

Town of Franklin



Conservation Commission

**April 6, 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 7:10 PM as a remote/virtual/in-person meeting. Members in attendance: Patrick Gallagher (via Zoom), Jeffrey Milne, Jeff Livingstone, Richard Johnson, Michael Rein, Meghann Hagen (via Zoom), Mark LePage. Absent: None. Also present: Breeka Li Goodlander, Conservation Agent.

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

Chair Gallagher noted that the applicants for the public hearings for 25 Forge Parkway and 1 Paddock Lane requested continuances.

PUBLIC HEARINGS

Public Hearing – NOI – Spruce Pond Aquatic Management Program

Mr. Shawn McCarthy, project manager of Solitude Lake Management, addressed the Commission for a Notice of Intent to apply aquatic herbicides at Spruce Pond. He stated that they manage over 100 lakes in Massachusetts. He stated that the client is Spruce Pond Village Association, and they would like to continue a project management program at the pond that has been ongoing. He noted the previously approved Order of Conditions. He stated that the goal is to continue controlling the invasive weeds that grow in the pond and improve the biologic function of the water body. He discussed that they want to control the nuisance growth. He explained the problem of milfoil growth in a lot of ponds and how it spreads. He stated that they want to do regular monitoring and use very specifically selected herbicides and algicides that are registered and on U.S. and MA approved lists. He reviewed the location of the pond. He stated that the plan is to control the invasive growth, and the big issues are the variable water milfoil in two basins and the algae that is growing along the shoreline and intermixed with the milfoil. He discussed other growth including water lilies that they like to keep under control. He reviewed the chemicals they propose to use for the treatment. He stated that they are not proposing any significant alteration to the wetland. He stated that there are no restrictions on the chemicals for boating, fishing, or swimming by the EPA. He stated that to be prudent, they will close the pond for 24 hours the day of the treatment. He stated that the shoreline will be posted that it has been treated. He suggested no drinking or cooking with the pond water for three days, no irrigation with the water, and no livestock watering for one day. He reviewed the treatment process and stated that he does believe there will be a need for a second treatment.

Ms. Goodlander explained how this NOI came about. She reviewed that a similar NOI was historically approved by the Conservation Commission but expired early last year. She noted that the applicant

conducted one unpermitted herbicidal treatment last fall; the Town requested the applicant file a new NOI, including an after-the-fact filing component for the unpermitted herbicide application last fall. She stated that unfortunately this NOI does not include any mention of the unpermitted herbicide use; she requested Mr. McCarthy include that in the next iteration or revision. Mr. McCarthy stated that was good to know. Ms. Goodlander stated that additionally, the outstanding BETA scope and fee needs to be paid before review. She stated that she took an initial first look; she stated that the NOI is being filed as ecological restoration and these goals need to be quantified such as how successful is the treatment and what the target goals are. She stated that an event sequence needs to be provided. She stated that time of year restrictions are required. She stated that the applicant indicated that work is proposed at a perennial stream crossing which is town owned. She stated that the applicant must contact Derek Adams, DPW, for work surrounding the proposed culvert. She stated that the applicant should provide Alternatives Analysis to the chemicals used in the treatment.

Chair Gallagher asked if BETA would look at the chemicals in the scope. Ms. Goodlander stated that she thinks BETA could include it in their scope. She discussed some of the proposed chemicals. She stated that the applicant is requesting a five-year approval and generally, it is three years; she recommended three years. She stated that for any work in the 25 ft. no-touch zone such as spraying the herbicides on the bank, the applicant would need to submit a variance as this is a local regulation. She stated that the NOI is missing the local functions and characteristics statement under the local regulations and bylaw. Mr. LePage asked how long this has been done. Mr. McCarthy confirmed since 2018. Mr. Livingstone asked if there is any passive activity that happens on the pond. Ms. Goodlander stated that she has never seen anyone out there. She stated that the biggest point of connectivity is the perennial stream.

Mr. Wayne Curtis, resident, stated that the pond is well used in the summer as there is boating, fishing, and kayaks. He stated that his backyard abuts the pond which is where he puts a boat in. Mr. Livingstone discussed that in the past, the three-year versus five-year time period was discussed and the shorter time period allowed for review with regard to community development. Chair Gallagher noted the need for the review by BETA and the DEP number.

There was a motion made by Michael Rein to continue the public hearing for the NOI for Spruce Pond Aquatic Management Program to April 20, 2023. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Public Hearing – NOI – 25 Forge Parkway

Chair Gallagher stated that the applicant requested a continuance of the public hearing.

There was a motion made by Meghann Hagen to continue the public hearing for the NOI for 25 Forge Parkway to April 20, 2023. The motion was seconded by Mark LePage and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Public Hearing – ANRAD – 1 Paddock Lane

Chair Gallagher stated that the applicant requested a continuance of the public hearing.

There was a motion made by Jeffrey Milne to continue the public hearing for the ANRAD for 1 Paddock Lane to April 20, 2023, at 7:03 PM. The motion was seconded by Mark LePage and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-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 and Mr. Chris Lucas, wetland scientist of Lucas Environmental, 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 he thanked those who met onsite, and the small isolated wetland that they agreed on was delineated. Mr. Lucas stated that they submitted a response letter outlining this additional wetland that was flag. He stated that they are in receipt of BETA's final comment letter. He stated that at this time there are primarily four outstanding issues. 1. BETA noted an offsite wetland; however, it is offsite and not part of the ANRAD. The applicant will make note of it for any future permits. 2. BETA had identified six areas throughout the internal wetlands where they believe there are intermittent streams; the applicant is recommending a fact of finding that there is something there for future permits. 3. Wetland C was quite wet which is the area the Commission members walked through on the site walk. He reviewed the area in debate and said it did not have the hydric soils. He stated that BETA has a difference of opinion. He stated that the Commission could debate and discuss what they think it is. 4. He stated that Test pit 16 now has nine flags; it is wetland D and flagged D1 through D9 which is now delineated. He stated that they are hoping to close the public hearing tonight.

Mr. Jonathan Niro from BETA Group stated that Mr. Lucas did a good job summarizing all the outstanding points. He stated that as seen on the site walk, BETA and Lucas Environmental took a close look at the area between wetlands A and C and have a professional disagreement on what that is. He stated that BETA feels it is a wetland connection. He stated that both parties have provided substantial responses backing up both stances. He stated that they agree on wetland D, and it is now flagged. He stated that regarding the streams, they should be included as a fact of finding. He stated that they felt there were additional streams on the site but were interior to flagged wetlands.

Ms. Goodlander stated that she agrees with the facts of finding for the intermittent stream and offsite wetland. She stated that she mentioned at a previous hearing that for the offsite wetlands you could use the MA GIS layer so the buffer zone could be shown on the plan. She stated that she still maintains that the wetland C flag series connects to the wetland A flag series. She stated that there are two different ways that the Commission can go about this. She noted that the applicant wanted to close the hearing tonight. She stated that review letters were sent within the past 72 hours and if Commission members have not had time to read them, it is within their right to continue the hearing. She stated that she would not vote to issue an ORAD tonight. She stated that she can get the language for the facts of finding and they can sign it next time. She reviewed what a fact of finding is. Mr. Livingstone explained what typically in legal proceedings a finding of fact is; it is like a judge making a note for any future proceedings providing for better context. He reviewed the professional disagreement regarding the interpretation of soils in the area.

Ms. Goodlander stated that the Commission can take their time and think about this. She stated that any classification of these wetlands such as isolated versus BVW, state jurisdictional depends on what can be impacted down the line; we cannot discuss the project. Mr. LePage gave suggestions on closing the hearing and doing an ORAD with conditions and fact of finding. Vice Chair Milne polled the Commission members; Commission members indicated agreement. Mr. Niro stated that he recalls there is a portion of the ORAD form for discussion of items that are not confirmed, so you would want to note the two flags on the C series wetland and the two flags on the A series wetland that you would be saying that the connection is between. He stated that all four of those flags should be noted. Ms. Goodlander stated that it is not drafted. She recommended that the Commission approve the ORAD as stated with the fact of findings and vote to close it at the next hearing and she will have the language drafted.

Mr. Lucas stated that he thought the Commission could close the hearing and vote on it tonight. Ms. Goodlander stated that you can. She reviewed other ways to handle the approve and close as well.

Mr. Shipe stated that he wanted to clarify that if you vote this evening is it going to be very clear that what you are voting on is stating that wetland C is connected to wetland A and the specific flags that we discussed tonight; that will be clear in the record. Ms. Goodlander confirmed.

There was a motion made by Mark LePage to approve the ORAD for 121 Grove Street CE159-1261 with facts of finding as stated. The motion was seconded by Richard Johnson and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-if voted, not heard; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

There was a motion made by Michael Rein to close the public hearing for the ANRAD for 121 Grove Street CE159-1261. The motion was seconded by Richard Johnson and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-if voted, not heard; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Chair Gallagher re-entered the meeting.

GENERAL BUSINESS

Minor Buffer Zone Activities: None.

Permit Modifications/Extensions: None.

Certificates of Compliance: None.

Violations/Enforcement: 305 Union Street

Chair Gallagher stated that the enforcement order needed to be extended. He stated that they were in communication with the owner and the owner's consultants this week. He stated that his understanding is that they are waiting for Mass DEP to review the non-traditional work plan with the restoration component that had been submitted. He stated that the owner is aware that until that is done, the enforcement order will be kept open.

There was a motion made by Richard Johnson to extend the enforcement order for 30 days for 305 Union Street. The motion was seconded by Mark LePage and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Minutes: March 22, 2023

There was a motion made by Mark LePage to approve the meeting minutes for March 22, 2023. The motion was seconded by Richard Johnson and accepted with a roll call vote of 6-0-1. Roll Call Vote: Milne-Yes; Livingstone-Abstain; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

Discussions: None.

Chair and Commission Comments: Converse and Conserve Workshop Recap, April 23 DelCarte Event, Forest Stewardship Plans, Biodiversity Project Update, Beaver Deceiver Updates

Ms. Goodlander stated that the Converse and Conserve Workshop was held last Wednesday; there were about 22 people attending. She stated that if anybody wants or needs any sort of field guide for ferns, tracks, trees, etc., please come to her office and take them. She stated that regarding the forest stewardship plans, Ryan Jette is jazzed about forest stewardship plans now so he and I have been meeting to put them on as many properties as we can. She stated that she would probably pick the same landowner goals as for DelCarte. She reviewed the biodiversity update for DelCarte and noted the turtle nesting habitat. Regarding the beaver deceiver updates, she stated that she is meeting with Mike Callahan who runs Beaver Solutions, for the project that the Commission recently approved. She discussed the DelCarte event on April 23. She

stated that she thinks that everyone who she reached out to for a table or to host an event has gotten back to her. She stated that the Audubon Society, Metacomet Land Trust, DCR, DPW, and Conservation will be there, and a colleague of hers will do a vernal pool exploration, a nature photographer volunteered to do a bird walk, and Mike Downey will do a woods walk. She reviewed some planned activities. She stated that the hours are 9 AM to 1 PM. She stated that there are a few outstanding items such as food, and she is hoping to get the ice cream truck back.

Commission members made comments. Ms. Goodlander stated that for tables there is DPW, Conservation, Metacomet Land Trust, and DCR. There are two tables for painting activities. She stated that the Recreation Department is having their event on Saturday; Conservation moved their event to Sunday. She stated that Recreation removed DelCorte from their cleanup list. She stated that they can still do trash bags, and there are plenty of areas that could be seeded. She stated that they are doing T-shirts again. She stated that they still have the banner. Ms. Hagen talked about the taco food truck. Ms. Goodlander discussed that she could not reach out to the food trucks as she works for the Town. She stated that someone not working for the Town/committee member would have to reach out to the food trucks. Chair Gallagher thanked Ms. Goodlander for her work. Ms. Goodlander stated that they should be there early for setting up, they should spread the word, and someone should pick up the food. She stated that DPW will be bringing the trash bins.

Ms. Goodlander stated that the dams need to be periodically checked and assessed. She stated that DelCorte is really high in water, and she discussed the water level. She asked if there was a rain date for the DelCorte event.

Mr. Livingstone stated that they had their first Board of Directors meeting. He stated that he was struck about how many ConComs do not participate in MACC. He stated that it is a large fraction and that it is an issue; the number of participating ConComs has decreased over the past five years. He stated that one of the objectives for this year is to figure out how to pull more ConComs in. He stated that another issue is the aging out and trying to get the younger people involved. He stated that Franklin is known as a pretty progressive ConCom. He stated that it is his opinion that ConCom used to be seen as penalizing; that was the perception of the citizenry. He stated that is not how it is now; it is completely changed. He stated that it is nice that the Town is recognized for what they have done. Ms. Goodlander stated that she was going to contact Dot at MACC to see if they would market April 23 and see if they would come. Mr. Livingstone discussed what MACC does. He noted that the people on the Board of Directors have been there a long time. He stated that we as a body can have a much closer relationship with MACC and help the MACC with the longer-term objectives of making conservation a conversation. Ms. Goodlander suggested that she will send an email regarding a rain date for the DelCorte event. Chair Gallagher stated that they can table that item for now.

Executive Session: None.

There was a motion made by Meghann Hagen to adjourn the meeting. The motion was seconded by Richard Johnson and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Hagen-Yes; LePage-Yes; Gallagher-Yes.

The meeting adjourned at 8:36 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary