

Town of Franklin



Conservation Commission

**February 9, 2023
Meeting Minutes**

As stated on the agenda, due to the concerns regarding the COVID-19 virus, this meeting is available to be attended in person and via the Zoom platform. In an effort to ensure citizen engagement and comply with open meeting law regulations, citizens will be able to dial into the meeting using the provided phone number, or citizens can participate by using the Zoom link provided on the agenda. This meeting will be held in the Council Chambers of the Municipal Building for citizens wishing to attend in person.

Commencement

Chair Patrick Gallagher called the above-captioned meeting to order this date at 7:00 PM as a remote/virtual/in-person meeting. Members in attendance: Patrick Gallagher (via Zoom), Jeffrey Milne, Richard Johnson (via Zoom), Michael Rein, Meghann Hagen (via Zoom), Mark LePage. Absent: Jeff Livingstone. Also present: Breeka Li Goodlander, Conservation Agent; Tyler Paslaski, Administrative Staff.

Note: Documents presented to the Conservation Commission are on file.

Chair Gallagher announced that the Conservation Commission is in the midst of the Open Space and Recreation Plan process for 2023. He reviewed that for the foreseeable future, the Conservation Commission will be holding sessions from 6 PM to 7 PM on the nights of regularly scheduled hearings where we will be talking about various topics for the Open Space and Recreation Plan process. The public is welcome to attend. He announced that on Monday, an open space survey will be going out to all residents; he encouraged residents to respond as any feedback is appreciated. In addition, anyone can comment on the plan through the link provided on the Commission's webpage on the Town's website.

PUBLIC HEARINGS

Public Hearing – NOI – 74 South Street CE159-1259 – continued

Ms. Goodlander stated that the applicant requested a continuance.

There was a motion made by Richard Johnson to continue the public hearing for the NOI for 74 South Street to February 23, 2023. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Public Hearing – NOI – 0 Lincoln Street, Franklin Heights Parcel B CE159-1260 – continued

Chair Gallagher stated that the applicant requested a continuance. Ms. Goodlander stated that the applicant is working on the latest stormwater design revisions. She stated that they have an outstanding BETA balance; once it is paid, BETA will be able to review their latest submissions.

Mr. Michael Hassett of Guerriere & Halnon, Inc. (via Zoom) on behalf of the applicant stated that he would pass along the outstanding balance.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 0 Lincoln Street, Franklin Heights Parcel B to February 23, 2023, at 7:02 PM. The motion was seconded by Mark LePage and

accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Public Hearing – ANRAD – 121 Grove Street CE159-1261 – continued
Chair Gallagher recused himself.

Mr. John Shipe of Fairfield Residential (via Zoom); Mr. Chris Lucas, wetland scientist of Lucas Environmental; and Mr. Robert Hewitt of Fairfield Residential (via Zoom) addressed the Commission for an Abbreviated Notice of Resource Area Delineation (ANRAD) at 121 Grove Street to confirm the delineation of resource areas onsite. Mr. Shipe stated that a few weeks ago this project was discussed; to recap, the wetlands were flagged by Lucas Environmental and an ANRAD was submitted. He stated that Mr. Jonathan Niro from BETA Group submitted a comment letter on January 6, 2023, and Mr. Lucas submitted a response letter on January 23, 2023. He stated that it was a substantive rebuttal to some of the concerns raised; there are a couple of areas that there is a disagreement. He noted that at the last meeting he does not think the Commission or Ms. Goodlander had a full opportunity to read Lucas Environmental's letter. He hopes that has now happened.

Mr. Lucas stated that he was going to give a general review and not go into the level of detail that was provided in the submitted letter. He stated that they made the majority of changes that BETA Group indicated. He reviewed the nine comments provided in BETA's letter dated January 6, 2023, which was provided in the Commission's meeting packet. He reviewed the applicant's responses to the nine comments regarding their agreement, and he reviewed the areas in which they disagreed. He stated that they disagreed with BETA's contention that there were six additional streams on the site. He stated that they do not agree that those six areas contain a defined channel and that they are streams. He reviewed that the area between flags 5 and 6 in wetland C and flags 29 and 30 in wetland A are areas of disagreement which is addressed in comment number eight in BETA's letter. He reviewed the criteria that they look at which includes vegetation, soils, and hydrology. He reviewed each of these criteria and noted that they have been out to the site numerous times. He explained that he is a soil scientist. He reviewed the vegetation, soils, and hydrology in wetland C and wetland A; he explained reasoning that they disagree with BETA's assessment this area. He discussed BETA's comment number nine related to test pit 16. BETA believes there are one or two isolated wetlands in this area. He stated that they have looked at it; he reviewed the reasons that he does not believe it is a wetland and it is an upland. He showed a draft plan that was done a few years ago by another firm and explained their noted areas of wetland.

Ms. Goodlander stated that the commissioners have to look at the plan in front of them which is the delineation that they are approving. She asked Mr. Lucas to add a GIS layer, put a buffer zone on it, and make a note that it is from Mass GIS to his plans so the commissioners can see exactly how much resource state and local jurisdiction is on the property. She stated there is lots to unpack and digest and she would wait honestly until BETA responds. She stated that no matter what, DEP puts the authority on the seven Commission members to make the determination of what you feel is an accurate delineation. She stated that there is an outstanding BETA fee, and BETA will not review the latest letter until that is paid. She discussed re-delineation in the spring without mowing. She discussed that winter is not an appropriate time to prove groundwater. She recommended a continuance so BETA can review the latest letter.

Commission members asked questions. In response, Mr. Lucas explained that there is a lot of sensitive fern but that does not mean it is a wetland. He noted that they provided the rainfall data for April and they were not in a declared drought at that time. He stated that they still did not see high groundwater at that time. He stated that the draft LEC plan shown from a few years ago is important as it shows another consultant's delineation of the site and they think it is worth the time of the Commission members to look at. He explained that if they have to wait to look at the site further, it would probably be June, which is a delay for the applicant. He stated that he believes the soils do not lie; they are more accurate than groundwater and the vegetation as the vegetation can shift from year to year. He does not see the need to wait for June. In

response to the question of what if they went with BETA's recommendation, what would it do to the project, Mr. Lucas stated that there is a proposed building up there. Ms. Goodlander stated that this is a 40B and the applicant is seeking exemption from local bylaw, so for all intents and purposes, you can build on an isolated wetland. Mr. Lucas stated that they have to look at if it is federally jurisdictional which has implications for possible permitting consequences; waiting until June will hold up the design which is why we came forward with the ANRAD.

Mr. Shipe noted Ms. Goodlander said that regarding the particular area in question around test pit 16, that if it is isolated wetland, it can still be built on. Ms. Goodlander reviewed that in the applicant's application they were requesting a variance from all local bylaw and from the application that they wanted the opportunity to build on isolated wetlands. She stated that the ANRAD is stating that they are seeking verification on local and jurisdictional, and that is their application, too. Mr. Shipe pointed out that if the area near test pit 16 were to be designated as an isolated vegetative wetland, Ms. Goodlander's statement that they could build on it, correct him if he is wrong, but if it exceeds a certain threshold, it may in fact be extremely more difficult to build on it in the future, is that true, depending on the size. Ms. Goodlander stated that for an isolated wetland under the Act can still fall into state jurisdiction. She stated that her point is that is what you are proposing, so in the future for a 40B for an isolated wetland and Chris, maybe if you want to guide your client with this. Mr. Shipe stated that Mr. Lucas did not need to guide him; what he is saying is that if it were a small 500 ft. isolated wetland, relatively incidental. Ms. Goodlander stated that she sees what he is driving at and sure but at the same point the point of contention right now is that she believes it is connected to BVW and BETA believes that it is connected to BVW and the end goal of this anyways is that the Commission still has the presiding authority, you are the regulating, permitting authority, to take all resources given to you and suss out and discuss which boundary line you would like to go with. She said this is different from an NOI. She stated that they are not approving the project yet, they are just approving the line. Mr. Shipe stated that he is referring to the area around test pit 16 and he does not think Ms. Goodlander or BETA have stated that it is connected to the BVW. Ms. Goodlander stated that she agrees that it is an isolated wetland and BETA believes it is an isolated wetland; Lucas Environmental does not believe it is an isolated wetland. She stated that truly the point of discussion is the isolated wetland, wetland C, that would connect to BVW. Mr. Shipe stated that he was referring to the area around test pit 16 that we have not identified as any wetland whatsoever. He stated that if it is small, it may not be a substantial impact to the development of the land. But, if it is a large square footage of isolated vegetative wetland, it can have a much greater impact to the development in the future.

In response to a question of the possible size of the possible wetland at test pit 16, Ms. Goodlander stated that not off the top of her head, but it is nothing as substantial as these complexes that you see in front of you. In response to a question, Mr. Lucas discussed the location of agricultural land in or near wetland A. Ms. Goodlander stated that the Commissioners can schedule a site walk; she will send an email out regarding possible dates. In response to a question, Mr. Lucas explained that wetlands can change over time; this delineation was done in 2018. He noted that ANRADs are good for three years. Ms. Goodlander reiterated that the applicant has an outstanding balance for BETA services. Mr. Lucas stated that they did receive this; he stated that \$1,800 seems excessive for BETA to review a five-page letter and prepare a response. He noted that walking the site with the Commission would be beneficial. Ms. Goodlander stated that any funds that are not utilized will be returned back. She stated that BETA will not look at the letter from Lucas Environmental until they have the scope and fee met. Mr. Shipe reviewed that BETA has available budget of \$1,100 for the review and they are requesting an additional \$700. Ms. Goodlander stated that she does not work for BETA. She stated that if Mr. Shipe has a concern, please send her an email and she will happily send it along to BETA's project manager. Mr. Shipe stated that he requests a continuance of the hearing. In response to a question, Mr. Lucas reviewed that he believes soils are the best indicator. Mr. Shipe stated that he hopes there is an equitable compromise across the board of the delineations. Vice Chair Milne confirmed they need a response back from BETA and they need to schedule the site visit. He requested all parties be present at the site visit.

There was a motion made by Mark LePage to continue the public hearing for the ANRAD for 121 Grove Street CE159-1261 to February 23, 2023. The motion was seconded by Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Chair Gallagher re-entered the meeting.

Public Hearing – NOI – 30 Uncas Brook Row CE159-1263

Mr. Bill Halsing of Land Planning, Inc. and Mr. Brian Osborne, applicant, addressed the Commission for a Notice of Intent to replace a failing cesspool with a new septic system and upgrade the existing foundation under the existing single-family home with approximately 4,000 sq. ft. of impact within the 100 ft. buffer zone. Mr. Halsing reviewed that there is an existing house with a failing cesspool that the owner would like to put in a new septic system in the front yard and raise the existing house and put in a full foundation, keeping the house in the same location. He stated that the wetlands were delineated by North East Ecological Services. He showed and reviewed the plan. He stated that most of the work is within jurisdictional areas. He noted a retaining wall on the right side of the property. He stated that they are showing compost sock as a barrier along the wetland side of the property and they have shown a stockpile area.

Ms. Goodlander stated that she has not had a chance to review because of everything else. She stated that he did drop off a check today for BETA to review it. She stated that this is a single-family home. She asked how much more they are excavating under the foundation. Mr. Halsing stated they have to be at least 4 ft. below frost. Ms. Goodlander asked what is the status of the cesspool; she stated that they can have an emergency authorization. Mr. Halsing stated that in reality, the system will be put in after the house. Ms. Goodlander stated that she can prioritize this to go out tomorrow and review the delineation and let them know her comments. She recommended this item be continued.

In response to Mr. Johnson's question, Ms. Goodlander stated that under the bylaws and regulations, any NOI, the way that it is written, would trigger a peer review. She stated that typically she tries to save residents money where we can. Chair Gallagher stated that he agreed with Mr. Johnson and wherever we can avoid these costs we should. He stated that I think this is a little more of a sensitive site and putting in septic right off of a pond, to me that had a little more potential risk that he thought it merited having a second set of eyes. In response to Chair Gallagher's concern, Ms. Goodlander stated that she can send this to Town Engineer Michael Maglio for review to see if there is any feedback for the Commission. Chair Gallagher asked it to be sent to Mr. Maglio. Mr. Halsing noted that the Board of Health approved the septic system. Chair Gallagher asked Ms. Goodlander to try to limit the scope of BETA in these circumstances.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 30 Uncas Brook Row to February 23, 2023, at 7:04 PM. The motion was seconded by Richard Johnson and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Public Hearing – RDA – Franklin Ridge

Mr. Jon Juhl (via Zoom) addressed the Commission for a previously approved Request for Determination of Applicability for the Franklin Ridge Senior Housing project located off Veterans Memorial Drive; the previously approved RDA expired, and the applicant is required to refile. Mr. Juhl stated that nothing has really changed in the project. He stated that they have been working on the financing side; they need the extension for that process of securing financing.

Chair Gallagher stated that this is an administrative gray area regarding an extension as the regulations do not provide for that. He stated that they are having the applicant refile, but for all intents and purposes, they can consider this akin to an extension.

There was a motion made by Jeffrey Milne to close the public hearing for the RDA for Franklin Ridge. The motion was seconded by Michael Rein and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

There was a motion made by Mark LePage to approve the RDA with a negative determination for Franklin Ridge. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

GENERAL BUSINESS

Minor Buffer Zone Activities: None.

Permit Modifications/Extensions: Permit Modification – Villages at Oak Hill

Mr. Andrew Thibault of Goddard Consulting (via Zoom) addressed the Commission as the representative for the project. He stated that he submitted a revised restoration plan for the site in his letter to the Commission dated January 23, 2023. He reviewed that he first came before the Commission in the summer of 2021. The previous agent and he met on the site and reviewed areas not in compliance. He submitted a planting plan to bring the areas into compliance; however, it was never carried out. This summer Ms. Goodlander and he went out to the site to assess the current conditions. They came back with a plan based on current conditions. He reviewed the revised restoration plan which was provided in the Commission's meeting packet. He noted that they came before the Commission in late fall to get an extension on the order of conditions for three years, so the order is already extended to carry out this work.

Ms. Goodlander asked about the habitat enhancement signage and asked if it could be closer to the road and not on the bank or some other signage at the head of the path going down to the pond. Mr. Thibault stated that he thought that was a great idea to add one or two additional signs. Ms. Goodlander stated that she thought it was a nice restoration plan. In response to a question, Mr. Thibault reviewed the history of the site and the order of conditions.

There was a motion made by Richard Johnson to approve the permit modification for Villages at Oak Hill. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Permit Modifications/Extensions: Permit Modification – Chilson Park

Ms. Goodlander on behalf of DPW reviewed the request. She explained that DPW is proposing a change in substrate in the area of Chilson Park that was previously proposed as wood chips. She stated that the playground area is about 598 sq. ft. and within the 100 ft. buffer zone. She stated that there is no net increase in impacts as proposed. She recommended approval. In response to a question, she stated that she did not know what the substrate is made of but she can provide the specification sheet to the Commission members in an email.

There was a motion made by Mark LePage to approve the permit modification for Chilson Park. The motion was seconded by Richard Johnson and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Certificates of Compliance: None.

Violations/Enforcement: 305 Union Street

Chair Gallagher provided an update. He reviewed that a non-traditional work plan was submitted to DEP. He stated that this is essentially out of our court at this point; the only thing left is to hear confirmation from DEP that what was submitted is in acceptable form. He stated that he thinks the enforcement order should be extended until they get that confirmation.

There was a motion made by Jeffrey Milne to extend the enforcement order for 30 days to March 9, 2023, for 305 Union Street. The motion was seconded by Mark LePage and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Minutes: January 26, 2023

There was a motion made by Michael Rein to approve the meeting minutes for January 26, 2023. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Discussion Items: None.

Chair and Commission Comments:

Chair Gallagher stated that the Town is in the midst of the Open Space Plan now which leads into the Master Plan renewal which will start this fall. He stated that a number of boards/committees have a representative on the Master Plan Committee. He stated that the Commission gets to appoint one individual. He stated that if a commission member is interested, please let him know. He stated that he was asked by Town Administrator Jamie Hellen to respond by the beginning of March.

Mr. Rein noted that the next public hearing on the open space is scheduled before the next Commission meeting, and it is scheduled for the Senior Center. Ms. Goodlander discussed that staff at the Senior Center believes that the multi-purpose room will be available for use for the open space public hearing on February 21, 2023, from 6 PM to 8 PM. She stated that the meeting will also be via Zoom. Chair Gallagher asked Ms. Goodlander to put the 2016 plan on the Google drive in case anyone wants to review it. Ms. Goodlander noted that it was on the Open Space webpage. She recommended everyone sign up for Conservation news alerts.

Mr. Rein asked if they are within striking distance of Earth Day, and he asked if they want to do it the same day as the Recreation Department. Ms. Goodlander stated that she has thought of that; she is open to anything. She suggested early March to start planning the event. Ms. Hagen noted the Franklin Area Moms group and stated that she was throwing together a tentative plan which might be something fun to partner with Conservation Commission on, a big environmental extravaganza that we were looking to possibly do on the Town Common around that time and hoping to get Conservation Commission, DPW, and some other resources involved. She stated that she may bring the idea to the Commission. Ms. Goodlander asked Ms. Hagen to send her an email on it.

Ms. Goodlander stated that Mr. Derek Adams submitted an application for them to become a Tree City USA.

Executive Session: None.

There was a motion made by Jeffrey Milne to adjourn the meeting. The motion was seconded by Michael Rein and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

The meeting adjourned at 8:35 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary