

Town of Franklin



Conservation Commission

**May 12, 2022  
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 Training Room, third floor 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 (via Zoom), Andrew Mazzuchelli (via Zoom); Richard Johnson (via Zoom), Patrick Gallagher, Michael Rein. Absent: William Batchelor. Also present: Breeka Li Goodlander, Conservation Agent; Tyler Paslaski, Administrative Staff; Lenore White, Wetland Strategies, Inc. (via Zoom).

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

**PUBLIC HEARINGS**

**Public Hearing – RDA – New England Power Company PIT Maintenance – Continued**

Ms. Goodlander stated that materials were submitted after the filing requirement; the hearing will be continued.

There was a motion made by Patrick Gallagher to continue the public hearing for the RDA for New England Power Company PIT Maintenance to May 26, 2022, at 7:01 PM. The motion was seconded by Michael Rein and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Gallagher-Yes; Mazzuchelli-Yes; Johnson-Yes; Rein-Yes.

**Public Hearing – NOI – 585 King Street – Continued**

Mr. Mark Manganello (via Zoom) of LEC Environmental and Mr. Josh Berman (via Zoom) of Marcus Partners, applicant, addressed the Commission for the construction of a 255,400+ sq. ft. warehouse distribution facility that will include a paved driveway from King Street, stormwater management and septic systems, with associated grading and clearing; the driveway will go directly across a wetland from King Street to the planned site of the facility. Mr. Manganello stated that they have previously been before the Commission regarding this project. The hearing was continued to receive initial feedback from peer reviewer Ms. White. He stated that a review memo was received from Ms. White. He stated that just this past Friday, they submitted a package in response to Ms. White's first letter. They are moving ahead with the process. They understand that Ms. White has additional comments, and she will be providing a second letter which they will respond to. He stated that therefore, they are requesting a continuance. He provided an overview of the updates. He stated that there were three topics in the initial review letter that required addressing. He discussed that the bylaw required an alternatives analysis based on the riverfront

area performance standards of the Wetlands Protection Act. He stated that they provided a graphic which he reviewed. They have identified this property as suitable for this development. He pointed out and discussed the alternative access points along King Street that they looked at. He stated that what they found is that none of those alternatives would significantly reduce wetland impacts or they had other major issues. He stated that accessing the property from the west would require a really long driveway that crosses multiple private driveways which would require re-zoning and there would be truck traffic on Washington Street which is a residential neighborhood. He stated that they also evaluated off-site properties currently for sale in Franklin; they found none of those to be reasonable alternatives. He stated that Ms. White is looking for them to expand their analysis to include other properties owned by the property owner; they intend to do that.

Ms. White stated that the regulations require that they look at the owner's property and the owner's ability to find alternatives, not the applicant. The owners are not Marcus Partners; the owners are the Ranieri family.

Mr. Manganello stated that the second item on the list was the replication area to which they have provided supplemental information to address some of the comments. He noted that Ms. White is looking for additional technical information from them to support the effectiveness of the wetland replication areas. He stated that they will provide that.

Ms. White stated that some of her concerns are that there are some replication areas below the power lines and the power company goes in and wipes out most of the vegetation when they do their maintenance. So, replication areas cannot be located within the shadow of the power lines. She noted that the replication area is approximately 23,000 sq. ft. She is concerned that there will be enough water to support the replication areas. Mr. Manganello stated that he would provide additional supportive information. He noted that they are going to bolster their planting plan to add more saplings and increase the sapling size to be planted in the replication area. He discussed wetland hydrology.

Mr. Manganello stated that the last issue may be a miscommunication. He stated that they were asked to address the stream crossing in more detail which they did. He stated that he thinks they are in agreement and Ms. White corrected her comment. Ms. White stated that there is a limited project for stream crossings and it sets out some guidance as to what to consider. She asked Mr. Manganello to look at the standards and to make sure the project took into account those issues that may arise in creating a new stream crossing. Mr. Manganello stated that they would do that in writing. Ms. White stated that she asked Mr. Manganello for a construction sequence to explain how the replication area is going to be built and how the stream crossing is going to proceed. She stated that she will be requesting a summary of the report from the traffic engineer about moving the driveway. Mr. Manganello stated that they will do that.

Ms. Goodlander noted that the applicant requested a variance for the 25 ft. buffer zone.

Mr. Gallagher questioned the proposed variance for work within the 25 ft. buffer and requested additional information. He requested the applicant review if there are any alternatives within the existing site that would reduce the impact on the wetlands; any small steps that can be taken to reduce the impacts would make this a better project. Vice Chair Milne asked about the variance. Mr. Manganello stated that the bylaw regulations mandate preserving a 25 ft. buffer zone around the wetlands. The bylaw includes an opportunity for applicants to request a variance from that. The bylaw also has standards for replication. He explained that in a situation where it is a limited-access project and there is no other means of accessing the upland, preserving the 25 ft. buffer zone is impossible. He discussed that the regulations contemplate this possible scenario. He explained that the 25 ft. buffer zone is going to be disturbed for access to the wetland crossing; as such, they would request a variance. Ms. White discussed the

performance standards and the preservation of the 25 ft. buffer zone. Mr. Manganello stated that the amount of replication is two times what is required. He stated that maybe there will not be a 25 ft. buffer zone around one of the areas; however, there will be twice as much wetland when the project is done. He stated that they could modify their replication design; he discussed the constraints. Ms. White reviewed the regulation requirements. She stated that if the project does not meet the standards, she does not know how the Commission could approve it. She stated that she understands the constraints, but it is not the Commission's problem. There may be alternatives and relocation possibilities. Mr. Manganello stated that they would look at that. Mr. Gallagher asked if some of the wetland replication could be done on another property. Ms. White stated that there is nothing in the regulations that would prohibit that. Commission members reviewed the location of the power lines on the plans.

Mr. Karen Miller, 246 Washington Street, reviewed the alternatives diagram and stated that it was outdated as there are locations that now have houses on them. She asked why it would be an alternative to show access through family property that is not for sale. Ms. Goodlander stated that the alternatives analysis looks at all options even if they are not viable. Ms. Miller asked if all of the owner's alternative properties were considered including LLCs. Ms. White reviewed that the alternatives analysis requirement looks at the owner's properties. Ms. Miller stated that on the Commission's website it says that the Commission's job is the protection of Franklin's natural resources which means not just wetlands. She stated that currently it is all residential, there are trees buffering the noise from Rt. 495, and there are animals. She thinks that the Commission should consider all the natural resources. Mr. Livingstone clarified that there are certain laws and bylaws that the Commission is set to curate and those laws cover things like wetlands. There are other natural resources that are not under the legal purview of the Commission. He stated that as a civic body, they can be sued for making decisions for which they have no legal basis. He stated that the Commission is constantly reminded of that by the Town's attorney. Mr. Gallagher discussed the difference between the Planning Board and the Conservation Commission.

Mr. Blake Peters (via Zoom), 16 Taft Drive, urged the Commission to not allow offsite mitigation. He stated that if this site cannot be mitigated in terms of the bylaws, then maybe the project does not fit here or it needs to be smaller. He stated that the Commission is allowed to not approve of the applicant's variance request.

There was a motion made by Patrick Gallagher to continue the public hearing for the NOI for 585 King Street to May 26, 2022, at 7:02 PM. The motion was seconded by Michael Rein and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Gallagher-Yes; Mazzuchelli-Yes; Johnson-Yes; Rein-Yes.

#### **Public Hearing – NOI – 839 Upper Union Street – Continued**

***Mr. Mazzuchelli recused himself.***

Mr. Nick Dewhurst (via Zoom) of Bohler Engineering and Mr. Randy Miron (via Zoom) of Bohler Engineering addressed the Commission for the construction of a 42,750 sq. ft. industrial building for multiple tenants complete with parking, stormwater management, landscaping, and utilities. He provided an overview of the project since they were at the last Commission hearing. He stated that they have worked with Ms. White to address her outstanding concerns regarding the buffer zone restoration, and they have submitted revised updated materials as well as comment responses to BETA for their review of the site plan for the Planning Board. They have received follow-up comments with a few minor outstanding comments that they are in the process of addressing.

Ms. White stated that she received the plans that show that the 25 ft. buffer zone is going to be a nicely protected resource area. There are a number of shrubs and trees proposed to be planted there. She stated

that she thinks the plan is suitable to move forward with. She stated that there was some question on BETA's review letter regarding some confusing language that needs to be explained. Mr. Dewhurst stated that they also had some questions on the follow-up letter from Mr. Gary James of BETA. He stated that they scheduled a call with Mr. James and Town Engineer Michael Maglio; he asked if Ms. White and/or Ms. Goodlander would like to participate in that call. Mr. Dewhurst requested an approval with conditions that they satisfied BETA's outstanding comments. Ms. White noted that there was only one wetland area on the project. She stated that she was confused about some of the drainage and the language in BETA's response. She suggested a continuance of the hearing because she does not know if any of the comments affect the wetland area. Vice Chair Milne stated that this is an issue that needs to be resolved. Ms. Goodlander read aloud and discussed BETA's comment. Ms. White stated that if the plans were going to be altered in a way that affects the wetlands, the hearing should be continued. Mr. Dewhurst stated that he reviewed BETA's comments and he is confident that those changes will not affect the wetlands. However, if anything does change, they would make the Commission aware and do whatever is necessary. Ms. White said that it is not unusual that little changes may need to come back. She stated that she thinks the Commission could move forward with their decision-making tonight. Commission members provided their opinions and historic context on approving with conditions or continuing the hearing. Mr. Dewhurst stated that they are on the Planning Board's May 23, 2022, meeting agenda. Mr. Gallagher noted that the Commission's next meeting is on May 26, 2022; he suggested continuing the hearing.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 839 Upper Union Street to May 26, 2022, at 7:03 PM. The motion was Not Seconded. It was accepted with a roll call vote of 4-0-1. Roll Call Vote: Milne-Yes; Livingstone-Yes; Gallagher-Yes; Johnson-No; Rein-Yes.

Mr. Dewhurst stated that Planning Board approval is conditioned upon Conservation Commission approval. He asked that if prior to the Planning Board meeting on May 23, 2022, if all concerns have been addressed, could he get a memo from the Commission or something in writing that they could share with the Planning Board to make the Planning Board feel comfortable that if they approve then the Conservation Commission will approve. Mr. Gallagher stated that he does not believe there is a way to do that under public meeting law.

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

**Public Hearing – ANRAD – Franklin Heights Parcel B – Continued**

Mr. Desheng Wang (via Zoom), wetland scientist of Creative Land and Water Engineering, LLC, addressed the Commission for an Abbreviated Notice of Resource Area Delineation parcel of 219-178-002-000 (off Lincoln Street); the 20.3+/- acre property is Parcel B of the Franklin Heights housing development. He stated that at the last hearing he was not present. He stated that there was an issue raised about the two isolated wetlands with one qualifying as a vernal pool. He stated that he conducted a site visit. He stated that the smaller wetland was bone dry and the larger isolated wetland was approximately 1 ft. x 2 ft. area with less than an inch of puddle. He stated that photos were provided. He stated that he did a follow-up site visit on May 11, 2022, and it was dry. He reviewed the specific vernal pool criteria which has to be satisfied which this does not meet. He stated that the observation in the field confirmed that it was dried up. He stated that as such, the hydrology will not support it as a vernal pool. Regarding the biologic aspect, he stated that he was there three or four times and never heard any frog callings. Based on the criteria set in the Wetlands Protection Act, which the Town's bylaws reference, it is their professional judgement that the two isolated vegetative wetlands do not provide vernal pool habitat conditions. He stated that this information was provided in his report.

Ms. White stated that the 2 ft. or 4 ft. depth that Mr. Wang cited is not a criterion. Mr. Wang stated that he did not say that exactly; he was noting his experience in the past 30 years. Ms. White stated that the State criteria is that it has to be observed dry for it to be a vernal pool. Mr. Wang stated that is correct. Ms. White stated that she has been out there in March and April and those areas did contain standing water. She stated that when they were out there together, they did not investigate those pools, they did not look for egg masses, and they did not go in and look for anything. She stated that she does not agree that the photos showing it dry demonstrate that it is not a vernal pool. She stated that frankly, photos showing it dry are exactly what is needed to demonstrate that it does dry up; vernal pools are supposed to dry up. She stated that the evidence that was submitted to her is not evidence that it is not a vernal pool. Mr. Wang discussed the requirements for a vernal pool and stated that it is in his report. He stated that he was at the site for much longer than Ms. White. He was there for many hours and at least four times. He measured the water depths of at least 6 in. He provided his reasoning and that in his professional opinion, it is not a vernal pool. Ms. White stated that his letter does not say all that. She stated that she is having trouble agreeing that the research has been done in accordance with the definition. She stated that she has certified many vernal pools as well over her 30 years. Mr. Wang explained volume and depth. Ms. White said that she is not convinced it is not a vernal pool. Mr. Wang stated that he clearly stated in his report that biological evidence is not present. He asked what he should put in his writing to explain that this is not a vernal pool. He stated that the hydrology does not support this.

Ms. Goodlander stated that she read Mr. Wang's report. She stated that the report does not indicate that Mr. Wang looked for and did not find fairy shrimp. She stated that fairy shrimp can live in shallow water. She discussed her concerns and noted that we are in a drought and consideration of vernal pools should take that into account. She discussed the guidance documents on the National Heritage website for determining vernal pools. She stated that the intent of the ANRAD is to properly delineate the boundaries; she thinks the boundaries are accurate. She stated that going forward, any NOI would condition that the vernal pools be looked at earlier in the season and recertify them. Otherwise, she is comfortable. Ms. White stated that she agreed. Mr. Wang stated that we can condition it so that in the springtime they can take another look at it. Commission members made comments and noted that they would revisit the question if/when an NOI is presented.

There was a motion made by Patrick Gallagher to close the public hearing for the ANRAD for Franklin Heights Parcel B. The motion was seconded by Michael Rein and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Gallagher-Yes; Mazzuchelli-Yes; Johnson-Yes; Rein-Yes.

There was a motion made by Patrick Gallagher to approve the ANRAD for Franklin Heights Parcel B. No Second was made. It was accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Gallagher-Not Asked to Vote; Mazzuchelli-Yes; Johnson-Yes; Rein-Yes.

## **GENERAL BUSINESS**

**Minor Buffer Zone Activities: None.**

### **Permit Modifications/Extensions: Amego School OOC Extension Request CE159-1200**

Mr. Scott Jordan (via Zoom) of EcoTec, Inc. and the general contractor (via Zoom) addressed the Commission. Mr. Jordan stated that this is a boarding residence off Washington Street for children with disabilities. Their permit is about to expire; they are very near completion. They are looking for a one-year extension of the permit. The general contractor reviewed the remaining construction.

Ms. Goodlander stated that she conducted a site visit. Construction is underway and the site is in compliance, sans a few broken wattles. It was communicated in the field that the wattles should be repaired/replaced and kept in good working condition.

There was a motion made by Patrick Gallagher to approve the one-year extension for Amego School OOC Extension Request CE159-1200. The motion was seconded by Michael Rein and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Gallagher-Yes; Mazzuchelli-Yes; Johnson-Yes; Rein-Yes.

**Certificates of Compliance: Well Station 3 Improvements CE159-1183**

Ms. Goodlander stated that she conducted a site visit. As of May 3, 2022, all restoration action items are complete.

There was a motion made by Patrick Gallagher to approve the Certificate of Compliance for Well Station 3 Improvements CE159-1183. 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; Gallagher-Yes; Mazzuchelli-Yes; Johnson-Yes; Rein-Not Asked to Vote.

**Violations/Enforcement: 305 Union Street Enforcement Order**

Ms. Goodlander reviewed that on May 3, 2022, the Conservation Office received an anonymous tip that the property owner at 305 Union Street was dumping potentially hazardous materials into an industrial well. Per the anonymous tip, the materials included tar roofing shingles, creosote covered timbers, lead painted siding, asbestos wrapped steam pipes, and other debris. A site visit was conducted on May 4, 2022, to investigate. During the site visit, it was noted that building materials were located within an industrial-sized well which connects to an intermittent stream and subsequently two Bordering Vegetated Wetlands (BVW). Given the nature of the violation, an Enforcement Order was signed by Chair Batchelor on May 5, 2022. Given the nature of the violation, the Building Commissioner and Health Department were also notified. On May 5, 2022, the Building Commissioner issued a Cease and Desist and as of May 9, 2022, will be sending an Enforcement Order. On May 6, 2022, the Health Department sent an Enforcement Order and notified MassDEP of potential asbestos issues. MassDEP was testing for asbestos on May 9, 2022. Results of these tests are forthcoming. Site photos and descriptions were provided. She stated that the owner is not able to further demolish the building or dispose of the material at this time. She requested the Commissioners sign the Order.

**Minutes: April 28, 2022**

None.

**Discussion Items: Earth Day-Final Preparations/Review before Event May 21**

Mr. Paslaski provided updates of the event. Mr. Livingstone noted refreshments for the event will be picked up from Big Y. He stated that he reached out to the manager of Starbucks but did not hear back. He noted that he was made aware of another event occurring at DelCarte at the same time; that event is for Habitat for Humanity furniture and electronics collection and recycling. He stated this will take up all the space with very large trucks in the very small parking lot. He stated that this event will destroy the ability of the Commission to have their event and to get any volunteers at the DelCarte site. He stated that the Habitat for Humanity event was held at Beaver Street last year. He stated that the group scheduled the event this year at DelCarte without talking to the Commission first. He stated that he is very upset about finding out about this and not being told; things like this have happened in the past. He stated that this would seriously impact the ability of the volunteers because they cannot get into the property to park. Mr. Gallagher suggested the police be contacted and maybe they can work it out where people can park. Ms.

Goodlander stated she can have a follow-up conversation with Mr. Bryan Taberner. Mr. Paslaski stated that he and others would be there about 8 AM to start setting up.

**Chair and Commission Comments: None.**

**Executive Session: None.**

There was a motion made by Patrick Gallagher to adjourn the meeting. The motion was seconded by Michael Rein and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Gallagher-Yes; Mazzuchelli-Yes; Johnson-Yes; Rein-Yes.

The meeting adjourned at 8:49 PM.

Respectfully submitted,

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Judith Lizardi  
Recording Secretary