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From: **Breeka Li Goodlander** <bgoodlander@franklinma.gov>

Date: Tue, Apr 29, 2025 at 9:54 AM

Subject: 310 CMR 10.05(4)

To: Mark LePage & Jeff Livingstone <

Morning Jeff and Mark,

I just wanted to send you this snippet from the WPA re: abutter notification. As we know, abutters were notified (affidavit of service attached) on Tuesday, April 22 - 10 calendar days before the first initial public hearing. The legal ad also began circulating on Tuesday, April 22 and the public hearing notice was posted at the Clerk's office on Friday, April 18. I've also attached the Certified Abutters List from the Assessor's Office which shows properties within 300 feet of the parcel boundary to be notified (note here: the WPA only requires 100 feet, so we are more conservative in our public notices. This fact may be beneficial to you as you move through the public hearing process during my leave.) As you can see, both 36 (Mr. Gene Grella) and 32 (Mr. Ben Sandman) are listed on the abutters list and notices were sent out to them (see attached white certificate document/screenshots below) which means that the process to notify them occurred. I'm not saying they're lying that they haven't received their notices - I believe them when dealing with USPS and a holiday schedule - only that there is so much the Town is liable for and/or the regulations only speak to notices being sent out. The requirement stops at having a Certified Abutter List, affidavits of service, and proof that notices were mailed **at least seven days prior to the initial public hearing**. Given that the affidavit of service was provided on April 22, 10 calendar days prior to the initial hearing (or eight if you exclude April 22 and May 1), the legal requirement is met for abutter notification. Additionally, per 310 CMR 10.05(4), the Conservation Commission is the final say on abutter notification compliance, absent a clear showing that the Applicant failed to notify an abutter - which is not the case here given the Certified List, affidavit, and white slips.

As I mentioned to Mr. Grella this morning, lawfully the Commission cannot postpone opening the hearing, as submissions need to open within 21 calendar days, and there is no other legal reason not to. The Commission is obligated to open the hearing to avoid a lawsuit from the Applicant and/or a Request for a Superseding Order of Conditions with DEP. As you know, if the Applicant finds fault in the process with the Commission, they can skip home rule and go right to DEP for an Order which has less oversight and more lax regulations than the Town does. If that happens, there is no public comment, no Order of Conditions drafted by the Commission, and no control from townsfolk. We need to follow the public process to ensure that resources are protected as much as possible.

Other than the documents attached, I do not have green cards from the Applicant yet, except for six, which includes MassDEP. This is typical, as green cards usually come back after a public hearing is opened. You may recall Applicants mentioning that they have the green cards during subsequent meetings for previous projects and handing them to me during the hearing. I do have white cards (the other half of Certified Mail/Return Receipt) demonstrating that abutter notifications were sent out. Unfortunately, there is nothing else the Commission can do to maintain compliance with all facets of every presiding Reg and any wavering from these Regs is to ensure non-compliance.

I highly suggest you both have a digital copy of the WPA on your devices so you can easily search for keywords and read the Regs to better be able to communicate effectively and lawfully with abutters and Applicants. I also suggest reviewing your MACC handbook and the [MACC resource library](#) (i.e., "meeting basics") to help with supplemental information.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

10.05: continued

Concurrent with the filing of the Notice of Intent, the applicant shall provide notification to all **Abutters**. Notwithstanding the foregoing, the requirement to provide Abutter notification is subject to the following limits. An applicant is required to provide notification to an Abutter whose Lot is separated from the Project Locus by a public or private street or body of water only if the Abutter's Lot is within 100 feet from the property line of the Project Locus. An applicant who proposes work solely within Land under Water Bodies or Waterways, or solely within a Lot with an area greater than 50 acres, is required to provide notification only to Abutters whose Lot is within one hundred feet from the Project Site. An applicant proposing a Linear-shaped Project greater than 1,000 feet in length is required to provide notification only to Abutters whose Lot is within 1,000 feet from the Project Site. Abutter notification is not required for projects proposed by the Massachusetts Department of Transportation Highway Division pursuant to St. 1993, c. 472 as approved on January 13, 1994. The applicant shall provide notification at the mailing addresses shown on the most recent applicable tax list from the municipal assessor. Notification shall be at the applicant's expense. The notification shall state where within the municipality copies of the Notice of Intent may be examined or obtained and where information on the date, time, and location of the public hearing may be obtained. To ensure compatibility with local procedures, applicants must comply with any rules of the local conservation commission pertaining to the location for examining or obtaining the Notice of Intent and information about the hearing. The applicant shall provide written notification to all Abutters required to be notified by hand delivery or certified mail, return receipt requested, or by certificates of mailing. Mailing at least seven days prior to the public hearing shall constitute timely notice. The applicant shall present either the certified mail receipts or certificate of mailing receipts for all Abutters at the beginning of the public hearing. The presentation of the receipts for all abutters required to be notified as identified on the tax list shall constitute compliance with Abutter notification requirements. The conservation commission shall determine whether the applicant has complied with Abutter notification requirements. The Department will dismiss Requests for Action based on allegations of failure to comply with Abutter notification requirements, absent a clear showing by an Abutter seeking Department action that the applicant failed to notify the Abutter. An applicant submitting a Notice of Intent for a project that is also subject to 310 CMR 9.00: *Waterways* and/or 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth* may provide joint public notice by appending to the public notice required by 310 CMR 9.13: *Public Notice and Participation Requirements* and/or 314 CMR 9.05: *Submission of an Application*, as applicable, notification that a Notice of Intent is pending before the issuing authority, provided the notification complies with 310 CMR 10.05(4). An applicant may provide a joint public notice, even if the Notice of Intent is not a Combined Application.

- (b) For certain purposes, other forms of Notices may be used.
1. For certain projects, applicants may at their option use the Abbreviated Notice of

(Snippet from 310 CMR 10.05(4))

Parcel Number: 284-039-000
CAMA Number: 284-039-000-000
Property Address: 32 RED GATE LN

Mailing Address: SANDMAN BENJAMIN SANDMAN
MEGAN
32 RED GATE LN
FRANKLIN, MA 02038

Parcel Number: 284-040-000
CAMA Number: 284-040-000-000
Property Address: 36 RED GATE LN

Mailing Address: GRELLA GENE P GRELLA ELIZABETH A
36 RED GATE LN
FRANKLIN, MA 02038

(Snippet from Certified Abutters List demonstrating Ben Sandman and Gene Grella were listed)

9589 0710 5270 0103 7786 05

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

Franklin, MA 02038

Certified Mail Fee \$4.85

Extra Services & Fees (check box, add fee)

<input type="checkbox"/> Return Receipt (hardcopy)	\$3.00
<input type="checkbox"/> Return Receipt (electronic)	\$1.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.73

\$9.68

SANDMAN BENJAMIN
 SANDMAN MEGAN
 32 RED GATE LN
 FRANKLIN, MA 02038

FRANKLIN, MA 02038
 APR 22 2025
 04/22/2025

for instructions

(White card demonstrating the a notice was sent out to Mr. Sandman)

7022 3330 0000 6061 4555

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

FRANKLIN, MA 02038

Certified Mail Fee \$4.85

Extra Services & Fees (check box, add fee)

<input type="checkbox"/> Return Receipt (hardcopy)	\$3.00
<input type="checkbox"/> Return Receipt (electronic)	\$1.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.73

\$9.68

GRELLA GENE P
 GRELLA ELIZABETH A
 36 RED GATE LN
 FRANKLIN, MA 02038

FRANKLIN, MA 02038
 APR 22 2025
 04/22/2025

for instructions

(White card demonstrating that the notice was sent to Mr. Grella)

Breka Li (Bree-kah Lie)

First name



**TOWN of
FRANKLIN**
MASSACHUSETTS

Breeka Li Goodlander, PWS, CERPIT

Director | Conservation

**355 East Central Street
Franklin, Massachusetts 02038-1352**

o. 508-520-4929

E. bgoodlander@franklinma.gov

Subscribe [here](#) to receive all the latest Conservation news.

NOTE: The Conservation Department is extremely busy this season. Please allow us three business days to respond to all Conservation inquiries and/or permitting questions. For emergencies, please call (508) 520-4847. Working from Home: 4/24, 4/28, 4/29, 5/2, 5/5-5/9, and 5/12-5/16. On leave thereafter.

*Before printing this e-mail, consider whether it is necessary. **Think Green.***

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5 attachments



Abutter Notification Submittal.pdf

7606K



Notification to Abutters Mailing copy.pdf

745K



284-066-000-000 - 444 EAST CENTRAL ST - REPORT - SIGNED COPY_NOI App Abutter List.pdf

2004K



Green Cards 1.pdf

1109K

 **2025-04-22 ABN Cert Mail Receipts.pdf**
5502K