

Town of Franklin



Conservation Commission

**September 7, 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, second floor of the Municipal Building, for citizens wishing to attend in person.

Commencement

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

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

PUBLIC HEARINGS

Public Hearing – NOI – Spruce Pond Aquatic Management Program

Ms. Goodlander stated that she had no new information.

Chair Livingstone discussed a previous situation where a meeting was opened, it was to be continued, and the Commission discussed benign pieces of the application. He stated the applicant took umbrage to that as they felt they did not have an opportunity to represent themselves. He reviewed the Commission's policy that even if there is to be a continuation of a meeting, if there is a potential for any discussion, the applicant or their representative will be present. If the applicant chooses not to be present, that does not impact the ability, ethically or otherwise, of the Commission to have any discussion as it is an open meeting. He stated that also means that the public can comment whether or not the applicant is present. He stated that it is the applicant's responsibility if they feel that might occur that the applicant be present for any and all meetings even if they feel that it is a mere continuation. He stated that he wanted to make this very, very clear in the record as it has become a big deal in the last couple of meetings.

Chair Livingstone stated that this NOI for Spruce Pond Aquatic Management Program has been going on for a long time, and it does look like there is some difficulty on the side of the applicant to get things moving. He stated that this does not look good to the Commission. He stated that he strongly advises the applicant to get the filing fees taken care of right away, and essentially do whatever is necessary to move this along.

Mr. Keith Gazaille of Solitude Lake Management (via Zoom), representing the applicant, addressed the Commission. He stated that he has tried to contact the applicant but has been unable to reach them. He stated that he will make sure the fee is paid this week. Chair Livingstone stated that basically the Commission does not know what is going on. He advised to do whatever he needs to do to move this along.

Ms. Goodlander stated that she wanted to piggyback off of Chair Livingstone's statement about quorum issues and stated that for what it is worth, our quorum is based on the seven seats, not members, so despite Mr. Gallagher being gone, the quorum is still four. She noted that there are only four remaining commissioners who can vote on this project.

There was a motion made by Richard Johnson to continue the public hearing for the NOI for Spruce Pond Aquatic Management Program to September 21, 2023, at 7:01 PM. The motion was seconded by Mark LePage and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – ANRAD – 1 Paddock Lane

Chair Livingstone stated that the recommendation was for continuance; the abutter notification cards have not been received. Ms. Goodlander stated that the applicant just has to scan them and send them to her. She stated that she heard back from the wetland scientist, and they are having the wetland line revisions surveyed now.

There was a motion made by Meghann Hagen to continue the public hearing for the ANRAD for 1 Paddock Lane to September 21, 2023, at 7:02 PM. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 100 Financial Park

Chair Livingstone stated that there is a recommendation to continue this and a note about abutter notifications. Ms. Goodlander stated that she has them. She stated that BETA submitted their review letter, and all outstanding comments were met sans requirements for state and local stormwater standards. She stated that we are just waiting for the applicant to do that. She stated that she hopes to have that by the next meeting.

Ms. Connie Lu of Highpoint Engineering and Mr. David Cowell, wetland scientist of Hancock Associates, addressed the Commission. Ms. Lu provided a review and update of the project from both Conservation Commission and Planning Board processes. She stated they went through three rounds of revisions for stormwater and two for traffic. She stated that for the Conservation Commission, they have submitted responses to peer review comments, revised site plans, resource area impact summary, stormwater report, and revised landscape plans. She stated that the only outstanding item for BETA is stormwater. She discussed that their goal is provide an update, discuss Commission questions that are non-stormwater, and move toward a September 21, 2023 vote.

Mr. Cowell stated that he was responsible for the wetland delineations on the property. He stated that given the number of flags, he was happy there were not many comments on the wetlands side. He showed and explained the delineation areas circled in red as shown on the revised EC Plan. He stated that he believes it is more accurately delineated now. He discussed his process on delineation of those areas in response to comments. He stated that none of the changes were substantive. He noted that BETA commented on a flag missing in the field. He stated that he went back into the field and located the missing flag; the comment is resolved.

Ms. Lu reviewed changes to the site entrance regarding truck turning that were requested to be made, and they made them. She stated that they realigned and shifted the site entrance; with that, there is work within the 0 ft. to 25 ft. buffer zone, and they submitted a variance request. She stated that the total alternation is about 2,240 sq. ft.

Chair Livingstone stated that there is a balance of conservation principles and public safety and almost always we have fallen on the side of public safety. He stated that they do not know how busy that road will become.

Ms. Lu stated that they submitted a revised resource area summary. She reviewed the buffer zone alterations as shown on a diagram. She reviewed grading and drainage. She stated that they went through three rounds of review and revisions with the Planning Board. She stated that she thinks they have addressed all the comments and are waiting for a response back from the peer review engineer. She explained what has been changed. She said the overall design is similar to what they came in with; they have modified some of the subsurface drainage. She stated that they added two water quality treatment units. She stated that they still have the bioretention areas planned. She stated that there were a few comments from BETA on landscape which she reviewed, and they have provided revised plans. She discussed comment A2 from the peer review letter related to the plan scale. She stated that they feel the plans are readable. She reviewed comment A5 regarding the construction sequence. She noted it may change due to the bidding process. Chair Livingstone stated they could provide an updated schedule and the scale is trivial. Mr. Cowell stated that he has seen this conditioned.

Chair Livingstone stated that they have been talking internally about the way Franklin does this. He stated that in this town, they want you to go to Conservation before the Planning Board. He stated that he is not sure if that makes a lot of sense to the applicants, and he is curious to know if the applicant has any opinion on the situation.

Ms. Lu stated that her opinion is that it has been a little challenging because there has been some crossing over of dependencies. She stated that it results in a longer process.

Mr. Cowell discussed that in his experience if an Order of Conditions was issued and the Planning Board required any substantive changes to the plans, they would need to come back to the Commission and request an amendment.

Chair Livingstone stated that he brought this up because of the entrance which is a case in point. He stated that it may be a more efficient and less back and forth with a different process. Ms. Hagen asked about the variance submitted and if they were going to do some wetland replication. Ms. Goodlander stated that it was buffer zone only and not actually a wetland impact. She stated that she would consider the plantings around the fire pond.

There was a motion made by Mark LePage to continue the public hearing for the NOI for 100 Financial Park to September 21, 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: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 15 Liberty Way

Chair Livingstone stated that there is a recommendation to continue this. Ms. Goodlander stated that the applicant submitted a response to the BETA peer review today. She stated that she looked at it. She said there are two outstanding items that she noted right away. She said the applicant said they would not file with DEP until they received local approval. She said that based on her understanding of how the ConCom operates, this is not the way. Chair Livingstone stated that this is the correct process as the Commission typically does not move forward until a DEP number is filed.

Mr. Chris Frattaroli, wetland scientist of Goddard Consulting (via Zoom) on behalf of the applicant, stated that he only submitted the responses to peer review today. Regarding the DEP filing comment, he stated that it is duly noted, and he will make sure that process is moved forward to get a DEP number. He shared his screen and reviewed the diagrams. He reviewed that the proposal is for the expansion of parking. He stated that they walked the site with BETA, came to an agreement with all the flags, and they have an updated plan showing all the flags. He stated that they identified a small intermittent stream which necessitated the DEP filing. He noted responses to other BETA comments. He reviewed a diagram showing the invasive species

management plan. He noted that a few other documents have also been revised in response to BETA's comments.

Chair Livingstone asked about legality and if there is an existing easement is there any legal restriction on the permanence on any remediation. Mr. Frattaroli stated that he pulled the deed from the Registry and it sounds like, the gist of it, is that maintenance is allowed, and he has seen it mowed once or twice this summer.

Ms. Goodlander stated that the stormwater standards are needed prior. She stated that it is a sewer easement. Chair Livingstone discussed the remediation and expressed concern and said it would be silly if a third party could come in and tear it all up. He stated it needs to be looked in to. Mr. Frattaroli stated that it is noted.

Commission members asked questions. Mr. Frattaroli noted the invasive species management plan. He stated that some herbicide treatment has been proposed as well.

There was a motion made by Richard Johnson to continue the NOI for 15 Liberty Way to September 21, 2023, at 7:04 PM. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – Lot 1A Prospect Street

Chair Livingstone stated there is a request from the applicant to continue this. Ms. Goodlander stated that a site walk was done, and the applicant will revise the line; they are working on their revised submission.

There was a motion made by Jeffrey Milne to continue the NOI for Lot 1A Prospect Street to September 21, 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: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – ANRAD – Veterans Memorial Drive

Ms. Goodlander stated that she recommended approval. She stated the findings were of three isolated wetlands.

Ms. Nicole Hayes of Goddard Consulting (via Zoom) stated that she was here if there were any questions.

There was a motion made by Richard Johnson to close the ANRAD for Veterans Memorial Drive. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

There was a motion made by Meghann Hagen to approve the ANRAD for Veterans Memorial Drive. The motion was seconded by Richard Johnson and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 0 Upper Union Street Solar

Chair Livingstone stated there is a recommendation to continue. Ms. Goodlander stated the wetland scientist reached out to her today about the outstanding local filing fees and asked a great question which she said no to. She said the representative asked if it would make sense to pay the local filing fees after they have a second site walk with BETA and revise the plans because the local filing fees are based off what is on the plans. She stated that it was a great question but to keep it consistent with everyone else as they pay their fees based on the initial filing. She stated thank you but no. She stated that there is an outstanding BETA scope as well for the second site walk. She said the site walk is tentatively set for September 11 as we need the check first.

Chair Livingstone stated that they receive tons of projects all the time, and it is one agent. He stated that so, that office does have to prioritize, and they will prioritize based on whether or not the fees have been received or not. He stated that filing fees are important especially if you want to move things along.

Ms. Colleen DeBenedetto of Valta Energy on behalf of the applicant VS Union Solar Smart LLC addressed the Commission. She stated that she had updates and a question. She said that at the last meeting there was going to be a request for town counsel regarding the variance and a vote to deny. She said Ms. Goodlander has provided some information, but she would like to know if there was a written or verbal opinion.

Chair Livingstone stated that it was his personal opinion for transparency above all. He stated that they did talk to the town attorney and the question was if you issue a denial could you potentially be charged with a taking. Unfortunately, the law is very blurry on this point; however, our legal counsel says yes, there is the potential that is the case. He said that point two is that Massachusetts is a very progressive state and is extremely pro solar. He noted he has done research. He said that pretty much 90 percent of the time the state sides with solar. He said so, it seems, the legislature/citizenry is in support of solar, and he thinks that bears consideration, and we work for the citizenry. He said so, in that case, the opinion would be not to deny as we would not want to be seen obfuscating the development of alternative sources which the citizens want. Ms. Hagen stated that she still struggles with the concept of cutting down that many trees for a project of any kind, but she does understand the creation of renewable energy sources. Chair Livingstone explained that it is a question of sacrifice. Ms. Goodlander stated that the applicant still needs a variance. Mr. LePage summarized that the Commission would, based on this, approve the variance.

Ms. DeBenedetto stated that she received Ms. Goodlander's request for additional funds for BETA to go back out. She stated that check request was put through. She stated that Ms. Goodlander explained how the local fees were structured and calculated. Ms. Goodlander stated that because of the filing fees, she has not conducted a thorough review. Chair Livingstone stated they were moving forward.

There was a motion made by Mark LePage to continue the NOI for 0 Upper Union Street Solar to September 21, 2023, at 7:07 PM. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – RDA – 121 Grove Street

Chair Livingstone stated there is a recommendation to continue. He stated that the applicant has not provided the return receipts. Ms. Goodlander stated that the applicant requested the continuance today; she stated that she has not asked the applicant for the slips yet. Mr. Johnson stated that the applicant does not seem like they are pushing to get test pits done, and they have not paid for their BETA review. Ms. Goodlander stated that the applicant is waiting at this time.

There was a motion made by Meghann Hagen to continue the RDA for 121 Grove Street to September 21, 2023, at 7:08 PM. The motion was seconded by Mark LePage and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – ANRAD – 124-126 Grove Street

Chair Livingstone stated there is a recommendation to continue. Ms. Goodlander stated that the applicant requested a continuance today. She stated that they are waiting on a site visit from BETA tentatively scheduled for September 18.

There was a motion made by Jeffrey Milne to continue the ANRAD for 124-126 Grove Street to September 21, 2023, at 7:09 PM. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 3 Mount Street

Chair Livingstone stated there is a recommendation to continue.

Ms. Amanda Cavaliere of Guerriere and Halnon addressed the Commission on behalf of the applicant for an NOI at 3 Mount Street with four lots total with proposed work including the construction of a single-family home with associated garage, driveway, and private well on Lot 4. Additional activities include the installation of individual septic tanks and an associated gravity sewer main that will discharge to a shared septic system on Lot 2 for Lots 1-3. She said it is about a 10-acre lot. She stated they have reviewed different alternatives for development of the site. She stated the properties are planned to stay within the family. She discussed the development of Lot 4. She stated that they looked into doing a sewer extension, but it did not meet the criteria. She reviewed and showed on the plans where the shared septic system would be located. She stated there would be a sewer easement. She stated the total disturbance is 17,300 sq. ft. within the buffer zone. She stated the Board of Health approved the septic design. She stated they need an Order of Conditions. She stated that they are trying to save apple trees on the property. She stated that BETA still needs to do a site walk and provide comments.

Ms. Hagen read a comment from an abutter stating they live next door and their well is in front of the property. The wetland stream is behind the well. He explained that when the house burnt down in 2018, their water was affected. He wants to be assured the well will not be affected by what the applicant wants to do. Ms. Cavaliere stated that they can look into that. She stated they are required to be 100 ft. from a well by the state. She pointed out where the well for the subject property is.

Ms. Goodlander stated that the Sisters did have a comment, and they wanted to make sure all impacts were not on their property, and she told them yes.

There was a motion made by Mark LePage to continue the NOI for 3 Mount Street to September 21, 2023, at 7:10 PM. The motion was seconded by Richard Johnson and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Public Hearing – NOI – 122 and 138 East Central Street

Chair Livingstone noted that no DEP number is required, and there is a recommendation to continue.

Mr. Rick Goodreau of United Consultants and Mr. Brad Chaffee, owner, addressed the Commission for an NOI at 122 and 138 East Central Street for proposed works consisting of the redevelopment of a parking area, landscaping included, within the 100-ft. buffer zone for a total of 7,327 sq. ft. of impacts. Mr. Chaffee stated that they would be going before Design Review; he provided a rendering to the Commission of the building. He stated that they would be restoring the building.

Mr. Goodreau discussed the location of the properties. He stated there is an isolated vegetated wetland which is protected under the local bylaw. He stated that they worked through this unique situation with Ms. Goodlander. He reviewed the provided plans and pointed out the isolated vegetated wetland. He discussed that it is a redevelopment project. He stated they would be going to the Planning Board for site plan approval for the uses that will occur at 138 East Central Street. He stated that the current two-family house will not be affected. He noted that they will be satisfied the stormwater regulations and discussed the proposal. He discussed how the two properties are tied together for the stormwater. He stated that they received a peer review letter from BETA today.

Chair Livingstone discussed the East Central Street portion of Franklin. Mr. Goodreau noted that Mr. Chaffee has previously developed 70-72 East Central Street and reviewed other properties on East Central Street that Mr. Chaffee owns. Chair Livingstone discussed properties owned by Dean College in the downtown area. Ms. Hagen stated that Dean is working hard under the new administration to be a partner

with the town. Mr. Goodreau discussed that they will work to address BETA comments. He noted that they will be reducing the impervious.

There was a motion made by Richard Johnson to continue the NOI for 122 and 138 East Central Street to September 21, 2023, at 7:11 PM. The motion was seconded by Meghann Hagen and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

GENERAL BUSINESS

Minor Buffer Zone Activities: None.

Permit Modifications/Extensions: None.

Certificates of Compliance: None.

Violations/Enforcement: None.

Violations/Enforcement: None.

Minutes: August 22, 2023

There was a motion made by Mark LePage to approve the meeting minutes for August 22, 2023. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Johnson-Yes; Milne-Yes; Hagen-Yes; LePage-Yes.

Discussions: None.

Chair and Commission Comments

Ms. Goodlander asked if for Certificates of Compliance that have been denied, does the Commission ask people to pay an additional filing fee when they come back before the Commission. Chair Livingstone stated that technically yes because it has a different filing number so there is a refiling fee. Ms. Goodlander stated that it is the same NOI number. She discussed why she originally was thinking of saying yes. Chair Livingstone stated that they can discuss it and the Commission can change that if they want to. Ms. Goodlander noted the filing fee is \$50. She stated that compared to other towns, our filing fees are very cheap. She reviewed the reason the COC was denied. Ms. Hagen stated that she thought that was the right move to charge the filing fee again.

Executive Session: None.

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

The meeting adjourned at 8:46 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary