**Franklin Conservation Commission**

**Minutes of Meeting**

**October 27, 2016**

To: Town Clerk

cc: Members

File

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

Members Not Present: J. Livingstone.

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

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

**Public Hearing – NOI – 656 King Street – Wegman Companies**

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., representing the Wegman Companies, addressed the Commission to revise the detention basin by adding a 4” PVC slow drain. He stated a detention basin during the winter months was failing to completely drain within the 72-hour time. Soil testing and monitoring done found majority of failure to drain properly was due to frost condition that was not allowing the water to infiltrate properly. Proposing to add a 4” diameter pipe at the bottom to deal with a low flow volume during those months. Since the frost has dissipated, he has monitored every storm until this weekend and the pond does drain within in the 72-hour time. He feels the addition of the 4” pipe will suffice to empty the pond within time.

Chairman Batchelor questioned as there is no DEP number yet why was this being addressed.

Mr. Wilson stated DEP has been very slow issuing numbers; they have not issued a number since early September.

Mr. Russell stated without a DEP number the applicant can make the presentation; the Commission just holds open the hearing pending receipt of the number. If there are no comments from DEP, then all that must be done is to formally close the hearing.

Chairman Batchelor noted that if a presentation is made tonight and any Commission members are not present for the meeting in which a conclusion must be drawn, that poses a situation.

Mr. Russell stated that is a possibility, but when only a DEP number is missing usually there will be no more testimony. He stated that 85-90 percent of the time when DEP issues a number, there are no comments. In addition, he recommended peer review on this application because there have been concerns raised that they system as installed and/or designed is not functioning properly. The current

stormwater report submitted with the application indicates the entire system was looked at. Therefore, it would behoove the Commission, the applicant, and the abutting property owners to have the system looked at based on that report. This has been discussed with Mr. Wilson and it is everyone’s opinion this is the best course of action. Mr. Maglio, town engineer, says peer review is probably warranted.

Mr. Wilson said they strongly agree with this. They need an estimate so a check can be drafted.

There was a motion made by Paul Harrington to authorize peer review for the project for the NOI for 656 King Street. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-0.

Ms. Debbie Murphy and Mr. Paul Murphy, 17 Forest Street, direct abutters to the 656 King Street property, provided documentation, photographs and background information to the Commission members. Ms. Murphy discussed photographs of January 13 when developers started to put 30,000 yds. of fill on her property line. She stated there was a breach in the hill and all the sediment flowed down the hill and filled the silt tube with muck and pushed it into her property. It has never been cleaned, never been looked at. She described pictures of the construction showing much loose soil and a pond. All of it has been coming into her property for the duration of the project. She showed the seven oaks that were supposed to be planted on the property line; they were improperly located and only half of the diameter required. She showed additional pictures of the pond being very full for days in September and October; it is neither frozen nor had been frozen. Another picture showed where the stream overflowed immensely and flooded her property. There are equal amounts of water under her house and in her sump pump area. She showed emails sent to Mr. Maglio, town engineer, Mr. Russell, conservation agent, and Mr. Nutting, town administrator, and stated she is still waiting for people to come up with a plan. She provided a letter from Children’s Hospital stating her daughter has developed health issues because of this. Yesterday at 6:00 AM there was truck idling on her property line for 20 minutes; they were delivering equipment for the day’s work. This has happened many times. She noted that 7:00 AM is the earliest work time allowed. They are repeated violators. She was told to call the police to have them written up. She did not want to do that as she is trying to be a good neighbor; but, yesterday she called the police. Ms. Murphy showed the approved plan of January 17, 2012 and outlined all the wetlands. She said that out of the eight acres of land and 30,000 yds. of fill, the rest is all in the Commission’s jurisdiction, even the building. The pond is about the only thing out of jurisdiction and it comes up to the 100-yard buffer line. She showed how the developers’ retention and drainage systems drain into her property and under her house. Her sump pump runs 24/7. She wants the Commission to understand the raingarden and two ponds have landscaping requirements which she showed, but all the plants are gone. They are supposed to give a detailed receipt of everything planted, but it is not on file. There are no big plants on the entire site. She noted she has very good files and can confirm if the plantings were a Conservation Commission or Planning Board requirement. She explained that Monique Allen, a prior Conservation Commission member, had noted the different plants to be used. These planting were supposed to balance and absorb some of the water. There are no plantings over there now. The size was not correct so the root ball was not there to absorb the water. Then, they died. For two years, she has been asking people to come look at the site and her property before they sign off on anything. She has already been through three conservation agents as each has left the job. She does not know where to turn; she has come before the Commission many times.

Mr. Russell stated that if the plants were planted as required and the Commission released the conditions, and then the plants died, it is not a wetlands violation.

Chairman Batchelor stated that if this is a Planning Board decision, it trumps anything the Conservation Commission can do.

Ms. Murphy stated she brought the plans to show that almost all the project is within the 100-foot buffer. She stated there is no final certificate of compliance released. The Planning Board has signed off on a partial certificate. The Conservation Commission signed off on a partial certificate in 2014.

Chairman Batchelor stated peer review is an independent body that will validate or invalidate the entire drainage plan and how the water is flowing. It is his opinion that the peer review will look at and identify any problems with the flow and retention.

Mr. Russell stated that two facts must be kept in mind. The application submitted is for drainage repair of basin one; the peer review has been extended to look at the entire drainage system. Also, every time Ms. Murphy has contacted him, he has investigated. He stated that 90 percent of the project was complete when he came onboard. What transpired before that was beyond his control. But, he did have the project engineers sign-off and put their licenses on the line that everything was done per the Conservation Commission plan. What was signed off on by the Commission was everything except the mitigation areas as that goes for two years after the sign off which would be October 2016. Interrupting that is the drainage flow issues with a new NOI submitted.

Chairman Batchelor stated that there is nothing they can vote on except the drainage and the release of the mitigation areas.

Mr. Russell stated that if during the peer review analysis problems are encountered, it could start kicking in additional work. At that time, under the NOI, the Commission would have the authority to impose conditions such as all dead plants would have to be replaced.

Chairman Batchelor remarked that if the peer review comes back and does not touch the issues Ms. Murphy has presented, there is nothing the Commission can do.

Ms. Murphy asked about the wetlands lines and new flagging as the wetland area has gotten bigger.

Mr. Russell stated that the current wetlands lines are good until 2019. In addition, he noted that in response to Ms. Murphy’s statement that a project cannot put more water on an abutter’s property, that would be a civil action between Ms. Murphy and the project owners.

Ms. Murphy asked when she could get a copy of the peer review.

Chairman Batchelor stated when the peer reviewers present their document to the Commission, it becomes public record. It should be about one month or so.

Mr. McLean indicated that jurisdiction is not just area, it is subject matter of what they have control over within the area; the Conservation Commission is not the police.

Chairman Batchelor stated the peer review will be looking at the drainage.

There was a motion made by Scott McLean to continue the public hearing for the NOI for 656 King Street until December 1, 2016 at 7:20 PM. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

**GENERAL BUSINESS**

**Certificate of Compliance: 127 King Street**

Mr. Russell stated all is ready to go forward with the release.

There was a motion made by Scott McLean to release the certificate of compliance for 127 King Street. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-0.

**Certificate of Compliance: 3 Rona Lane**

Mr. Russell stated all is ready to go forward.

There was a motion made by Scott McLean to release the certificate of compliance for 3 Rona Lane. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

**Discussion Item: National Grid Vegetation Management**Ms. Mariclaire Rigby, National Grid Vegetation Strategy; Mr. Jonathan Duval, National Grid Transmission Forester; Mr. David Donoghue, National Grid Distribution Arborist; and Mr. TJ Roskelley, Attorney of Anderson and Kreiger LLP, addressed the Commission. Ms. Rigby stated they asked for this meeting as National Grid has been doing utility vegetation maintenance work in Franklin for decades. She explained how the vegetation management departments are setup within National Grid. For both transmission and distribution lines, vegetation growing near these wires must be maintained on a cycle basis to keep the vegetation from touching the conductors and keeping power on in Franklin. Transmission lines are the larger towers, typically 80 ft. Easement and wider right-of-way corridors are managed on four-year cycles. Distribution lines are road-side and managed on four to five-year cycles. Different skills and equipment are used for each. When planning the work, they review for endangered species and water resources and use best management practices when out in the field. She addressed two sites mentioned in the conservation agent’s report. For 5 Kenwood, it was a transmission corridor with tress cut by hand. Since receiving the letter from Mr. Russell, no additional transmission work has been done in Franklin. For 23 Longfellow, it was a distribution line. Trees needing to be maintained were cut by hand and chipped offsite. There was a communication gap on the side of National Grid regarding transmission and distribution departments. Internally, as a company, this has been corrected. The vegetation still needs to be maintained so there is not an interruption of power. There is nothing critical now, but do not want it to get to critical point where there could be issues. In some towns, they contact the conservation agent ahead of time to alert. They would like to discuss this as they need to continue to do vegetation maintenance work and there is work to be done in wetlands.

Mr. Russell stated that as indicated in his agent’s report, the lack of an exemption is under the jurisdiction of the Town Council; they are the ones who passed the bylaw. The Commission only follows the bylaw. The bylaw specifically states trees cannot be cut. In addition, he noted this Commission has approved at least two permits for National Grid on the distribution side. He agrees there have been internal communication issues within National Grid. He stated they have been cutting down trees with wetlands flags on them which caused great difficulty for an applicant trying to maintain a wetlands line. Then, a year later they cut down trees on the land of a private property owner causing great expense. Something is not right. However, from his position as the conservation agent, he does not have any problem with an exemption for a utility company through the Town Council. This Commission cannot just ignore a section of the bylaw.

Attorney Roskelley stated his understanding is that National Grid has been performing exempt maintenance work in Franklin for decades. It was permitted as an exempt activity and okayed by the

agent. He explained the legal perspective and intent. It seems that it was acceptable in the past, so he is curious as to what has changed to make it not an acceptable interpretation of the bylaw now.

Mr. Russell stated what has changed is him being the agent.

Chairman Batchelor stated the past is the past; this Commission deals with the current situation. If issues come up, they must determine whose jurisdiction it is--Town Council or Conservation Commission. No exemptions allow for harm or damage to the public. It also does not allow for an internal interpretation of what the rules are.

Mr. Russell noted the state requires the local Commission’s bylaw to be more stringent. One way that Franklin made it more stringent is to say that a tree that is in jurisdiction cannot be cut. National Grid is exempt to only cut down trees in the buffer; they have taken down trees that were in the BVW at 5 Kenwood Circle which is a violation of 310CMR. However, the Commission only generated a letter, not enforcement action. It is the Town Council that determines whether the exemption exists or not.

Chairman Batchelor suggested listening to each other and having a conversation. He stated that things were probably done that should not have been done and asked the National Grid presenters to agree.

Mr. Duval stated that line construction work goes through a permit process with engineers. On their end, they are in the business of cutting trees to maintain what is already out there. It is a different department. They do not use the environmental department for maintenance work. They have been maintaining these lines since late 1960s. Permits are separate; they do not have anything to do with that department.

Chairman Batchelor asked them that as a home owner how would they feel if they had to spend their own money for something that someone else did to damage their property.

Mr. Duval stated that when he received the letter from Mr. Russell he said he would have no problem meeting with and rectifying issues with the property owner.

Chairman Batchelor stated he understands this maintenance must take place. The issue is larger than the cutting of trees.

Mr. Russell stated he thinks National Grid should have an exemption. He noted it is not up to him how National Grid will attack this problem.

Mr. Donoghue said he was responsible for the crews that did the work at 23 Longfellow. There was no malicious intent. He disagreed about what he thinks the Commission just said that National Grid did. He saw the area prior to the cutting. He does not have photos; it was a heavily overgrown line. He believes the contractors performed the work within the specifications and they did not clear cut anything off to the right side of the line. He wants to clarify what was cut and not cut. The contractor did not cut that area.

Mr. Russell stated he agreed, but they were still cutting in the jurisdictional area and no permit was obtained under the local bylaw.

Mr. Donoghue said he works in 27 towns and this is a common exemption. This is the first time it has come up.

Chairman Batchelor stated he cannot comment on 27 towns; he can only comment on Franklin.

Mr. Russell stated it is his opinion that the bylaw should be amended; the Commission does not have that authority. He stated the ball is in National Grid’s court. If they decide to petition the town for an exemption, the Commission would have input. He suggested National Grid contact Mr. Mark Cerel, town attorney, for his input.

Mr. Roskelley remarked that they are here to solve a problem and reiterated that until recently the bylaw was interpreted differently and they were given an exemption. The Commission must understand National Grid is relying on past practices established for routine maintenance.

Ms. Henrichon stated that the Commission should be notified ahead of time when any work is going to be done, even if it is determined that National Grid is granted an exemption.

Mr. Russell noted that under 310CMR, National Grid must file a NOI to cut in the BVW; 310CMR exemptions are for buffer zone work.

Chairman Batchelor thanked the National Grid presenters for coming in and having this discussion.

**Discussion Item: Website**

Mr. Russell stated the Town of Franklin has a new website. They are still working through it and becoming more familiar with it.

**Discussion Item: Support for LCC Request**

Ms. Henrichon stated they were approached by Stony Brook Wildlife Sanctuary, part of Mass. Audubon. They asked if they could use DelCarte to do a walk on natural history interpretation sometime this spring to be funded by the Franklin Cultural Council. The focus is on mindfulness.

Chairman Batchelor stated he thinks it would be great.

Mr. Russell stated there is a form for groups or organizations that want to use Conservation Commission controlled land. He asked if the Commission wanted this form completed and submitted or since it is Mass. Audubon just let them do it.

Ms. Henrichon said it is essentially the town that is asking for the use of DelCarte.

Mr. Russell stated the form is for non-municipal use; not for town-sanctioned events. So, based on that, it seems the form is not needed.

There was a motion made by Tara Henrichon that the Conservation Commission is in support of a Mass. Audubon program funded at the discretion of the Franklin Cultural Council. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-0.

**Discussion Item: Adoption of Best Practices Manual**

Mr. Russell stated the Planning Board has gone on record as recommending the adoption of the Best Practices Manual dated September 1, 2016. There are a few minor corrections to be made. He requested a formal vote of the Commission to adopt it.

There was a motion made by Tara Henrichon that the Commission adopt the Best Practices Manual dated September 1, 2016. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

**CHAIR AND COMMISSION COMMENTS**

**Minutes**

There was a motion made by Paul Harrington to accept the minutes for the October 13, 2016 meeting. The motion was seconded by Scott McLean and accepted with a vote of 4-0-2. (Ms. Henrichon and Ms. Gelineau abstained.)

**Signed Certificates of Compliance**

Certificate of Compliance – 3 Rona Lane – Wrenlin Corp. – SE159-71

Certificate of Compliance – 127 King Street – Claremont Condominiums – CE159-1073

There was a motion made by Scott McLean to adjourn the meeting. The motion was seconded by Nick Shuler and accepted with a vote of 6-0-0.

The meeting adjourned at 8:44 PM.

Respectfully submitted,

Judith Lizardi

Recording Secretary