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Conservation Commission Minutes - 05/12/2016

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**Franklin Conservation Commission
Minutes of Meeting
May 12, 2016**

To: Town Clerk
cc: Members
File

Present: J. Livingstone, P. Harrington, B. Batchelor, T. Henrichon, A. Gelineau, R. Pendkar, George Russell, Conservation Agent, Kathleen Celorier, Secretary.

Chairman Livingstone announced the meeting would be audio and video recorded. Mr. Ravi Pendkar requested to make an audio recording.

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

Public Hearing – Continued - NOI – Map 233, Lots 3, 4 & 5 Lincoln Street

Mr. Eric Dias, Professional Engineer of Strong Point Engineering Solutions, LLC, addressed the Commission for the construction of residential subdivision. He stated they had appeared before the Planning Board with a subdivision modification on April 25, 2016. The Planning Board disagreed with their approach and requested they reapply as a definitive subdivision; they did refile. The only change on the plan set is the term "subdivision modification" to "definitive subdivision." They have received comments from BETA on drainage, but have not yet addressed them. They also received four comments from BETA's wetland consultant and they responded to those comments to the agent. Mr. Dias provided a written document to each Commission member with said responses; as well, he verbally reviewed each response. In response to a Commission member's question, he stated it was a matter of administration as to the reason the Planning Board was making a distinction between "subdivision modification" and "definitive subdivision." His understanding of the project was that it was a subdivision approved in 1998 and that presenting it as a subdivision modification was correct. But, the Planning Board stated this was a completely new subdivision.

Mr. Russell stated that as applicant is responding to the comments from the peer review consultant, he forwarded said comments to BETA Engineering and will request response from them by May 26, 2016. He recommended the hearing be continued to the next meeting.

Commission indicated that wildlife evaluation would be beneficial to the overall project.

There was a motion made by Ravi Pendkar to continue the public hearing for the NOI for Map 233, Lots 3, 4 & 5 Lincoln Street to May 26, 2016 at 7:35 PM. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

Public Hearing –NOI – 300 Fisher Street – Site Specific, LLC

Mr. Russell recommended peer review for this application.

Ms. Peg Stofa, Attorney of Gordon & Rees, representing the owners of 300 Fisher Street, addressed the Commission for the demolition of an existing industrial building. She stated there will be no excavation; building will be brought down to the slab. The Trust does not have a lot of money. It is listed as a Superfund site; it is next to the town's water supply. However, none of those issues are relevant to this NOI as only taking down the building.

Mr. Charlie Shepherd of CDW Consultants provided an overview of the project. NOI has been submitted. Site is just under 17 acres and zoned mostly industrial; some is riverfront. The building is enclosed in chain-link fence. Filter fence will be installed. Current access is from Fisher Street. The structure is concrete block.

Chairman Livingstone stated the building is a public safety hazard; it is vacant, structurally unsound and toxic material in ground. This is a substantial project and there are significant impacts.

Mr. Pendkar indicated he did not see the value in peer review and questioned what would they be looking for.

Mr. Russell indicated he recommended peer review to establish where the wetlands lines are which will dictate everything else on the site.

Ms. Stofa stated they did have a wetland scientist verify and reflag the previously indicated wetlands lines.

Mr. Russell stated he would like to have the town's professional look at the wetlands line and determine if there are any problems. This is a Superfund site; Commission should know the location of the wetlands line. Filter fencing is not allowed so that must be changed. Town attorney recommends peer review in these cases. A wetlands line is only good for three years and it has expired. Commission cannot accept this plan and then during a future project or excavation ask to have the line reviewed as Commission would have already accepted it on this plan.

Ms. Stofa stated their wetland scientist did reflag the lines and there will be no excavation, so none of those risks are posed from this project. Lead and solid waste are the toxins that she is aware of at present.

Chairman Livingstone summarized that this is the one and only opportunity to make sure this is the correct line. And, based on the nature of the site and the likelihood that there will be cleanup work done, the Conservation Commission must make sure it is correct.

Ms. Stolfa stated she saw the proposal from BETA for peer review and it seems rather high based on the narrow scope of the project. She assumes that if the client agrees to pay, the money will be held in Trust and only paid if it is used.

Mr. Russell stated that of the last twelve peer reviews BETA has done, they have all come in under budget.

A resident of 21 Mary Jane Road, an abutter to the site, asked if they were going to sell the property and build anything on the land.

Chairman Livingstone stated that it is a Superfund site; the likelihood of something going up there would require a very big clean up.

Mr. Russell stated this proposal is to demolish the building only.

Ms. Stolfa stated that after testing, it was concluded that there were no containments in the air.

There was a motion made by Paul Harrington to close the public hearing for the NOI for 300 Fisher Street. The motion was then rescinded by Paul Harrington.

There was a motion made by Ravi Pendkar to recommend peer review for the wetlands line on this application for the NOI for 300 Fisher Street, noting the concern of the Commission that this may be the Commission's only chance to firmly once and for all delineate that before any future action is done. The motion was seconded by Paul Harrington and accepted with a vote of 5-0-1 (Mr. Pendkar voted No).

There was a motion made by Paul Harrington to continue the public hearing for the NOI for 300 Fisher Street on May 26, 2016 at 7:40 PM. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Public Hearing – NOI – 2 Maria Circle - Giancioppo

Mr. Russell stated that although the Commission is receiving new material at this meeting, he has previously received these materials.

Ms. Renee McDonough, Wetland Scientist of Goddard Consulting, LLC, representing the applicant addressed the Commission for the construction of two additions to existing single-family house. She indicated there was an intermittent stream at the back of the lot. Lawn and landscaping surround the home. With the two additions, they are adding 326 sq. ft. on existing lawn and existing developed area. Applying for NOI. Under the town bylaw will be working in the 100 ft. buffer zone.

Mr. Russell stated he has visited the site and generated a review letter. Applicant has met all concerns. He recommended approval with stipulations outlined in his agent's report.

Chairman Livingstone stated when applicants are working within the buffer zone, Commission typically asks them to make the best effort possible to remove dirt from the excavation and keep it as far away as possible.

Mr. Donald Giancioppo, owner/applicant, stated the reason for the additions is the family has outgrown the house.

Commission stated that as impervious area is being created it must be done so that runoff is going away from the wetlands.

There was a motion made by Bill Batchelor to close the public hearing for the NOI for 2 Maria Circle. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

There was a motion made by Bill Batchelor to accept the NOI for 2 Maria Circle with special conditions #20, 24, 27, 28, 29, 34, and 44. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

Public Hearing – ANRAD – Map 242, Parcel 12 Maple Street – Carroll Construction

Mr. Briscoe Lang, Principal Environmental Scientist of Pare Corporation, representing Carroll Construction, addressed the Commission to confirm the delineation of bordering vegetated wetlands. He reviewed the proposed plan. He stated that in early 2015 their wetland scientist identified two isolated wetlands without point source inlets and qualifying as isolated vegetated wetlands and freshwater wetlands under local bylaw. There are two other wetlands off the site with the 100 ft. buffer within the site. Additional information on the delineation will be forthcoming. He submitted the green cards to the Commission. He stated some of the lines were last delineated July 11, 2008.

Mr. Russell recommended peer review to verify the lines. He stated this was imperative because as the developer starts laying out the development, the Commission must know the impact. In order for the Commission to determine the impact, it must be known where the lines are. Regarding the delineation date, Mr. Russell stated that was subject to the permit extension act allowing a seven-year window to July 11, 2015, but that window has expired.

Mr. Lang stated an option would be to exclude this part. As the project develops they will know if they need the additional flagging.

Mr. Russell stated the critical item to get the project moving is to verify the current lines of the two isolated wetlands. The northern portion can be looked at as the project moves forward. Should the Commission decide not to request peer review of the line, when the development comes forward the Commission has defacto accepted the line.

Chairman Livingstone stated the above would be true for whomever did the delineation. Who is to say that BETA would be any more or less accurate than the other group as both are certified professionals. If Commission says that applicant has to hire a second wetland scientist, Commission is saying that two data points are better than one. If Commission is going to go that route, then why doesn't Commission recommend to the applicant that there be two independent delineations, thereby eliminating the need for peer review for line delineation.

Commission members discussed what made sense at the ANRAD stage for requesting a second delineation. If Commission is going to second guess the lines for this ANRAD, the Commission will have to do this for every ANRAD to be consistent.

Mr. Russell stated without the Commission hiring their own peer review agent the Commission is on shaky legal ground.

Chairman Livingstone remarked that the Commission may want to consider publishing opinion as in which situations a peer review might make sense.

Mr. Michael Mavrides, of Wrentham, clarified that an ANRAD can be appealed by an abutter.

Mr. Russell stated an appeal can be made by any ten people in town.

An abutting property owner stated that he wants it to be clear as to what is being done at this phase and what will transpire after that, including the timing.

Mr. Russell reviewed the process and noted this is to confirm the wetlands line.

There was a motion made by Paul Harrington to request peer review for delineation for the ANRAD for Map 242, Parcel 12 Maple Street. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-2 (Mr. Pendkar and Mr. Harrington voted No).

There was a motion made by Bill Batchelor to continue the public hearing for the ANRAD for Map 242, Parcel 12 Maple Street to May 26, 2016 at 7:45 PM. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

Public Hearing – NOI – 100 Financial Drive – Daedalus Projects, Inc.

Mr. Harrington recused himself.

Mr. Pendkar recused himself.

Mr. Russell stated he recommended peer review for this project for the construction of 70,000 sq. ft. academic building facility, parking, play areas and a soccer field. He stated this has already gone through peer review for the ANRAD portion; this is now for the development impact. Before any testimony was taken, he told the applicant there is a Commission member missing tonight. If a presentation is given and the hearing is then continued and one of the four members are not present at the next meeting, there will not be a quorum. He recommended since the hearing is going to be continued anyway, that applicant not make a presentation.

There was a motion made by Angela Gelineau for peer review for the NOI for 100 Financial Drive. The motion was seconded by Bill Batchelor and accepted with a vote of 4-0-0.

There was a motion made by Angela Gelineau to continue the public hearing for the NOI for 100 Financial Drive to June 9, 2016 at 7:15 PM. The motion was seconded by Batchelor and accepted with a vote of 4-0-0.

GENERAL BUSINESS

Minor Buffer Zone Activity: 5 Chilmark Road

Mr. David Constantino, 36 Wampanoag Drive, local remodeling contractor in Franklin, representing Evelyn and Jim Harmon, property owners of 5 Chilmark Road, addressed the Commission for the deck replacement project that will involve footings only, no foundation work. He stated he will remove and replace the existing deck to construct a screened porch with an attached deck. He will be putting in ten new footings with 12 in. sonotubes. These will be dug using a small machine with no disturbance.

Mr. Russell stated that the slope goes in such a way that there will be no erosion.

There was a motion made by Paul Harrington to accept the MBZA activity for 5 Chilmark Road. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Violation: 23 Longfellow Drive

Mr. Russell stated this is on the agenda based on three issues: the clean-up was done before the review was complete and before a permit was issued; the work was done by heavy equipment and the installed erosion control barriers are filter fabric which are not allowed; and from the review by WSI the wetlands line may not be where the plans indicate and therefore the impact of the work may be greater. He recommended the Commission issue another enforcement order requiring the filing of an NOI for the activity that has taken place and get the wetlands line delineated to know the impact. There is a significant BVW on the site.

Mr. Michael Mavrides, of Wrentham, indicated he was at the last Conservation Commission meeting. He provided Mr. Russell with the required check for peer review and was told he could leave. He stated he assumed based on Russ Waldron's report he could start taking the leaves out. He brought his bulldozer and when started found that there was loam under the leaves. He took a few loads out. He put up fabric on both sides, then got days of rain and no erosion happened. The peer reviewer met him onsite and said there were a few flags that were wrong. He called Bruce Wilson and Russ Waldron to the site and they said that Mr. Mavrides should plant some grass where he disturbed the soil, which he did. He put the silt fence on both sides. He then called National Grid who had clear-cut on his property. They said they can help him remediate what was taken down, but they did not feel there was a need because on the easement it says they have the right to clear-cut. By their legal documents they do not have to notify the property owner and they have the right to clear cut 10 ft. on either side of the poles. The National Grid representative said he would speak to Mr. Russell. He summarized the leaves are gone, grass planted, silt fence put up. He had no idea he was waiting for a permit.

Mr. Russell stated in addition to what the property owner just stated, National Grid may have authority in terms of an easement to go onto the property and cut vegetation, but they do not have a permit under the Wetlands Protection Act to cut vegetation in a resource area or buffer zone. National Grid does not have an exemption under the local Wetlands Protection bylaw to cut anything in a jurisdictional area. The property owner did not create the problem, but is responsible for mitigation of the problem.

Chairman Livingstone questioned how to amend this situation to return it to what it should be.

Ravi Pendkar said he sympathized with the property owner as the owner does not live on the property and is dealing with the dumping of leaves and National Grid exercising their right-of-way. He noted the property owner has been cooperative with Commission: he brought in a wetland scientist and filed RDA to remove leaves. In the RDA the Commission gave a positive finding. He stated the problem with adding conditions to an RDA is that there is no legal enforcement of the conditions as there is no release of conditions. In an NOI there is a release of conditions. The property owner has done everything a reasonable person could do in this case except he did not inform the Conservation Commission before doing this work. Given there is only an RDA on this problem, can just work with that and square it off and that will be the end of the matter.

Chairman Livingstone stated he agreed and feels similarly. He remarked that Mr. Russell feels there should be some record of the plan.

Mr. Russell stated there has been no permits filed for this work. There has been a remediation plan, but that is not a permit. He confirmed there was a positive RDA. Therefore, applicant has to reapply formerly to the Commission for them to reconsider this, or applicant has to file an NOI.

Chairman Livingstone summarized applicant must refile the RDA with the plans that show what has been done so Commission can review. Then Commission will have a record of what was and is to be done and have another public hearing for reconsideration of the positive RDA.

Mr. Mavrides asked if he filed an NOI for the new lot would that work.

Mr. Russell stated that would solve all the problems. He also stated he would send Mr. Donahue, the National Grid representative, a letter outlining their responsibility regarding the local wetlands bylaw. And, he will generate a letter to Mr. Mavrides asking for a tentative schedule.

Chairman Livingstone stated he was disturbed by the interaction of National Grid with the property owner. The Commission needs to go further than writing a letter to Mr. Donahue. The town attorney should be involved.

Discussion Item: DeICarte

Mr. Russell stated the DPW has been spreading woodchips adjacent to the water body in an attempt to control the invasive species. Some is in jurisdiction and some is not. He asked the Commission if they wanted another permit for the placement of the woodchips, or could this be considered part of the original permit to remove the invasive species.

Mr. Pendkar stated area used to be filled with brush; now it is completely landscaped with wood chips. All the trees have been shaved off to 15 ft. high. The permit that was filed did not allow for any of these things to happen. Wildflowers were supposed to replace this, not mulch.

Chairman Livingstone recalled safety concerns by police and at their request the clearing be done so police had full visibility of the area. At no time does he remember having a discussion to allow mulch to be put in the entire area.

Mr. Russell stated that the spreading of the mulch does rise to the level of a permit, minimum of an RDA, because area is within jurisdiction and under management of the Conservation Commission. He will generate correspondence to the Director of DPW.

Discussion Item: Education and Outreach

Mr. Russell stated Commission members received the draft of the Open Space Plan which will be going on the social media website and having public hearing on it next week.

Discussion Item: Local Filing Fees

Mr. Russell stated the local filing fees have not been updated since 1997. He would like to do some comparison charts based on other local communities and discuss further at next Conservation Commission meeting. Franklin may be under charging for filing fees. For instance, town does not charge for filing an RDA, but agent still must do site visit.

Discussion Item: Yearly Operational Plan – Weed Spraying

Mr. Russell stated this is set up by DPW and is the annual herbicide spraying in the public right-of-way. Most is done on impervious surfaces. DPW needs an RDA for this and it will be brought to their attention.

CHAIR AND COMMISSION COMMENTS

Chairman Livingstone referenced two informative materials he provided to Commission members regarding the Keystone educational program he attended. Materials included funding sources for various types of projects.

Signed Minor Buffer Zone Activity & Orders of Conditions.

Minor Buffer Zone Activity – 5 Chilmark Road – Harmon
Orders of Conditions – 2 Maria Circle – Giancioppo – CE159-1127

There was a motion made by Paul Harrington to adjourn the meeting. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

The meeting adjourned at 9:30 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary