detention and infiltration basins which were there before. They are now laid out differently; it is consistent with what was originally approved. The new design is an improvement over the original design as they could add additional sediment forebays. The overall impervious area at the site has been reduced by 10,000 sq. ft.

Mr. Russell noted that the applicant is here under the Commission's and DEP's policies. The Commission is tasked with determining if this requires a new NOI or an amendment. He recommended that it only rises to the level of an amendment.

There was a motion made by Staci Dooney that the proposed modification only requires an amendment to the existing NOI. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

Discussion: Eagle Scout Project

Mr. Dan Sheehan, 33 Daniels Street, a Life Scout of Troop 126 in Franklin, addressed the Commission for the Boy Scout Project at DelCarte. He stated his proposal is to install 12 bird houses and 3 bat boxes in the DelCarte recreation area. He would like to install them around the conservation area with the bird houses along the trails and the bat houses in the wooded area between the parking area and the northern pond. The benefits include assisting the conservation of the bird and bat population, providing a home for the birds, and providing enjoyment to the visitors of that area. He confirmed this is for an Eagle Scout project. He stated the bird houses will all be the same except for the diameter of the entrance hole to attract different birds. The houses will be hung at 12 ft.

Ms. Henrichon noted that the applicant may want to add an additional bat house as male and female bats roost separately, but close together. She also suggested a mechanism to be able to easily open the bird houses for cleaning.

Chairman Batchelor noted that Mr. Sheehan did a great job outlining the proposal. He confirmed the completion date for everything being installed was October 29, 2017. He asked if Mr. Sheehan would undertake the maintenance involved beyond the October 29 date.

Mr. Sheehan stated that he could not say that; he would have to see how the project goes.

Mr. Russell suggested adding a stipulation to the motion of approval for the requirement of submission of photographs for each structure erected with some type of locational information so the specific structure could be located in the field in subsequent years; GPS coordinates would be great.

There was a motion made by Jeff Livingstone to approve the project with the stipulation of GPS coordinates and photographs for each of the installed structures. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

Discussion: 6 Dominica

Mr. Russell stated his office has generated many letters to the property owner and no responses have been received. He stated the Commission has the authorization to file the Orders of Conditions with the Registry under 310 CMR 10.05; he is requesting the Commission vote to allow him to record the Orders and bill the applicant.

Chairman Batchelor asked if there has been any attempt to contact the applicant by phone or by visit.

Mr. Russell answered No; he said he has put everything in writing. He stated that when this NOI was filed and Orders issued, he had to go so far as to serve letters to the property owner by constable.

There was a motion made by Jeff Livingstone to approve Mr. Russell to file as required Notice to the Registry for 6 Dominica. The motion was seconded by Jeff Milne and accepted with a vote of 5-0-0.

Discussion: DelCarte Projects

Mr. Russell stated that a report from Mass Audubon was received at the last meeting; they had very specific recommendations. A report from ESS concerning the beaver issues was also received. He is meeting with a consultant engineer the week after next on the beaver issues; it has been recommended that we need to have an engineer versed in structural integrity of the earthen berm and the beaver dam to come up with a plan for what vegetation should be removed, what conditions, and how to take care of the beaver issue. In addition, there are very specific outlined steps in the Mass Audubon report. The Commission must determine which steps should be undertaken first. The Commission must prioritize what Mass Audubon has recommended as we need to get some funding lined up. Mr. Russell stated he needs to sit down with Public Works to check on manpower. At the same time, the aquatic invasive species management is ongoing in the ponds. He recommended that the first priority should be the treatments recommended in the area between the playground and the pond including the removal of the woodchips, planting of the grass species, and removal of the invasives. This is probably going to be a bid item. He needs to know from the Commission if this is their first priority; he also has to notify the Town Administrator if it might be a capital improvement item.

Chairman Batchelor and Commission members discussed priorities and possible costs. Informally, they agreed that the ecological integrity of the space and invasive management should be first.

Mr. Russell mentioned that there is no section of DelCarte beyond the playground/parking lot that is ADA compatible.

Commission members discussed the possibly of some ADA compliant trails in the future, a three-year enhancement plan for DelCarte, and a Master Plan with a funding plan for DelCarte. Possibly a sub-committee could be formed to develop a Master Plan.

Mr. Livingstone asked if there was a way for the Commission to help out the scout's project and bear the costs of supplies to build the birdhouses as the scout is fulfilling a key element for DelCarte that Mass Audubon pointed out.

Chairman Batchelor and Ms. Henrichon stated they believe that part of a scout project is for the scout to raise their own capital.

Mr. Livingstone suggested the scout write a one-page grant application and the Commission approve it.

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Mr. Russell questioned what would happen when the next scout project comes along. He would have to check this with the procurement officer.

Ms. Henrichon asked Mr. Russell to share with Mr. Sheehan the Mass Audubon report information that indicated bird house nesting guidelines with specific height information for the birdhouses.

Chairman Batchelor confirmed that the Commission should ask Mr. Russell to go ahead with asking for a capital improvement as stated for the woodchip bundle. The second piece is at the next meeting to bring some ideas to the meeting for the development of a master plan.

Ms. Henrichon asked to authorize a sub-committee for the Master Plan.

Mr. Russell stated he would email Ms. Gelineau and Mr. Harrington.

Ms. Henrichon made a recommendation to form a sub-committee to create a Master Plan for DelCarte.

Minutes:

There was a motion to approve the meeting minutes for September 7, 2017. The motion was seconded and accepted with a vote of 4-0-1. (Chairman Batchelor abstained.)

There was a motion made to approve the meeting minutes for August 24, 2017, with the two changes as submitted by Mr. Livingstone which are on page 2, Villages at Oak Hill, fourth paragraph, and page 5, 13 Evergreen, fifth paragraph. The motion was seconded and accepted with a vote of 4-0-1. (Ms. Henrichon abstained.)

Chair and Commission Comments

Ms. Henrichon confirmed that Garelick Farms would have had to return to the Commission because of the findings.

Mr. Russell stated that he recommends that an Order never be given that is too open-ended; have the applicant come back to get authorization.

Signed Minor Buffer Zone Activities & Determinations of Applicability

Determination of Applicability (Negative) 30 Shady Lane – Callahan

Determination of Applicability (Negative) 129 Conlyn Avenue – Fontana

Minor Buffer Zone Activity – 61 Bayberry Common – Kepple

Minor Buffer Zone Activity – 62 Bayberry Common – Boblack

Minor Buffer Zone Activity – 65 Bayberry Common – Burns

Minor Buffer Zone Activity – 66 Bayberry Common – McElman

There was a motion made by Jeff Livingstone to adjourn the meeting. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

The meeting adjourned at 8:48 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary