

**Franklin Conservation Commission
Minutes of Meeting
May 17, 2018**

To: Town Clerk
cc: Members
File

Members Present: Bill Batchelor, Tara Henrichon, Paul Harrington, Angela Gelineau, Jeffrey Milne, Staci Dooney, George Russell, Conservation Agent.

Members Not Present: Jeff Livingstone.

Chairman Batchelor announced the meeting would be audio and video recorded. He reviewed how the Commission operates. He stated that Mr. Russell, Conservation Agent, makes recommendations to the Commission based on law; the Commission interprets the law and the needs of the individual. Therefore, it is the Commission's responsibility to come to a decision, not Mr. Russell's decision; he is here in an advisory technical capacity. Chairman Batchelor announced an addition to tonight's agenda, Item 2.2.2: 43 Blueberry Lane-Extension.

There was a motion made by Tara Henrichon to accept the additional agenda Item 2.2.2: 43 Blueberry Lane-Extension. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

Mr. George Russell's Agent's Report and Supplemental Agent's Report have been appended to the minutes.

Public Hearing – RDA – 69 Mill Street

Mr. Brian Orlando, homeowner, addressed the Commission to take down the current deck and install a new deck. He stated that to do so, he would need to move some piles of grass clippings and dirt debris left by the previous homeowner. He would like to use a small machine and provide runoff barriers; the piles are approximately 3 ft. x 5 ft. He stated it would be a grueling process to haul the debris out by hand using a wheelbarrow; poison ivy is all over the piles and he is allergic to it.

Mr. Russell stated the wetland scientist's report recommended removal by hand. Another option would be for the Commission to allow debris to remain. However, in the debris there is some non-vegetative debris such as a long piece of metal. Removing the non-vegetative debris and leaving the vegetative debris would satisfy everything. He stated an application was filed; he

went out for the site inspection and found the issue. The applicant has been very responsive. He noted that all three projects were included: deck, driveway, and debris. He recommended the vegetative debris remain, the non-vegetative debris be removed, and the Commission issue a negative #3.

Commission members discussed the issue and asked the applicant questions.

Mr. Orlando stated leaving the vegetative debris would not impact his project and he could remove the non-vegetative debris.

Mr. Harrington stated this does not go along with the wetland scientist's report.

Mr. Russell stated he agreed that this does not go along with the wetland scientist's report, but there is a medical issue regarding poison ivy. He would rather have the debris stay than bring in a machine.

Mr. Harrington stated with the wetland scientist's approval, he has no problem.

Ms. Gelineau stated almost everyone is allergic to poison ivy; we do not want to set a precedent with this stating he does not have to do the removal due to poison ivy. It should be due to the use of the machine that would cause more disturbance than letting the vegetative debris piles remain.

There was a motion made by Jeffrey Milne to close the public hearing for the RDA for 69 Mill Street. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

There was a motion made by Jeffrey Milne to approve the RDA for 69 Mill Street with a negative #3 and only the metal objects/non-vegetative debris be removed as bringing in a machine would cause more damage than would help. The motion was seconded by Staci Dooney and accepted with a vote of 5-1-0. (Mr. Harrington voted No.)

Public Hearing – RDA – 604 Pleasant Street - MacDougall

Mr. Bruce MacDougall, homeowner, addressed the Commission to construct a 4 ft. x 60 ft. stone retaining wall to prevent runoff. He stated they have a steep slope in the front of the house; there is a lot of dirt and water runoff when it rains. They will be using rocks that are on site.

Chairman Batchelor stated this project should be beneficial to help stop the erosion.

Mr. Russell stated the retaining wall is absolutely needed; the resource areas are in the rear.

There was a motion made by Tara Henrichon to close the public hearing for the RDA for 604 Pleasant Street. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

There was a motion made by Staci Dooney to approve the permit for the RDA for 604 Pleasant Street with a negative #3. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-0.

Public Hearing – Continued - NOI – Panther Way Sculpture Park - DPW

Mr. Russell stated this item needs to be continued. He recommended continuance to June 14, 2018.

There was a motion made by Angela Gelineau to continue the public hearing for the NOI for Panther Way Sculpture Park to June 14, 2018, at 7:15 PM. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

Public Hearing – Continued - NOI – 725 Union Street – Holmgren Engineering

Mr. Russell stated the applicant has already granted permission to extend the hearing. Mr. Russell wanted to inform the Commission that peer review was received after his initial Agent's Report was submitted. The peer review in terms of drainage is going to require plan revisions, and the plans have yet to be submitted to the Planning Board. As a result, BETA Group and Mr. Russell are meeting with the applicant. Therefore, he would like to continue the public hearing to June 14, 2018.

There was a motion made by Angela Gelineau to continue the public hearing for the NOI for 725 Union Street to June 14, 2018, at 7:20 PM. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

GENERAL BUSINESS

Minor Buffer Zone Activity: 495 Pleasant Street

Mr. Gary Shea, homeowner, addressed the Commission to construct a deck 61 ft. from a stream bed and within the 100 ft. buffer. He stated he removed by hand the two sheds shown on the drawings and disposed of them; he did not know he needed a permit to remove them. He confirmed he would use sonotubes.

Mr. Russell recommended approval of the MBZA.

Commission members asked the applicant questions about the project.

Ms. Henrichon requested the application be amended to include the retroactive removal of the sheds.

Mr. Russell explained the map submitted with the application, in his opinion, shows an incorrect wetlands buffer zone from the BVW. The reason he did not raise a lot of issues is that the entire lot is within 200 ft. of the riverfront zone; thus, it is within jurisdiction.

There was a motion made by Angela Gelineau to approve the MBZA for 495 Pleasant as submitted for the deck construction and retroactively for the removal of two sheds indicated on the map accompanying the plans. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

Permit Extension: 880 West Central Street

Mr. Russell stated this is an extension for the NOI which will expire next month. He recommended approval to grant the one-year extension because there are some issues still to be worked out with the applicant and the Commission as noted in his Agent's Report. If the Orders are allowed to lapse, there is a much bigger problem.

There was a motion made by Staci Dooney to extend the permit for one year for 880 West Central Street. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

Permit Extension: 43 Blueberry Lane

Mr. Russell stated this was previously on the Commission's agenda. The Commission did not act on the request for an extension because some required reports under the Orders were missing. Since the last meeting, those reports have been received. Therefore, he recommended approval of the one-year extension.

There was a motion made by Angela Gelineau to extend the permit for one year for 43 Blueberry Lane. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

Violations/Enforcement: 13 Bubbling Brook

Mr. Russell stated this is one of the cases where we had some issues at this address. The property had requested to address the Commission on this item.

Mr. Brian Keller, homeowner, addressed the Commission regarding activity by the stream. He stated he sent a letter dated April 1, 2018, to the Commission regarding the concerns Mr. Russell brought to his attention. He discussed the content of Mr. Russell's letter. He knows there is a state law that allows him to speak to the Commission regarding what has occurred and would like them to hear the details.

Mr. Russell stated he observed the activity that was just explained by Mr. Keller. Mr. Russell stated there are photographs in the Commission members' packets. The issue was not the treehouse/tree platform, the issue is the supporting structure. He noted one of the photographs clearly shows this. He stated he does not see this as a big deal, but it is within about 5 ft. to 10 ft. of the stream. As a result, his original recommendation to the owner was that this would be an MBZA and he did not see any big deal. Then, we realized that due to the proximity of the stream, an MBZA would not be correct as it would be in the 25 ft. no-touch zone. He then recommended to the applicant to file an RDA which the Commission could grant a negative #3. He noted as the applicant stated, the material was removed. He stated that just like the permit granted to the previous applicant on tonight's agenda who removed two sheds, the Commission must approve this. The law states, you cannot fill, alter, or remove without a permit from the Commission.

Mr. Russell stated he does not think an RDA fee can be waived; the Town Council sets the fees, this Commission does not. The regulations state if you are within 25 ft. of the river, you cannot get a variance and you must submit either an RDA or NOI.

Ms. Gelineau stated Mr. Keller seems to be talking about the spirit of the law versus the letter.

Chairman Batchelor asked what the cost of an RDA was.

Mr. Russell stated \$210, which covers the legal fee and advertising fee.

Mr. Keller, in response to Commission member's questions, stated it has all been removed. It was dangerous. He said this structure was much different than the previous applicant's example of the two sheds. He does not think his affected the wildlife or stream.

Ms. Gelineau stated it is more about how a person goes about removing it.

Ms. Henrichon asked what happens when a tree presents imminent danger and must be removed.

Mr. Russell confirmed it would be an after-the-fact RDA. He noted for this structure, posts were driven into the ground.

Ms. Gelineau asked what the Commission would do if the structure were still there.

Mr. Harrington stated an RDA.

Ms. Gelineau stated this was put up without an RDA and taken down without one. She reviewed the normal process of an RDA and that a wetland scientist would be required to provide a scientific opinion about if it should stay or go and how. However, it is gone now. She suggested they not do the wetland scientist part, but the applicant still needs an RDA for taking it out.

Mr. Russell stated the fee for the RDA is determined by the Town Council.

Mr. Keller stated he is looking for the easiest way.

Mr. Harrington asked if an RDA fee could be waived and what would that do for precedent.

Ms. Keller stated it is an eleven-year old kid. It was a kid enjoying nature, not playing X-box. He stated in the end, if I have to pay something, I do.

Ms. Gelineau stated Mr. Keller seems to be talking about the spirit of the law, versus the letter.

Mr. Milne asked what the Commission's options are.

Mr. Russell stated he does not think an RDA fee can be waived; the Town Council sets the fees, this Commission does not. The regulations state if you are within 25 ft. of the river, you cannot get a variance and you must submit either an RDA or NOI.

Chairman Batchelor stated that this is a situation where the river is there.

Ms. Henrichon reiterated the Town Council sets the fees and the law states an RDA or NOI must be submitted for this.

Chairman Batchelor stated that probably the easiest thing to do is file the RDA.

Mr. Keller confirmed he must fill out the RDA but does not have to show up to the public hearing.

Mr. Russell reviewed the process and stated this is a legal technicality. He explained how to fill out the RDA form and suggested to attach prior letter correspondence from Mr. Russell to the application.

There was a motion made by Paul Harrington to require an RDA for actions at 13 bubbling Brook. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

Minutes:

There was a motion made by Staci Dooney to approve the meeting minutes for May 3, 2018. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-2. (Ms. Gelineau and Mr. Milne abstained.)

Discussion: 300 Fisher Street

Mr. Russell stated this discussion has been moved to June 14, 2018, at the request of the person making the presentation.

Discussion: Commission Procedures

Mr. Russell stated there has been discussion recently between himself, the Chair, the Vice Chair, the Town Administrator, the Town Attorney, and the Assistant Town Administrator, on some of the procedures outlined in the local bylaw. Two of the things he has been tasked with doing with the help of the Commission are reviewing the entire local bylaw to see what needs to be amended and what does not. As part of doing that, but not within the bylaw, is to see if he can provide, with the help of the Commission as it is going to be an ongoing thing, some action into the fee structure that is governed by the Town Council. For instance, one of the things that is happening, and it would have happened with 880 Central Street, is a project is done and the Orders of Conditions expire, but the stipulations attached to those Orders were not met. They can be reporting requirements or a number of things. An expired Order of Conditions cannot be amended. And, he could never recommend to the Commission to grant a Certificate of Completion because technically, the Orders are not complete. Therefore, an applicant would have to file a new NOI, get the Commission's approval, get an invalid COC for the old Orders, and then get a valid COC for the new Orders. Unfortunately, for some projects, that would require filing an advertising fee, the state fee, and the local permitting fee. If it is an Industrial/Commercial property, the local fee is \$600. In a condition like tonight, where the applicant was asking to waive the local RDA fee, right now this Commission, and the Town Attorney agrees, has no control over the fee; it is strictly Town Council. We are going to try to come up with some wording that would allow situations such as the one we have with a commercial establishment that does not want to pay the \$600 fee, to see if instead of paying the \$600, they pay, and he is just giving a number, an amount such as \$300. He stated we cannot waive the advertising fee and we cannot do anything about the state fee.

Commission members discussed ideas and helping homeowners and residential. They may be less inclined regarding some commercial venture.

Mr. Russell noted that right now there is no authority in the bylaw for the Agent to do anything but enforce the bylaw. One of the ways we are going to start looking at things is to potentially give the Agent some flexibility to do some approvals. For instance, if someone wanted to put up a shed like the applicant on Pleasant Street, to allow the Agent to approve things like that without filing the RDA. He provided Commission members with a document as a starting point.

Ms. Henrichon asked if the Commission can help Mr. Russell look at the bylaw so he does not have more work piled on. Should they each take a section?

Mr. Russell asked the Commission that if they see something in the bylaw that looks like it is out of date or too restrictive, bring it to him so he can combine it all into one document to recommend to the Town Council. He noted the first step is to change the bylaw and then look at the regulations. The Town Council has to amend the bylaw.

Commission members and Mr. Russell discussed looking at procedural changes and the bylaw, and they discussed examples and issues they keep running into.

Chairman Batchelor stated something must be done. We must get these impediments out of the way. He stated people are getting upset and going to Town Council. The Town Administrator is upset, the Assistant Administrator is upset, and Town Council is upset. We need to find a method to stop the complaining.

Commission members discussed how people do complain, but others are happy with what the Commission is doing with Declare and other areas. They discussed what other towns are doing and maybe they should try to line up with other towns. They are not going to satisfy everyone; it is a slippery slope. They want the Commission to be known as willing to work with people.

Mr. Russell stated the Commission can work to change wording immediately regarding if vegetative debris is found that the property owner must hire a wetland scientist. He had a property owner last week who is going to file an NOI; he contacted three wetland scientists to file the NOI and got a price range of \$1,000 to \$12,000 for the same thing. It is strictly the SOP of the Commission that requires them to hire the wetland scientist. He thinks it can be amended to require an MBZA, but he has to look at it further, and only require the wetland scientist if the vegetative debris is actually in the resource area. If it is in the BWV, it is his opinion that it should be looked at by a wetland scientist. If it is in the buffer zone, he would like to get out of requiring a wetland scientist. The differentiation would come if it was in the resource area. The problem will be riverfront.

Commission members discussed the SOPs and hiring a wetland scientist. They should look at what other towns are doing.

Mr. Russell stated he would take the lead and start doing research; he will get back to the Commission. He would like to attack the SOP on vegetative debris first; he would like to get

some relief for the private property owner who is in the buffer zone from having to file ideally anything but an approval by the Agent. But, in the meantime, allow them to get out from under the requirement of having to hire a wetland scientist.

Commission members discussed situations needed for a wetland scientist and noted they wanted to be very thoughtful about this. They would like some education of the public involved in this process.

Mr. Russell stated he will start this. He would like the Commission to give feedback with any ideas they have. He would like to create the leeway in the bylaws to get things done. The recommendation must come from the Commission as a body to the Town Administrator.

Signed Minor Buffer Zone Activity, Extension Permits & Determinations of Applicability

Determination of Applicability – 604 Pleasant Street – MacDougall

Minor Buffer Zone Activity – 495 Pleasant Street – Shea

Extension Permit – 880 West Central Street – Wise – CE159-1089

Extension Permit – 43 Blueberry Lane – Maple Sands – CE159-1097

Determination of Applicability – 69 Mill Street - Orlando

There was a motion made by Paul Harrington to close the regular session of the Conservation Commission meeting. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-0.

The regular session of the Conservation Commission meeting ended at 8:26 PM.

EXECUTIVE SESSION: Discussion – Pending Litigation

Respectfully submitted,

Judith Lizard
Recording Secretary