

Town of Franklin



Conservation Commission

**June 29, 2023
Meeting Minutes**

As stated on the agenda, 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

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

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

PUBLIC HEARINGS

Public Hearing – NOI – Spruce Pond Aquatic Management Program

Mr. Shawn McCarthy of Solitude Lake Management addressed the Commission to apply aquatic herbicides at Spruce Pond. He reviewed that they have been managing this since 2016. He stated that the original application had a lot of details. He stated that he focused on answering the questions from BETA. He reviewed aloud items from his document titled “Spruce Pond - Questions from Third Party Reviewer – Beta.” The document indicates that Beta provided several questions for the applicant to answer. The text in black shows the questions that were asked; the text in blue is Solitude Lake Management’s Response to those questions. The document is provided in the meeting packet.

Ms. Hagen confirmed with Ms. Goodlander that beyond tonight’s review with the Commission, Jonathan Niro of BETA and Ms. Goodlander must review the responses. She suggested this item be tabled to the next meeting. Ms. Goodlander stated that she recommended a continuance to have sufficient time to review.

Mr. McCarthy asked that responses be submitted to him via email to make sure they are received.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for Spruce Pond Aquatic Management Program to July 13, 2023, at 7:01 PM. The motion was seconded by Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – ANRAD – 1 Paddock Lane

Ms. Goodlander stated that she has not heard back from the applicant on the revised delineation. She stated that she would reach out to the applicant. She recommended a continuance to July 13, 2023.

There was a motion made by Michael Rein to continue the public hearing for the ANRAD for 1 Paddock Lane to July 13, 2023, at 7:02 PM. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – Maplegate Solar North

Ms. Goodlander stated that the applicant requested a continuance. She stated that she asked Jonathan Niro of BETA to provide an overview of the letter.

Mr. Greg DiBona of Bohler Engineering (via Zoom) on behalf of the applicant stated that there are a couple of delineations that they have to re-verify and check. They will be back onsite on July 5; they will submit a response letter on July 6. He stated that they will continue the conversation at the July 13 meeting.

Ms. Hagen confirmed this is an NOI.

Mr. Jonathan Niro of BETA Group (via Zoom) provided an update. He stated that he and others visited the site. He stated it is a very large site and only a portion is subject to the work. He stated that the applicant delineated all wetlands at the site. He stated that they looked at all delineations, but gave more focus to those surrounding the limits of work. He stated that what they generally found is pretty consistent with golf courses. He stated that golf courses are disturbed sites and you have hydric soil indicators creeping into the fairways. He stated that generally, at a number of locations, we observed those conditions. In those instances, the wetlands had changed, but did not extend to the limit of work. He stated that they also identified two unidentified wetlands. He recommended that the applicant take another look and reflag the identified areas as needed. He provided an overview of what was noted in their review. He stated that they would like more information on the proposed mitigation. He stated that the applicant is proposing a native seed mix under the panels and other locations which is a great approach; however, to ensure the mitigation is successful, BETA has requested additional information on soil compaction, soils, seed mix, mowing, etc. He stated that they also indicated additional mitigation as outlined in the response. He stated that BETA looked at an area where panels were indicated at the 50 ft. buffer zone which is a no-structure zone in the local bylaw. He discussed a caveat in the bylaw and said it looks like the golf course was built in the 90s. He recommended that the applicant indicate that this is a legally modified area. He suggested Ms. Goodlander look back at the old filing regarding this disturbed area. He stated that they saw some brush cutting and mowing around resource areas, and he wants to make sure that existing conditions at the site today are what was originally permitted. He stated that as a point of interest for the Commission, within the center of the limits of work which is outside the buffer zone or resource areas, there is a strip of white pine dominated forest. He stated that there were many pink lady slippers; their numbers are dwindling. He recommended, as a consideration, that the population of lady slippers be preserved or potentially transplanted.

Mr. DiBona stated they are looking to evaluate this comment and will look at where they could transplant or preserve the lady slipper vegetation.

Ms. Goodlander stated that she spoke with John Kucich of Bohler on behalf of the applicant and stated that he mirrored the same comment.

Mr. Niro commented that they are concurrently reviewing the stormwater design for this with the Planning Board.

Mr. LePage asked about the compaction issues. Mr. Niro stated that a lot of it is from course maintenance and walking around over time. He stated that a mitigation sequencing plan would need to be provided related to compaction and the native seed mix. Ms. Goodlander stated that she has yet to review the letter. Ms. Hagen asked for the square footage of the new wetland resources identified. Mr. Niro stated about half dozen areas identified for a few hundred square feet of additional wetlands and none encroached the limits of work.

Mr. DiBona stated that their recheck would be done on July 5 and asked if Mr. Niro would like to be onsite at that time. Mr. Niro stated that he would not be able to make it. He suggested Mr. DiBona speak to Ms. Goodlander about it. He stated that he would go out and adjust the flags as needed.

There was a motion made by Mark LePage to continue the public hearing for the NOI for Maplegate Solar North to July 13, 2023, at 7:03 PM. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 2 Elm Street

Ms. Karon Skinner Catrone (via Zoom), representing the owners of 2 Elm Street, addressed the Commission for an after-the-fact Notice of Intent for partial work/fill within BVW and associated buffer zone. The applicant is in front of the Commission to seek approval to install an above ground pool, and to discuss with the Commission proposed restoration and/or replication work for the fill within BVW. Ms. Skinner Catrone stated that she has been working with Ms. Goodlander regarding mitigation of some fill that was put in the wetland and buffer zone. She stated that regarding some history, the owner had requested a building permit for a pool and garage and was granted the building permit. She stated that later the owner found out that he was in violation. She stated that she met with Ms. Goodlander this morning regarding the mitigation. She stated they are going to pull all of the soil that was put in the wetland out of the wetland; they have some work in the 25 ft. no touch. They are proposing a mitigation area. She shared her screen and reviewed the area as shown on the plan. She reviewed the proposed plantings. She explained that the area is 1,400 sq. ft., and they are going to do the 2:1 replication. She stated that she submitted a waiver for work in the 25 ft. buffer.

Ms. Goodlander stated that this has been in front of the Commission for awhile and these are proposed plans. She stated that she would like to be able to approve this project and condition that she work with Bob and Karon to finalize the planting plan. She recommended approval with standard conditions which she reviewed including erosion control barriers biodegradable, as-built plan, written conformance reports which are typical for restoration--the two-years of monitoring would require it be drafted by an engineer but she is comfortable working with the applicants, work performed according to plan, approved changes, notification prior to work, right to impose additional conditions, use of clean fill, no straw bales, and remedy upon problem identification. She reviewed the applicant's NOI package. She added a condition for the pool of no backwater into the wetland. The applicant, who did not identify himself, noted the last condition was already discussed. Ms. Goodlander stated that the applicant submitted a waiver request. She stated that she recommended approval with as-stated conditions.

Ms. Hagen asked about the wetland. Ms. Skinner Catrone reviewed that the wetland runs along the side of the area, and they will be abutting the wetland area. Ms. Goodlander stated that it is not holistically a wetland replication because we are not grading, we are not sloping, we are just trying to encourage the natural migration of it with plants and revegetation to make it easier on our residents. Ms. Hagen confirmed the slope will stay as is. Ms. Goodlander stated correct.

There was a motion made by Jeff Livingstone to close the public hearing for the NOI for 2 Elm Street. The motion was seconded by Michael Rein. No vote taken.

There was a motion made by Jeff Livingstone to approve the NOI for 2 Elm Street with conditions as stated with additional standard special conditions #20, 22, 23, 24, 27, 28, 29, 33, 34, and 37. The motion was seconded by Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 100 Financial Park

Ms. Goodlander stated that the applicant requested a continuance; they are still reviewing the BETA letter.

There was a motion made by Michael Rein to continue the public hearing for the NOI for 100 Financial Park to July 13, 2023, at 7:04 PM. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 15 Liberty Way

Ms. Goodlander stated that the applicant said on the phone that someone would be in attendance tonight, and they are not here. She stated that typically when applicants miss meetings like this, the Commission can deny projects. She stated that she would refrain from doing that as the Planning Board team for this has been at the Planning Board. Mr. Livingstone stated that for historical context, two misses they get a letter, and if they do not show up for the third one, that is when we basically deny.

There was a motion made by Meghann Hagen to continue the public hearing for the NOI for 15 Liberty Way to July 13, 2023, at 7:05 PM. The motion was seconded by Mark LePage and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 10 Echo Bridge Road

Ms. Goodlander stated that she anticipated someone attending. She stated that this project came in, and as with all NOIs and ANRADs, she sent it out to BETA considering her workload right now. She stated that she got a scope and fee back, and she delivered it to the representative of the applicant and did not hear otherwise. She stated that she spoke to Chair Gallagher about this regarding the cost. She stated that she spoke to the applicant's engineer on the project that she would be willing to review this herself, but it would have to go within her timeframe. She stated that she left it up to them and she has not heard back. She stated that she has not reviewed the NOI narrative or its regulatory status. She stated that she went out to the site; the delineation is conservative in nature. She stated that there is a basin to the east which was not delineated, but it is not uncommon as it was off property, but the buffer zone does extend into the back. She stated that it is good to show all resources onsite; she has yet to communicate that with the applicant. She stated that she anticipates having the NOI reviewed within the next two weeks. She stated that she will reach out to the applicant to see what is up.

There was a motion made by Michael Rein to continue the public hearing for the NOI for 10 Echo Bridge Road to July 13, 2023, at 7:06 PM. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

GENERAL BUSINESS

Minor Buffer Zone Activities: 4 Fannie Way

The homeowner addressed the Commission for an MBZA for an in-situ 12x12 deck replacement/upgrade partially within the 50 ft. to 100 ft. buffer zone to BVW. She stated that this would be an in-kind replacement and be safer than the original.

Ms. Goodlander stated that she gave an administrative approval already.

There was a motion made by Jeff Livingstone to approve the MBZA for 4 Fannie Way. The motion was seconded by Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Minor Buffer Zone Activities: 16 Chilmark Road

Mr. Nicholas Levins addressed the Commission for an MBZA for an in-situ deck replacement/upgrade within the 50 ft. to 100 ft. buffer zone to BVW. He stated that he has an existing deck in rough shape, and he would like to replace the same deck.

There was a motion made by Jeff Livingstone to approve the MBZA for 16 Chilmark Road. The motion was seconded by Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Permit Modifications/Extensions: Extension – 160 Grove Street CE159-1218

Ms. Goodlander stated that the applicant was going to attend. She stated that she spoke with them this morning. She recommended approval for a one-year extension; they need more time to finish.

There was a motion made by Jeff Livingstone to approve the permit extension for the MBZA for 160 Grove Street CE159-1218. The motion was seconded by Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Certificates of Compliance: 176 Grove Street CE159-1086

Mr. Garrett Horsfall of Kelly Engineering Group (via Zoom) addressed the Commission. He stated that this is an outstanding Order of Conditions from 2015 that was discovered as the property is coming up for sale, and they want to close it out. He noted that Kelly Engineering Group designed 206 Grove Street; some of the work in that buffer zone overlaps. He stated that they submitted a letter, and all the work has been completed.

Ms. Goodlander recommended approval. She stated that there has been vegetation erosion within the 25 ft. buffer zone. She stated that when trucks are coming in there it is causing soil compaction and vegetation erosion. She stated that she asked Mr. Horsfall to reseed or put some sort of barrier there. She asked for the Commission's thoughts.

Commission members asked questions and made comments about reseeding. Mr. Horsfall stated the landowner would do what the Commission feels is appropriate here. Ms. Goodlander stated that personally and professionally she thinks that it is best practice to still maintain that 25 ft. no touch and if they need more expanded parking lot, that is a different discussion. She recommended approval so the sale could still go through. Commission members agreed with the solution. Ms. Goodlander stated that placing the boulders or boundary markers in choice locations is beneficial because she would still recommend vegetation maintenance in this area. She stated that we will want to make sure we are not being too conservative so we can still make sure they can still weed whack.

There was a motion made by Jeff Livingstone to approve the Certificate of Compliance for 176 Grove Street CE159-1086. The motion was seconded by Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Certificates of Compliance: 84 Populatic Street CE159-1252

Mr. Daniel Bien-Aime on behalf of Royal Estates Property Management (via Zoom) stated that this was a demolition and rebuild of a single-family home. He stated that the construction is completed and the house is pending a sale. He stated that he was looking to get a close out on the certificate of compliance.

Ms. Goodlander stated that if the certificate of compliance is not granted, they can still have the sale. She stated that it does not impact occupancy by any means. She stated that she has two concerns. Typically, before a certificate of compliance, they look for 75 percent coverage of vegetation. She stated that it is really close, but would not put her name to 75 percent coverage. She stated that to that point, the area she is talking about is not on the slope. She thinks a quick seed would fix it. She asked Mr. Bien-Aime to confirm that they actually graded the slope. She stated that when she had been there, the slope was vegetated, but recently when she was there, she noticed it was landscaped. She stated that in reviewing the meeting minutes and approvals, there was no work happening past the deck. She stated that when she went there, she noticed on the slope to the pond that there was a landscaped area, a barrier to prevent sediment transfer, it is shallow, and then she noticed that salvia was planted there. She stated that her concern is that something occurred past that deck and she leaves it up to the commissioners to decide. She stated that regardless, the salvia needs to be taken out.

Discussion commenced on the vegetation that was there. Ms. Goodlander stated that invasives are moving in now. She stated that for the CoC, it is not compliant for the as-built. She stated there are plenty of ways to remedy this; she would recommend substantial plantings. Mr. Bien-Aime stated that they did not change any grading in the slope. He stated there was a cleanup down there, the grass was cut, the area was overgrown, trash and leaves were removed, and they put in some mulch and a handful of plants. He stated that he can remove the mulch and plants. He asked what preferred planting they would like to see. Ms. Goodlander stated that they are going to need to revegetate the entire slope. She discussed the importance of leaf litter. Mr. Bien-Aime stated that they did not remove any vegetation off the slope. Ms. Goodlander stated that she could not see the slope when she went out previously at about the same time, and now she can. Discussion commenced on the status of the slope currently. Ms. Goodlander reviewed the vegetation on the slope. She stated that they removed the vegetation that was there and replanted with the salvia and some annuals. She stated that she would recommend revegetating with native plants. The slope needs to be stabilized.

Mr. LePage suggested holding off on the CoC until this work is done. Ms. Goodlander stated that she recommends denying the CoC and she will work with Daniel or the buyers who need to know about the condition. Mr. Bien-Aime stated this would be resolved before the sale. Ms. Goodlander confirmed she would work with Mr. Bien-Aime for the selection of species. Mr. Bien-Aime stated that is not a problem at all.

There was a motion made by Mark LePage to deny the Certificate of Compliance for 84 Populatic Street CE159-1252. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Discussion commenced on the reasoning why the CoC would not prohibit the sale of the property.

Violations/Enforcement: 305 Union Street

Ms. Goodlander stated that she has not heard from DEP. She stated that she has not heard from the applicant either.

There was a motion made by Michael Rein to extend the violation enforcement order for 30 days for 305 Union Street. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

Minutes: June 15, 2023

Mr. Livingstone commented that he did not see the minutes in the folders. Ms. Goodlander stated to disregard.

Discussion: 121 Grove Street Test Pits

Ms. Goodlander stated that she received an email generally requesting administrative approval for test pits. The test pits were within all subsequent buffer zones. She noted that test pits are exempt under the Wetlands Protection Act; they are not exempt under Franklin's bylaw. She stated that she communicated this back. She stated that she received a no. She stated that they brought up our bylaw chapter 271, which is labelled as a bylaw, but is a regulation; it was never adopted by Town Council. She reviewed the language in chapter 271 under alter. She noted chapter 181 of the bylaw adopted by Town Council; definitions of alter have two definitions that apply to these test pits which she discussed. She stated that she spoke to Town Attorney Mark Cerel and communicated it back to the applicant. She stated that she wants to seek the Commission's interpretation of her interpretation of this situation. She stated that she recommended to the applicant that they should wait until they have their Mass Housing approval or ZBA approval considering they are seeking waivers from local bylaw. As it stands, if they were to file now, they are not exempt. She stated that she gave them the option of filing the RDA. She stated that they did not want to file the RDA. They are not able to wait for the Mass Housing or ZBA; they need to perk test and file site plans. She stated that she told them she would be fine administratively approving test pits in the fields, but that is not up to her, it is just more time and money on their part. She stated that she is seeking the Commission's interpretation of what she told them regarding that they would have to file an RDA. She stated that Chair Gallagher would have to recuse himself on this item.

Commission members asked questions and made comments. Ms. Goodlander noted that the last time they were before the Commission, it was for an ANRAD. She noted that they are an affordable housing project, and they have not received approval from the ZBA. The ZBA would be determining if they have a waiver from local bylaw. They still have to adhere to the Wetlands Protection Act, regardless. She explained what the RDA would be from the Commission. She stated that in her year here, the Commission has required an RDA for fewer test pits than this. She stated that she is proceeding with caution and coming to the Commission to advise her. She stated that the applicant told her that they did not want to file the RDA due to time and money. She stated that she thinks there is historic precedent for applicants before the Commission who have asked for less. She stated that two days ago she let them know she was going to speak to the Commission. About an hour before the meeting, she received an email from Mr. Shipe that they will discuss internally. She stated the Commission can take their time in deciding.

Ms. Hagen stated that she would like to see an RDA from the applicant. Mr. LePage said he would be leaning toward an RDA. He stated that there was precedent for an RDA. He asked what the next steps would be. Ms. Goodlander stated that she does not know if they will come back and file the RDA. She stated their latest email indicated she would hear back from someone. She stated that they did file with Mass Housing. She stated that she understands needing to do a perk test. She understands they are on a tight deadline. She noted they may have been able to file this sooner and have a public hearing. She

suggested the commissioners review the bylaw and the definitions which are found on the Commission's webpage under bylaws and regulations. She noted that she was just looking for guidance.

Chair and Commission Comments: Aug. 16 OSRP Town Council

Ms. Goodlander stated that they/she did get on the August 16 Town Council meeting agenda to present the draft open space plan and receive their comment letter. Bound copies are being made by Allegra and will be submitted to state agencies as required. She stated that she is trying to get on the Planning Board's next agenda. She stated they need Planning Board approval and Town Council and DCS and MAPC. She stated that they have not received any comments regarding revisions. She stated there is no specific order of approvals.

Ms. Hagen stated that there was no Farmers Market this week. She asked if commission members can look at their schedules to sign up for the four weeks in July. She would like to let Roger know so any weeks the Commission is not there, he can have time to offer the table to other organizations. She stated that the new tent has worked great. She stated that she will provide the receipt for the new table. She reviewed how the setup works for the tent, table, and materials. She has been doing the set up but can work with anyone who wants to do this. Ms. Goodlander stated that if they get a cart, it is expenseable.

Ms. Goodlander stated that she and Derek were talking about how they were going to install the beaver deceivers in the areas that they cannot get to. DPW used to have a little boat. She asked if the Commission would mind funding a little boat for them. Commission members informally agreed.

Ms. Hagen stated that there have been lots of comments on the posters regarding the beavers. She stated that someone may be contacting Ms. Goodlander about beavers eating baby ducks. Ms. Goodlander stated that it was probably a snapping turtle. She stated that Derek is preparing three RDAs for other areas. Mr. Rein stated that he received many comments on how well the Sculpture Park was done. Ms. Goodlander stated that she was very impressed with Rex, her new intern. She stated that she gave him a 12-video course in hydric soils, and he is taking handwritten notes while watching them. She stated that she was going to try to get him on a bunch of things this summer; she reviewed some items that Rex has done and will do.

Executive Session: None.

There was a motion made by Jeff Livingstone to adjourn the meeting. The motion was seconded Michael Rein and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Rein-Yes; Hagen-Yes; LePage-Yes.

The meeting adjourned at 9:05 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary