

Town of Franklin



Conservation Commission

**October 21, 2021
Meeting Minutes**

As stated on the agenda, due to the concerns regarding the COVID-19 virus, this meeting will be conducted as a remote/virtual Conservation Commission meeting. 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 Batchelor called the above-captioned meeting to order this date at 7:00 PM as a remote/virtual/in-person meeting. Members in attendance: William Batchelor, Jeff Livingstone, Andrew Mazzuchelli, Patrick Gallagher (via Zoom), Paul Harrington (via Zoom). Absent: Jeffrey Milne, Richard Johnson. Also present: Becca Solomon, Conservation Agent; Tyler Paslaski, Administrative Assistant.

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

PUBLIC HEARINGS

Public Hearing – RDA - 725 Summer Street

Ms. Amanda Cavaliere of Guerriere & Halnon, Inc., representing the applicant, addressed the Commission for the tree removal and grading behind two new homes within the 25' to 100' buffer zone to a Bordering Vegetated Wetland; no structures or impervious development is proposed. The new homes are part of a bigger four-lot definitive subdivision project which is mainly outside conservation jurisdiction. She noted that it will have private water and sewer. She stated that an Order of Resource Area Delineation was issued by the Franklin Conservation Commission on November 15, 2018, and is still valid. She stated that the current project was designed in accordance with the ORAD. She stated that there is a 3:1 slope in the back that will be stabilized; erosion control is proposed.

Ms. Solomon stated that the work is within the buffer zone but will not alter an area subject to protection; therefore, it does not require the filing of a Notice of Intent. She recommended a Negative 3 Determination with the condition that due to the steep grading proposed, the biodegradable erosion control barrier be installed as shown on the plan and inspected by the Conservation Agent prior to clearing.

There was a motion made by Jeff Livingstone to close the public hearing for the RDA for 725 Summer Street. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

There was a motion made by Jeff Livingstone to approve a Negative 3 Determination for the RDA for 725 Summer Street. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Public Hearing – NOI - 850 Summer Street

Ms. Margaret Bacon, engineer/owner of Civil Site Engineering, representing the property owner, addressed the Commission for a septic repair for a single-family three-bedroom residential home. The existing septic system is within the 50' to 100' buffer zone of a Bordering Vegetated Wetland which currently exists as lawn. The repair includes the replacement of the soil absorption system which will be directly where the existing system is located. She reviewed the house location, current septic, wetland limits, and perennial stream. She stated that for Title V compliance, the proposed septic location is the only place that will work. She stated that erosion control will be installed, and there will be no work within the 25' zone.

Ms. Solomon noted that there is no DEP file number, yet; therefore, she recommended continuing the public hearing. Ms. Vicki Bartolini, owner of 850 Summer Street, asked why the public hearing needs to be continued. Ms. Solomon discussed the importance of the DEP number and stated that a file number will be provided by the DEP after they have reviewed the application. The public hearing cannot be closed until the file number is received.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for 850 Summer Street to November 4, 2021, at 7:01 PM. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Public Hearing - NOI - 455 Maple Street

Mr. Mitch Maslanka, wetland scientist of Goddard Consulting, representing the applicant, addressed the Commission for a restoration of the buffer zone in response to the Enforcement Order issued by the Commission on July 15, 2021, and includes the work already completed, in addition to the removal of six more trees and the stumping of the original 14 trees within the 50' buffer zone. Furthermore, the plan proposes grading for a more level yard adjacent to the driveway and the planting of three blue spruce tree saplings. He reviewed the plans and discussed/showed the location of the wetlands, the location of the single-family house, the removed trees, and remaining 14 stumps in the buffer zone. He stated that once the trees were cut down, the wood chips were spread on the property. He noted the site is stable. He explained that there are some trees remaining in the buffer zone. He discussed the new proposal which includes removal of additional trees as well as some grading. He reviewed the proposed buffer zone restoration plan.

Ms. Solomon noted that the planting of the blue spruce are shown on the plan but not state in the narrative. The proposed blue spruce would be replacing the previously removed maple trees. It is recommended that hardwood species such as maples should only be replaced with other hardwood species when looking to restore or replicate. Suitable hardwood species would include a variety of oak species or red maple. For the additional work, staked straw bales shall be installed as erosion control. The NOI narrative states erosion control will be shown on a future supplemental plan as they are not on the existing plans; no supplemental plan has been received. She stated there is no DEP file number; she recommended continuing the public hearing.

Mr. Harrington questioned if straw bales were the correct erosion control. He asked the reasoning for cutting down the trees and not replacing all of the trees. Mr. Maslanka indicated that the trees were removed for safety reasons. He stated that the straw bales are compostable; he stated that if the Commission prefers compost sock, that can be done instead. Chair Batchelor suggested Mr. Maslanka get in touch with the Conservation Agent and have the report modified, as necessary.

Ms. Laura Dombroski stated that she was part of a group of six people working to get the vernal pool certified. She stated that it is a body of water adjacent to this property; they are waiting to hear from Natural Heritage. She stated that species in the vernal pool could be greatly impacted by trees coming down; it is very vulnerable. She noted that the vernal pool is not protected until it is certified. She thinks a lot of caution has to be taken with trees taken down. She stated that sediment control is important so there is no runoff into the vernal pool.

Ms. Solomon recommended that the applicant reach out to Natural Heritage as soon as possible to get a letter regarding if the blue salamander is present. She requested Ms. Dombroski submit her evidence. Chair Batchelor noted that any evidence must be received by the Conservation Agent one week prior to the hearing continuance date.

The applicant asked where said salamanders are located. Ms. Solomon stated that it sounded like Ms. Dombroski was indicating that the salamanders were in a pond near the applicant's property, and it is being considered as a vernal pool. The applicant stated that he is for protecting the wetlands; however, the trees were cut down for a reason. Chair Batchelor recommended that the applicant stay in touch with the Conservation Agent.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for 455 Maple Street to November 4, 2021, at 7:02 PM. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Chair Batchelor called a three-minute recess.

Public Hearing – ANRAD – King Street Map 313 Lot 053

Mr. Mark Manganello of LEC Environmental Consultants, representing the applicant, addressed the Commission to confirm the boundaries of a Bordering Vegetated Wetlands (BVW) and Bank determined by the presence of 50 percent or more of wetland indicator plants, saturated/inundated conditions, groundwater indications, direct observation, and hydric soil indicators.

Ms. Solomon confirmed that this project is being reviewed by BETA and WSI. She stated that the review has not been received; she noted the peer review fee was only received this week. She noted that the DEP file number has been received. She recommended continuing the public hearing.

There was a motion made by Jeff Livingstone to continue the public hearing for the ANRAD for King Street Map 313 Lot 053 to November 4, 2021, at 7:03 PM. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Public Hearing – NOI - Washington Street (Franklin Flex Space) Map 304 Lot 064

Mr. Harrington recused himself.

Mr. Rick Goodreau of United Consultants, Inc. and Mr. Peter Genta, applicant, addressed the Commission. Mr. Goodreau reviewed that at the meeting two weeks ago they did not have a DEP file number; that has been received. In addition, comments have been received from both BETA and WSI. He noted that revisions will be made to the plans to reflect comments from the Planning Department, Town Engineer, Fire Department, BETA, and WSI. He stated that they will be making comprehensive changes to the plans.

Ms. Lenore White of WSI stated that she reviewed the project and conducted a site inspection. The site inspection looked great for the wetland delineation; she had no comments. She stated concern about the scope of work which she discussed in her memo. She stated that one concern is that it is a very steep slope and it is very well vegetated with mature trees. She stated concern about the amount of work to be done right up to the edge of the 25' no disturb zone. She stated that when the trees are removed up to the 25' zone edge, there is going to be disturbance in the 25' zone. She stated that she asked the applicant to prepare a more robust alternatives analysis. She would like them to move the project further back from the wetlands edge. She stated that she thinks this project is going to exceed the allowed impervious area. She discussed that the Commission could ask for mitigation. She stated that the slope needs to be stabilized during construction.

Mr. Matt Crowley, BETA Group, stated that he is primarily reviewing the project through the Planning Board, and there is some overlap with the Conservation Commission. He stated that, overall, the concepts presented are in accordance with DEP recommendations for discharges and stormwater management. He stated that primarily his concerns are what the industrial activities being proposed are, and if it is not known what those are, can some protections be put in place for the future. He stated that at this point, he is waiting for some additional input from the applicant.

Ms. Solomon noted what Conservation Agent Jen Delmore had said at the last meeting which was that numbers in the narrative are not the same as on the plan for square footage of disturbance in the buffer zone. She requested this be rectified.

Commission members asked questions and made comments. Mr. Livingstone stated agreement with Ms. White that the gradient is very steep. Mr. Gallagher commented that the alternatives analysis needs a little more regarding consideration of the items identified by WSI. Chair Batchelor stated that he strongly recommended that the applicant collectively talk with Ms. White, Mr. Crowley, and Ms. Solomon and come back to the Commission with a plan that perhaps meets a more realistic opportunity to build. Mr. Goodreau stated that he understood and was glad to have the opportunity to speak with Ms. White. He stated that they will be making some changes to the alternatives analysis.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for Washington Street (Franklin Flex Space) Map 304 Lot 064 to November 4, 2021, at 7:04 PM. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 4-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Mr. Harrington re-entered the meeting.

Public Hearing – NOI - 900 Washington Street, Olam Estates

Ms. Solomon stated that the applicant requested a continuance of the public hearing.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for 900 Washington Street, Olam Estates, to November 4, 2021, at 7:05 PM. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

GENERAL BUSINESS

Minor Buffer Zone Activity: None.

Permit Modifications/Extensions: Villages at Oak Hill

Ms. Solomon confirmed that this filing is a request for a one-year extension of the associated Order of Conditions (OOC) for the property. The OOC (CE159-1164) was issued August 2017 and will expire November 2021. She recommended issuing a one-year extension.

There was a motion made by Jeff Livingstone to approve the one-year extension of the associated Order of Conditions for the Villages at Oak Hill. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Certificates of Compliance: None.

Violations/Enforcement: Restoration Plan, 11 Mount Street

Ms. Solomon reviewed that a monitoring report was submitted as part of the Wetland and Buffer Zone Restoration Plan approved by the Commission showing all plantings have stayed alive since last year. A request was submitted that the Enforcement Order be lifted as all requirements of the plan have been met. She stated that she performed a site visit on October 13, 2021, and the current restoration seems to be successful. The plantings were inspected and most were healthy. She recommended approval for the Conservation Agent to send a letter stating the restoration plan was successful with a continuing condition that the homeowner notify the Conservation Department before trimming with a list of species being trimmed.

There was a motion made by Jeff Livingstone to approve the Conservation Agent to send a letter stating the restoration plan was successful with a continuing condition that the homeowner notify the Conservation Department before trimming with a list of species being trimmed. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Violations/Enforcement: Restoration Plan, 5 Palomino Drive

Ms. Solomon reviewed that this filing is a proposed restoration plan in response to a series of Enforcement Orders issued by the Commission. The Enforcement Order on July 29, 2021, consisted of a cease and desist of activity as well as an order for delineation of the wetland. A second enforcement order was issued October 14, 2021, stating that a restoration plan was to be filed with the Commission. She stated that a restoration plan was received. She conducted a site visit on October 13, 2021. She noted that significant debris was left besides that which was stated in the original plan and order. The proposed restoration plan identifies three zones for proposed work. She noted that there is needed clarification on which species and in what quantities and calibers will be planted; she recommended the applicant update the plan with the requested information. She stated that in addition, the plan includes invasive species management of poison ivy to be hand removed within the wetland and 0' to 25' buffer zone, or mowed once a year in fall. She noted that it is not recommended to approve mowing in the 0' to 25' buffer zone. She recommended approving mowing to the existing lawn only. She noted that the restoration plan states that a Commission member/agent will monitor and provide the report. She stated that this cannot be done and should be changed to list a consultant or consulting agency to provide the report. She stated that this should be addressed prior to approving the plan. She recommended continuing this item.

Mr. Gallagher recognized that the homeowner has been working on this with the Commission/Conservation Agent.

There was a motion made by Jeff Livingstone to continue the Violations/Enforcement Restoration Plan for 5 Palomino Drive to November 4, 2021. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Minutes: September 23, 2021

There was a motion made by Jeff Livingstone to approve the meeting minutes for September 23, 2021. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 5-0-0. Roll Call Vote: Livingstone-Yes; Gallagher-Yes; Harrington-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Discussion Items: 2022 Hearing Schedule

Chair Batchelor asked each Commission member if they were okay with the proposed 2022 Hearing Schedule. All Commission members indicated they were okay with the 2022 Hearing Schedule. There was No motion, No second, and No vote taken.

Discussion Items: Recusal of a Commissioner

Mr. Gallagher discussed recusal of a Commission member. He reviewed the requirements and best practices. He stated that anytime a Commission member is in any way affected by a project or has a financial interest in a project, the Commission member is required to recuse himself/herself. When there is a borderline call regarding recusal, the concern can be addressed to Town Counsel. If a Commission member is recused from something, they still have the right to ask questions and make comments; however, they do not have the right to act as a Commission member in making said comments. He stated that best practices include being up front about the recusal. He recommended that a recused Commission member who may want to comment on the item as an abutter, preface any statements being made by stating that the comments are being made as an abutter/party of interest, not in the capacity of a Commission member. This will protect the Commission and the process.

Mr. Livingstone suggested that when a Commission member does recuse himself/herself and does make comments, the meeting minutes are clear that the Commission member was speaking as an abutter. Chair Batchelor stated that he had a discussion with Town Counsel. He stated that the Commission member who has recused himself/herself may only come back if they have a direct and exclusive interest in a property that abuts the project and may only do so to ask a question or make a comment as it affects their property. Town Counsel said the best thing to do is leave the room or shut off the Zoom unless it has dire consequences for your direct interest property. Chair Batchelor stated that it is absolutely forbidden to provide a neighbor with materials subject to a hearing either pre or post as a Commission member. He stated that Commission members must be careful. Mr. Livingstone stated that transparency cannot be underscored enough. He stated that it is critical that if anyone thinks they have any kind of conflict, they should reach out and communicate with the Chair prior to the meeting. Mr. Harrington noted that Town Counsel offered to come to a Commission meeting to discuss this item. Chair Batchelor stated that it is his opinion that Town Counsel is not needed to come to a Commission meeting to discuss this item; Commission members informally agreed.

Chair and Commission Comments

Mr. Livingstone stated that he was making a personal comment; he stated that he thinks this is one of the best Commissions. He stated concern that a second Candidates Night event was scheduled at the same time as this Commission meeting. Therefore, the citizens had to make a decision to come to this Commission meeting or attend the Candidates Night. He thinks this is completely unethical. He does not know who made this decision, it is a bad one, and it reflects poorly on this town. He stated that it was disrespectful to the Conservation Commission.

Chair Batchelor stated that years ago when Mr. Livingstone asked him if he would like to be chair of this Commission, he did a lot of studying. The job of a chair is to administrate a meeting and control it and as such if a chair decides to close an issue, the issue should be closed. If a chair makes a recommendation, it should be considered and not debated. He stated that he tries to do everything he can with this Commission, as such.

Executive Session: None.

There was a motion made by Jeff Livingstone to adjourn the meeting. The motion was seconded by Andrew Mazzuchelli. No roll call vote was taken.

The meeting adjourned at 8:34 PM.

Respectfully submitted,

Judith Lizardi