

**Franklin Conservation Commission
Minutes of Meeting
October 13, 2016**

To: Town Clerk
cc: Members
File

Members Present: P. Harrington, S. McLean, Angela Gelineau, Nick Shuler, George Russell, Conservation Agent.

Members Not Present: B. Batchelor, J. Livingstone, T. Henrichon.

Mr. Harrington announced the meeting would be audio and video recorded.

Mr. George Russell's Agent's Report has been appended to the minutes.

Public Hearing – Continued – RFD – 82 Elm Street - Graf

Mr. Russell stated the applicant has requested a continuation to the December 1, 2016 meeting.

There was a motion made by Scott McLean to continue the public hearing for the RDA for 82 Elm Street until December 1, 2016 at 7:15 PM. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

GENERAL BUSINESS (items taken out of order from the agenda)

Certificate of Compliance: 7 Parmenter Way

Mr. Russell stated this is an old project for which the release had never been requested. There are no issues with this release request. He recommended the certificate of completion be allowed.

There was a motion made by Scott McLean to release the certificate of compliance for 7 Parmenter Way. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Minor Buffer Zone Activity: 9 Gwynne Road

Mr. Russell stated the applicant filed for a minor buffer zone activity to erect a shed. A site inspection revealed significant vegetative debris had been deposited in the jurisdictional area of the Commission. He spoke to the property owner and notified him of the issues. Applicant is here tonight to address the issues.

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., and Mr. Chris Wetmore, owner and applicant, addressed the Commission. Mr. Wilson stated the original application was to erect a 12 ft. x 20 ft. shed on the property. During a site visit Mr. Russell discovered a debris pile of leaves and grass clippings. Mr. Wilson has contracted with Mr. Goddard, wetland scientist, to look at it and verify the wetland line. The

flags will be refreshed and then determine if leaves and debris should stay and compost or if it would be damaging to remove the debris pile. Then, Mr. Wilson will update the plan and return to the Commission. He said Mr. Russell had suggested to withdraw this application and file an RDA to get approval of the wetland line as the line was last done in 2008, more than three years ago. He will update the flags, but does not think it will be a big change.

Mr. Russell stated he would recommend, as standard procedure of the Commission, to do exactly what the property owner is doing. He agreed with Mr. Wilson that the MBZA permit should be withdrawn and it will require the filing of an RDA which will cover both the shed and the report from the wetland scientist indicating whether the debris should remain or should be removed and how. An option is that the property owner could leave the MBZA in place until the report from the wetland scientist is available.

There was a motion made by Scott McLean that it is the Commission's position that the work at 9 Gwynne Road requires an RDA and analysis by a wetland scientist that the debris may or not be in the jurisdictional area and the report from the wetland scientist be submitted no later than December 15, 2016. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Public Hearing – Amendment Request – 412 West Central Street – Ayoub Engineering

Mr. Russell stated that permission in writing from the property owner has been received for this applicant to go forward with all necessary permits, etc., for this amendment.

Mr. Alan Micale, Consulting Engineer of Ayoub Engineering, working with the Ranieri Group and Nouria Energy, addressed the Commission for amending the Orders of Conditions. He stated the DPW changed the address of the location; it is also known as 438 West Central Street. All the orders were issued under the 438 address; they were later notified that the address had changed to 412 West Central Street. This is the Shell Gas Station. They have been working on this project for eight to ten years. Filed a request to amend the order of conditions to eliminate two items: the requirement for the as-built and the replacement of the stockade fence. The Commission had determined that this application could be done without a full NOI. They are trying to close out the two orders. They are not going to do the project, not going to do the Dunkin' Donuts or the drive-thru. They have been continuing these hearings for many years, but this is the end. The site has not changed in ten-plus years and the fence is up. If successful tonight to eliminate the two items, they will file a request for certificate of compliance for the two orders that were issued for the original tank removal project that happened ten-plus years ago.

Mr. Russell stated everything should be done under 159-862 order which will expire on October 15, 2016.

There was a motion made by Scott McLean to close the public hearing for the 438 West Central Street NOI amendment. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

There was a motion made by Scott McLean to approve the 438 West Central Street NOI amendment order of conditions 159-862. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Public Hearing – Continued - NOI – Beaver Street Interceptor Access Road - DPW

Mr. Jay Mello, Assistant Town Engineer, addressed the Commission for improvements to the access road. The abutter notifications had been sent out. This NOI was initially filed in August 2015. They had received some rather extensive comments from DEP which shut things down. This project is important to get done. The Beaver Street interceptor sewer line is over 100 years old. The interceptor carries a few million gallons per day of raw sewage which also flows by Mine Brook. They are doing as many things as possible to keep this very old pipe in shape. It needs to be accessed in case anything was to ever happen in case of emergency or regular repair. This project involves taking the area and making it more

of an established maintenance road. Plan to excavate down $\frac{3}{4}$ ft. and place crushed stone, so increasing the ground surface area of the road in that area by $\frac{1}{2}$ ft. DEP stated that by doing this they were taking flood storage area. So, in the design the $\frac{3}{4}$ ft. stone underground was added to provide compensatory storage. The calculations were provided to the Commission.

Mr. Russell stated he recommended five stipulations of approval as noted in his Agent's Report. Regarding stipulation #23, given the impacts of this project on the resource areas, he believes it would be advisable for the Commission to require annual reports from the engineer and/or wetland scientist on the impacts of the project on the jurisdictional areas.

Mr. Mello stated he was fine with that; it is to be expected.

There was a motion made by Scott McLean to close the public hearing for the NOI for the Beaver Street Sewer Interceptor Access Road. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

There was a motion made by Scott McLean to approve the NOI for the Beaver Street Sewer Interceptor Access Road with special conditions #20, 22, 23, 34 and 44. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

GENERAL BUSINESS (continued)

Violation: 23 Forest Street

Mr. Russell stated his office received a complaint concerning the property at 23 Forest Street. The property owner and Mr. Russell communicated via email and Mr. Russell was given permission to go on the property. He informed the property owner of his findings that there was significant vegetative debris in the jurisdictional area including the stream channel in back of the house. He outlined the procedures that needed to be followed and he followed up with a certified letter. The certified letter was returned as refused. A constable was used to serve the letter to the property owner. Follow up letters were generated at one month intervals. Mr. Russell informed the property owner that the issue would be on tonight's agenda and recommended he attend the meeting. Mr. Russell stated that in his Agent's Report he was originally recommending an enforcement order; however, as the applicant has taken the time to come before the Commission to address the issues, Mr. Russell's recommendation is strictly the standard procedure of the Commission to obtain a wetland scientist, prepare an RDA application based on the findings of the wetland scientist, and submit it to the Commission.

Mr. Mohammed Zia, property owner, and Mr. Robert Dellorco, 7 Wilson Road, addressed the Commission and provided background. Mr. Zia stated he was never aware that there was any stream in the back of his yard. The tree branches were so low they were poking his children's eyes. So, he trimmed the tree branches; he did not cut any trees. It was a hot summer and it took a few weeks to trim the branches so he pushed them aside; a few weeks later he rented a chipper and chipped them away. There was no damage done; there was no surface disturbed behind the creek. He stated he has lived in the house only two summers. Behind the creek is not his property; he believes the creek is not in his property. He has nothing to do with any debris on the other side of the creek. He reiterated that he trimmed the branches, brought them to the front yard, and chipped them away.

Mr. Dellorco stated the brook behind the house changed when Rt. 495 went through and he thinks there has not been any flow in there for years. The debris that Mr. Russell is talking about has been there for a long time.

Mr. Zia provided the Commission with a map and explanation of where his house and trees were located.

Mr. Russell stated everything within 200 ft. of the stream channel is within jurisdiction of this Commission. He stated the state courts have ruled that there are three tests of the state law: a person cannot alter, fill, or remove.

Mr. Zia stated he did not alter, fill or remove.

Mr. McLean stated the tree branches were considered fill.

Mr. Russell stated once they are put there, it is an issue. Cannot take them out because the courts have ruled that is a secondary issue. A permit is needed to put them there and leave them, or to take them out. Mr. McLean stated in the past the Commission has required that a wetland scientist is hired to study the situation and then the wetland scientist will bring to the Commission a report as to whether it is better to remove the branches or leave them there. It is the position of the Commission and of the courts that the branches constituted fill.

Mr. Harrington stated that the events occurred, so it has to be reviewed by a wetland scientist.

Mr. Zia stated he will file a retroactive permit. He does not have resources to hire a wetland scientist as he has done nothing wrong.

Mr. Harrington stated Mr. Zia is in the jurisdictional area and the condition does exist. This is the standard procedure for this kind of event.

Mr. Russell stated this is not a public hearing and it is the Commission's policy to not let the public speak at a non-public hearing. However, Ms. Murphy is the complainant.

Ms. Debbie Murphy, 17 Forest Street, asked exactly what it is that Mr. Russell is addressing. She stated that since the assisted living project on King Street went in, the drainage basin has widened. She did not intend for this to be addressed in this manner. Her concern is that since the project has been started in back of her property, her property has been flooded eight times and nothing has been taken care of or done to repair the wetlands and the wetlands just keep getting bigger. The assisted living project has put much debris in the wetlands. It is not anywhere near Mr. Zia's property. Her property has been affected. She has tried for years not to touch things so that if someone were to come to her property they could see what was going on and how all the roots have been stripped of soils; all the trees are falling down. The cause of all the problems is that the drainage system in back of her gets full during heavy rains and all the storm water from the assisted living project is carried in the channel. Not all of the limbs were cut down, they fell down.

Mr. Russell stated the original complaint was filed against 23 Forest Street.

Ms. Murphy stated she has asked Mr. Russell to come to her property numerous times. Her property has had three separate site visits from the Planning Board and Conservation Commission before the first thing was built over there. Her property was level and flat. They put 30,000 yds. of fill in a piece of land that had significant wetlands and put a building on top of it. As a result, all the water has gone to the abutters. The trees are falling apart and the limbs are falling off.

Ms. Gelineau asked Ms. Murphy that if she is sure the problem is from King Street, why was the complaint filed against 23 Forest Street.

Ms. Murphy said she contacted Mr. Russell and asked for someone to come to look at the whole issue. She said that Mr. Russell kept telling her that he cannot go onto the property over there where the source of the problem is. She does not know why Mr. Russell cannot see the other properties which are the source of the issue. The drainage basin has become enormous because there is so much water coming.

Ms. Gelineau summarized that there is debris on Mr. Zia's property whether he caused it or not.

Mr. McLean said as the property owner, Mr. Zia is liable.

Mr. Russell stated the debris he saw had fresh cuts.

Ms. Murphy stated that the branches Mr. Zia cut were not put in the wetlands, they were put against her property line.

Mr. McLean stated anything within 200 ft. of the wetlands is considered the buffer area which is the Commission's jurisdictional area. Mr. Zia was not supposed to cut any branches in that area without consulting the Commission.

Mr. Dellorco confirmed that Mr. Zia needs to hire a wetland scientist and then return to the Commission.

Mr. McLean stated that to avoid this in the future, Mr. Zia may want to have the wetland scientist delineate the wetlands to know where the wetlands and borders are.

Mr. Russell stated that Mr. Zia's entire property is in the buffer zone.

Mr. McLean stated that whatever Mr. Zia plans to do on the property, for instance, a shed or playground for children, he will have to come before the Commission to get it approved.

Mr. Zia said the law can be applied by the book, but in this case it does not make any common sense.

Mr. Dellorco stated Mr. Zia did not know he was in a wetland area.

Mr. McLean stated this was about rules and regulations. He reiterated that within 200 ft. of a river is in the jurisdiction of the Commission. If it is a non-river, a marsh, it is 100 ft. People should know where their wetlands are; the property owner is liable.

Mr. Harrington stated there are two separate things: the RDA with the wetland scientist and the recommendation for delineation so the property owner knows the buffer zones.

Mr. McLean stated Mr. Zia can appeal to the DEP and the courts.

Mr. Russell stated that in terms of property owners knowing about their wetlands, at least two or three times a day there are property owners asking his office about wetlands on their property. Secondly, a wetland scientist in this case is not going to be that expensive; the report can probably be one page. The RDA application is \$100 for the legal advertising. The issue stems from the local bylaw, not the state law. Thirdly, what is transpiring could have been avoided with a simple response to the first letter.

Mr. Dellorco stated it would have been better if Mr. Russell had knocked on the door.

Mr. Russell stated he did, twice, but no one came to the door.

There was a motion made by Scott McLean that it is the Commission's position that at 23 Forest Street the homeowner needs to have a wetland scientist issue a report and an RDA regarding how to deal with the vegetative debris. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Mr. Harrington stated that outside of this, the Commission should look at what is happening on the other side of the property with the retirement home.

Mr. Russell stated he now has legal permission to go on the 656 King Street property since they have filed an NOI. From that property vantage point, he may or may not be able to see the other properties.

Ms. Murphy stated that maybe if a list were compiled from the files of what all her issues are and what has been going on for five years, it could be resolved. When it rains it is very upsetting; she would like someone to look at the flooding on her property. The retirement home owners are awful; they do not have morals.

Mr. Russell stated there will be a public hearing at the next meeting so he cannot take Ms. Murphy's testimony at this time.

Discussion Item: DelCarte

Mr. Russell stated that he met with the assistant superintendent of the Franklin schools. They are going to send the DelCarte Field Guide and Lesson Plan to the fourth and fifth grade teachers and principals to see if they can incorporate it into spring field trips.

Discussion Item: Remote Participation

Mr. Russell stated the Town Council has adopted a remote participation procedure and policy which he provided in the Commission members' packets. He said this Commission could adopt its own policy although the town attorney is not recommending it; it is a lawsuit waiting to happen. There is a significant difference between a land use commission and the Town Council. A policy can be drafted, but caution is advised as this is brand new coming out of the Attorney General's office. He noted that state law only allows for four or five exemptions for participating remotely. The quorum of the Commission must still be present at the meeting site. The big advantage for remote participation may be for a meeting that is going to be continued and the member participating remotely would be at the continued meeting as well.

Mr. Harrington suggested this item should be tabled for a while and then come back to it.

CHAIR AND COMMISSION COMMENTS

Ms. Gelineau asked about 23 Forest Street. Who was Jamie that was mentioned?

Mr. McLean noted that Mr. Dellorco is a town councilor and Jamie Hellen is the deputy town administrator. He said the point Mr. Dellorco was trying to make is that Mr. Russell is not cheerful enough when he does his job.

Mr. Harrington and Mr. McLean confirmed that it is the property owner's responsibility and that is the Commission's position.

Minutes

There was a motion made by Angela Gelineau to accept the minutes for the September 29, 2016 meeting. The motion was seconded by Nick Shuler and accepted with a vote of 3-0-1. (Mr. McLean abstained.)

Signed Orders of Conditions & Certificate of Compliance

Certificate of Compliance – 7 Parmenter Way – Bella Construction – SE159-433

Orders of Conditions – Beaver Street Access Road – DPW – CE159-1102

Amended Orders of Conditions – 438 West Central Street – Nouria Energy – SE159-862

There was a motion made by Scott McLean to adjourn the meeting. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

The meeting adjourned at 8:16 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary