

## Town of Franklin



### Conservation Commission

TOWN OF FRANKLIN  
TOWN CLERK

2019 JUL 18 A 9:28

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#### June 6, 2019 Meeting Minutes

Chairman Bill Batchelor called the above-captioned meeting to order this date at 7:00 PM. Members in attendance: Paul Harrington, Staci Dooney, Jeff Livingstone, Jeffrey Milne, Braden Rosenberg, Alan Wallach. Members absent: None. Also present: Bryan Taberner, Director of Planning and Community Development; Jen Delmore, Conservation Agent.

#### Commencement

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

Ms. Delmore and Mr. Taberner's Agent's Report has been appended to the minutes.

#### Public Hearing – Continued - NOI – 38 Pond Street – G&H

Ms. Amanda Cavaliere, consulting engineer of Guerriere & Halnon, Inc., representing the applicant, stated this hearing is for a Site Plan Modification. The NOI has been submitted and brief testimony of the proposed project has been previously given. She stated there is minor buffer zone work in the 100 ft. buffer zone to redo the parking lot and improve parking on the site as well as drainage improvements. All comments have been received from BETA, DPCD, DPW, and all concerns has been addressed.

Ms. Delmore stated all wetlands related issues were resolved.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for 38 Pond Street. The motion was seconded by Alan Wallach and accepted with a vote of 7-0-0.

There was a motion made by Jeffrey Milne to approve the NOI for 38 Pond Street with special conditions #20, 23, 24, 27-30, 34, 37-41, 44 and 51. The motion was seconded by Alan Wallach and accepted with a vote of 7-0-0.

#### Public Hearing – Continued - NOI – Amego School – Washington Street

Mr. Scott Jordan of EcoTec, Mr. Kevin Quinn of Quinn Engineering, and Mr. Edward Cannon, attorney, addressed the Commission. Mr. Jordan provided the Commission members with updated plans. He stated he delineated wetlands in 2018. The property is 52 acres. The proposed development is in the northern portion along Washington Street. He described the wetlands on the property. He reviewed the 25 ft. no-disturbance setback, 50 ft. no-structure setback, and 100 ft. buffer zone on the plans. He stated a portion of four residential units were proposed in the jurisdictional buffer zone. The bulk of the work is grading for the stormwater system. He described the stormwater design, catch basin system, and erosion control barriers. He said the majority of the site is flat and sand which infiltrates well.

Ms. Delmore stated the peer reviewer, Wetland Strategies, recommended a special condition of permanent vegetative cover on the wetland facing slopes as soon as final grading is complete.

Mr. Jordan stated he was not aware of that.

Chairman Batchelor explained the reason for the special condition.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for Amego School, Washington Street. The motion was seconded by Alan Wallach and accepted with a vote of 7-0-0.

There was a motion made by Staci Dooney to approve the NOI for Amego School, Washington Street, with the special condition of permanent vegetative cover on the wetland facing slopes as soon as final grading is complete in order to protect a potential vernal pool located within the Bordering Vegetated Wetland, as well as special conditions #20, 23, 24, 27-30, 32, 34, 37-41, 44 and 51. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

**Public Hearing – Continued - NOI – Upper Union Street Solar**

Mr. Michael Lotti, Industria Engineering, and Mr. Everett Tatelbaum, Kearsarge Energy, addressed the Commission. Mr. Lotti reviewed he proposed plans to install a 1-megawatt solar farm. He stated the property is listed as Upper Union Street, but it is accessed through Mount Street. The property is about 140 acres of which about 111 acres are woods and 35 acres are fields. The property is owned by the Sisters of Mount Saint Mary and they are seeking additional income to support their facility. He stated they are working with the Sisters on a lease agreement for the property to build a solar farm. He discussed the wetlands on the property and noted they reduced the size of the proposed farm due to the wetlands. He reviewed the stormwater features and noted there are no direct basins. He stated they have been working closely with the Planning Board, and as of Monday night, they settled essentially everything with the Planning Board. He stated the plans he is showing at this meeting are the final plans; however, they have not been stamped by the engineer. He reviewed the changes on these plans to the plans that the Conservation Commission currently has. He noted they added some small stormwater control stone berms, the inverters were moved from the east side to the west side at the request of the neighbors, they added screening outside of the buffer zone, and they added some asphalt paving off the street at the beginning of the gravel access road.

Chairman Batchelor confirmed this was all pre-disturbed land as it was farmland.

Ms. Delmore asked about a variance requested for the fence within the 25 ft. no disturbance zone located 10 ft. off the wetland line.

Mr. Lotti said this is new as of Monday night. He reviewed the area on the plans. He said he would prepare revised plans.

Chairman Batchelor noted if it were not pre-disturbed, then there could be a debate. But since it was farmland, it is pre-disturbed.

Commission members discussed the pre-disturbed nature of the farmland.

Mr. Lotti stated this is a 20-year lease of the land. The Sisters will continue farming on other portions of the land.

Mr. Harrington asked if the vote to close the public hearing should be held until the revised plans are received. To be consistent, the Commission does not usually approve a plan until the final version.



Chairman Batchelor stated he would prefer not to postpone based on recommendations he has received over the week. He said there are some issues with this that we want to move along and he has great faith in both Mr. Taberner and Ms. Delmore that they will follow this through; a special stipulation can be added to the approval.

There was a motion made by Jeff Livingstone to close the public hearing for the NOI for Upper Union Street Solar. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-1. (Mr. Harrington abstained.)

There was a motion made by Braden Rosenberg to approve the NOI for Upper Union Street Solar with the stipulation that the plans will be revised as discussed by the applicant during tonight's meeting, and if there are any other changes or deviations to what was discussed, the applicant will come back before the Commission to present any additional changes or deviations, and special conditions #20-24, 27-30, 32, 34, 37-41, 44 and 51. The motion was seconded by Alan Wallach and accepted with a vote of 7-0-0.

**Public Hearing – ANRAD – Prospect Farms**

Mr. Stephen O'Connell of Andrews Survey and Engineering, on behalf of the applicant, addressed the Commission and stated he is presenting an ANRAD application for three parcels of land on Prospect Street and Washington Street. The application is for the Commission to review and verify wetlands that are requested to be verified on the subject properties. The wetland resources were identified by Environmental Consulting and Restoration, LLC initially in August 2017 and again on April 9, 2019. They identified a BVW on the property, inland bank perennial stream, and 200 ft. riverfront area. There is also a potential vernal pool within the wetlands system which is identified on the plans.

Ms. Delmore stated she recommended the project go out for review to WSI given the length of the line which is over 7,000 ft.

Mr. O'Connell stated they anticipated that and they have no objection.

Chairman Batchelor reminded the applicant that it is his opinion that the Commission does not like to take testimony more than a brief overview because until the wetlands are established, anything can happen. He stated that until WSI gets back to the Commission and establishes exactly what we are looking at from a wetlands standpoint, he will not ask for a vote on anything tonight.

Mr. O'Connell stated that usually when he presents ANRAD applications to commissions, the public usually likes to comment on various aspects of the property. He stated he wanted it to be known that this application is only for the verification of the wetlands on the site.

Chairman Batchelor stated this is not project scope; it is wetlands, it is wetlands law, it is conservation law. He asked the public to hold any questions as the Commission is going to request a continuance of this public hearing.

Ms. Delmore agreed.

There was a motion made by Jeffrey Milne to continue the public hearing for the ANRAD for Prospect Farms to June 20, 2019 at 7:05 PM. The motion was seconded by Alan Wallach and accepted with a vote of 7-0-0.

**Public Hearing – NOI – New England Power Company Transmission Line ROW**

***Mr. Harrington recused himself.***

Ms. Alison Milliman of BSC Group, on behalf of New England Power, addressed the Commission and stated the purpose of the project is to replace existing transmission lines and maintain the transmission line right-of-way. This is part of a larger refurbishment project of 38 miles. It starts in Medway and finishes in Somerset. The NOI is for improvements and maintenance of existing access routes in some locations; roads need to be widened after the encroachment of vegetation in certain buffer zone and resource areas. The work within wetlands is required because there are existing structures that are already within those wetlands so access to those structures is needed to remove them and replace them with new ones. All access that will occur within the wetlands will be done using construction mats which are best management practices; it disperses the weight of the equipment so no major rutting or soil disturbance is created within the wetlands. They are also proposing a wetland replication plan as outlined in the NOI.

Ms. Delmore stated the wetland disturbance was going to be replicated; she confirmed there were some structures in the wetlands that are going to be removed. She recommended this be reviewed by BETA.

Chairman Batchelor stated he agrees with Ms. Delmore. He stated when in doubt, with a project of this size, it is always good to have a consulting company for peer review come in, especially when dealing with existing wetlands, removal, etc. He recommended BETA review the activities that will go on.

There was a motion made by Braden Rosenberg to continue the public hearing for the NOI – New England Power Company Transmission Line ROW to June 20, 2019 at 7:10 PM. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

***Mr. Harrington re-entered the meeting.***

**Public Hearing – Continued - NOI – 907 Washington Street**

Chairman Batchelor noted this is a continued public hearing; he believes the only issue involved was the establishment of wetland flags.

Mr. Bruce Wilson of GW Site Solutions stated that Mr. Vincent Forte Jr., project biologist of GW Site Solutions, met with Ms. Delmore onsite regarding two flags behind the shed that is going to be removed. He reviewed the plans currently before the Commission. He stated they moved the flags and added some notes for clarification purposes. During the site visit, they also discussed how best to remove the sheds and the concrete pads they are on, as well as erosion control.

Ms. Delmore stated Mr. Wilson nicely summed up the site visit and changes to the plans. She is more confident with the wetland line as it was moved.

There was a motion made by Braden Rosenberg to close the public hearing the NOI for 907 Washington Street. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

There was a motion made by Braden Rosenberg to approve the NOI for 907 Washington Street with special conditions #20, 23, 24, 27-30, 34, 37-41, 44 and 51. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.



## **GENERAL BUSINESS**

### **Permit Modifications/Extensions: End of Garnet Drive – NOI Extension**

Ms. Amanda Cavaliere, consulting engineer of Guerriere & Halnon, Inc., representing the applicant, addressed the Commission for a one-year extension of the Order of Conditions. She noted they were at the last Commission meeting as well. She stated this project is partially in both Franklin and Wrentham. She and the client met with Ms. Delmore onsite, and she believes all issues have been resolved.

Ms. Delmore stated during the site visit with Ms. Cavaliere, it was determined that only one the three areas that she had issue with regarding erosion control was on the Franklin side.

Ms. Cavaliere stated the erosion control on the one area on the Franklin side is going to continue to degrade. As they will not be starting construction at this time, it would be premature to put back the currently degrading erosion control. At this point, they want to keep the Order of Conditions open. She noted there has not been any construction there in excess of one year.

Commission members asked if the erosion was natural.

Ms. Cavaliere stated it was natural erosion. She stated when construction activities take place, the Order of Conditions is active.

Mr. Taberner asked if any wetlands were being impacted from the erosion due to the lack of good quality silt socks.

Ms. Cavaliere stated not that she was aware of. She reiterated this is just a request for an extension.

Mr. Rosenberg confirmed when construction continues, the erosion control would be restored.

Ms. Cavaliere confirmed when construction continues, they would restore the erosion control and alert the Commission before work resumes.

There was a motion made by Braden Rosenberg to accept the permit extension for End of Garnet Drive for one year. The motion was seconded by Alan Wallach and accepted with a vote of 7-0-0.

### **Permit Modifications/Extensions: 15 Bald Hill Drive – Permit Modification**

Mr. Dave Goodermuth and Ms. Annlouise Goodermuth, property owners, addressed the Commission.

Chairman Batchelor asked the applicants how a pool was put in without any erosion controls.

Mr. Goodermuth stated there were many erosion controls; the majority of the project was finished and the erosion controls were removed. He understands this is the last year that they can have the permit open; it is the third extension. He stated the only item they have to do to finish to project regards a couple of fence posts close to where the erosion control line was, within 100 ft. of the wetland border.

Ms. Delmore confirmed the current extension on the project is the final extension and will expire on June 12, 2019.

Ms. Goodermuth stated they did not do any work during 2017 due to a family situation.

Ms. Delmore asked what the continued work is. She reviewed the possibility of closing out the current Order of Conditions for the project if it is completed and doing an MBZA for the new work.

Mr. Goodermuth stated it is a few fence posts to finish the fence. He is doing the work himself. The site map was done for the original plan. There is a temporary fence at this time.

Chairman Batchelor suggested the applicant should refile the fence plan as an MBZA which costs \$50.00.

Mr. Livingstone asked if they were absolutely certain that they have expired three extensions.

Mr. Taberner stated the original application came in on May 2014. So, the Order of Conditions would have been on approximately June 2014.

Mr. Livingstone stated there is confusion. After discussion, he confirmed the applicants can get a final one-year extension on the Order of Conditions.

Chairman Batchelor stated the original plan cannot be changed, but if it is on the original plan, the applicant can get an extension and finish the work.

Ms. Delmore asked if the erosion control needs to be put back in for this minor activity. Usually, the erosion control is supposed to be left in until the end of the project.

Mr. Goodermuth stated Mr. George Russell, former Conservation Agent, recommended the erosion control be removed. He discussed the area in which the fence pieces will be installed.

Commission members discussed if there would be need to put the erosion control back; they informally agreed there was no need.

There was a motion made by Braden Rosenberg to accept the permit extension for the NOI for 15 Bald Hill for one year. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

**Discussion: Villages at Cook's Farm – Proposed Minor Modification**

Ms. Amanda Cavaliere, consulting engineer of Guerriere & Halnon, Inc., representing the applicant, addressed the Commission. She stated the Villages at Cook's Farm have been under construction for quite some time. They are nearing the end. They are proposing a field change. It was recommended they come before both Conservation Commission and Planning Board to make sure everyone was on the same page and comfortable with the proposed field change. They forwarded information to Mr. Bryan Taberner, Mr. Michael Maglio, Town Engineer, Mr. Matthew Crowley, BETA Group, and Planning Board. She stated they were before the Planning Board on Monday of this week and the Planning Board asked that the item be continued to the next meeting so Planning Board members could have more time to think about it. The proposed field change is to change the originally approved grass pavers around the perimeter of the paved area, about a 3 ft. strip, due to increased operation and maintenance costs due to snowplows picking up the pavers as they tend to lift. She stated there is one area where they plan to maintain the grass pavers. Calculations are provided showing no increase to the stormwater management system.

Ms. Delmore stated she does not see a problem with this. She noted she spoke to Ms. Love, Town Planner, about this.



There was a motion made by Braden Rosenberg to approve the proposed minor modification for the NOI for the Villages at Cook's Farm. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

**Discussion: Maple Hill Project – Access Points**

Mr. William Buckley, Bay Colony Group, representing the applicant, Carroll Construction Corp., addressed the Commission. He stated he would like to discuss with the Commission a Preliminary Subdivision Plan that they have filed with the Franklin Planning board. It is a 58-lot subdivision. It is about 73 acres. It has three owners. They filed it as a conventional subdivision which means it has full-sized lots; the frontage is 150 ft. with 30,000 sq. ft. lots. They have gone before the Planning Board twice. They have had a significant number of neighbors come to the meetings. The neighbors have been concerned about the roadways which connect two roads, two neighborhoods, that are currently dead-end roads. These roads are Bridle Path and Kimberlee Avenue. He stated as part of the discussion, the Planning Board asked the applicant to look at alternative means of access. He reviewed the plans and showed the possible access points. There are three public ways: Hancock Road, Bridle Path, and Kimberlee Avenue. All the other means are privately owned. The applicant has chosen Kimberlee Avenue and Bridle Path as the access points. He reviewed the wetlands near Hancock Road. He noted an ORAD was issued for this project in July 2017 for the wetlands on the site. He stated the Planning Board asked them to investigate access on Maple Street from another parcel owned by the Labastie family. He stated they looked at that; he prepared a memo on the findings. It would involve a wetland crossing. There is an intermittent stream. There is a portion where there is an existing cart path. He did an analysis about crossing this. It would be about a 3,000 sq. ft. alteration to that area to cross where it is currently 10 ft. to 12 ft. wide. This is less than the 5,000 sq. ft. that the Commission is allowed to grant a waiver or allow an alteration if certain conditions are met in the Wetlands Protection Act. He reviewed the condition he thought applied the best. He stated his opinion is that this does not fall under that condition as there is clearly reasonable access throughout the site where it would not impact or alter any wetland resources. He stated the neighbors wanted a second opinion and asked them to come to the Commission and talk about whether or not the Commission would allow access through that area. He stated that is the purpose of our discussion tonight. He said he is not here proposing a road through that; he is here having an informal discussion to see what the Commission's thoughts would be. He reviewed the local bylaw which he said is more restrictive than the Wetlands Protection Act. Under the local bylaw, when asking for a variance, there are two conditions that the Commission will accept a variance; he reviewed the two conditions. He stated he does not think they meet the criteria. He mentioned with their preliminary plan they also filed an open space plan; he reviewed the open space plan. He stated the Planning Board at this point does not think the open space plan is a good option; he stated he thinks it is a good option.

Chairman Batchelor stated he is not going to tell them how to engineer their project. He will not tell them where to put their driveway or their road. It is not the Commission's charter.

Ms. Delmore stated the Wetlands Protection Act says if there is alternative means of access, then you have to take it.

Mr. Buckley stated this is just an informal discussion. In the Commission's regulations, it says the applicant should come to talk to the Commission before filing an NOI. He is looking for some thoughts about this or some guidance.

Chairman Batchelor reiterated it is not the Commission's purview to tell the applicant where to put their road or what is the better alternative.

Mr. Buckley stated he is not asking the Commission to do that. He is asking for guidance. He asked if they were going to cross the wetlands at that point, based on the Commission's regulations and on state regulations as they enforce and understand them, and the Commission's past practices, would that be something the Commission would consider.

Chairman Batchelor stated he would not tell them whether the Commission would or not. He will say that the Commission has approved access through wetlands. It is very expensive, but it is not impossible. In the situation of the condominiums where he lives, there was a wetland crossing, but there was no other option.

Mr. Michael Doherty, 50 Bridle Path, talked about other reasonable access. He stated he thinks safety is a major issue here. He discussed the neighborhood roads and the children. He reviewed the curbs on Bridle Path and that the exist on Kimberlee Avenue is dangerous. He explained how the road would allow people to cut through from the Lincoln Street side to the Maple Street side. They are worried about safety with the extra traffic. They are also concerned about the open space being cut off; the animals travel and a road will cut off that travel.

Chairman Batchelor stated they cannot vote on anything that is not approved. They are not going to comment as a Commission as there is nothing before them where they can measure the wetlands. He cannot recommend. They are not engineers. They are here for the protection of the wetlands and that the laws are followed. All they can do is approve how they build or access wetlands, not how we recommend where you build.

Mr. Doherty noted this land is already pre-disturbed with a culvert and a road. The land has been used for logging. No one is asking the Commission to make a recommendation. The Planning Board asked the applicant to go to Conservation Commission about if it were possible.

Chairman Batchelor stated that anything is possible based on the restrictions of the laws. We are not the Planning Board. We are not going to sit here and play blue sky with a development. If the gentleman and the developer want to put in a road in a conservation area, then there is going to be wetland scientists, conservation engineers hired, etc. As long as they follow the laws and the regulations, so be it. He is not going to tell them to do it.

Commission members commented on the balancing of the public good versus the demands on the mission of conservation. When it comes to critical issues such as public safety as it affects the citizenry, as a body, we have considered them. There may be a time and a place where there has to be a sacrifice for the greater good for the citizenry. We have done that in the past, although rarely. To justify that, it is a very high bar.

Mr. Stephen Dunbar, 30 Madison Avenue, said he is impacted by this project. He is a professional civil engineer. He wanted to restate the statements he made at two previous Planning Board meetings. He stated this project as proposed violates three different safety codes, both Franklin and the State of Massachusetts. He measured it and has photo documentation. The road is too narrow by 2 ft., there are two curves that do not have the correct radius, and the intersection of Kimberlee Avenue and Maple Street does not have the sight distance. It does not meet the safety requirements. He stated this is the third meeting that Mr. Buckley has been silent on the safety issues. He stated that for the safety of the children, the applicant's proposal of accessing through Kimberlee Avenue and Bridle Path is not a reasonable alternative access. He discussed the wetlands. He reviewed the ANRAD report of 2017. He stated most of the wetlands are seasonal and dry for most of the year. There are significant invasive species. There are 3-



ft. maple trees. He thinks it is feasible to create a crossing and cross it. He wants the Commission to indicate to the Planning Board that the crossing is potentially feasible.

Chairman Batchelor stated he is not going to make a recommendation to anyone. He is throwing this back at the Planning Board. He does not know why Conservation is involved in saying they are going to approve this or approve that. The issue becomes what comes before us that is approved. It is against our charter and against the law for this Commission to do anything other than what our stated purpose is. He stated the Conservation Agent cannot give an opinion. We are not unsympathetic.

Mr. Anthony Giacobbe, 65 Bridle Path, stated he thinks it is up to Mr. Buckley to revise his plan and submit a plan to have it approved by the Commission to cross the wetlands. He stated the neighbors are asking Mr. Buckley to revise his plans so we can access only through Maple Street to cross into the wetland and to take it back to the Planning Board for their consideration.

Chairman Batchelor stated it is not germane to the Conservation Commission at this time as they have nothing in front of them. They have no package to read, no recommendations from BETA or WSI, or the Conservation Agent. To do anything else is against the law.

**Chair and Commission Member Comments**

None.

**EXECUTIVE SESSION**

Chairman Batchelor stated an item needed to be discussed in Executive Session. There was no Motion or Vote to go into Executive Session.

The regular session of the Conservation Commission meeting ended at 8:53 PM.

Respectfully submitted,

  
Judith Lizardi  
Recording Secretary

