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Conservation Commission Minutes - 04/14/2016

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Franklin Conservation Commission Minutes of Meeting April 14, 2016

To: Town Clerk
cc: Members
File

Present: J. Livingstone, P. Harrington, S. McLean, B. Batchelor, T. Henrichon, A. Gelineau, George Russell, Conservation Agent

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

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

Mr. Russell requested Commission add to the agenda "Discussion Item 2.4.5: DelCarte Pond Cleanup."

There was a motion made by Scott McLean to add to the agenda Discussion Item 2.4.5: DelCarte Pond Cleanup. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

Public Hearing –Notice of Intent – Railroad ROW off Hayward Street

Mr. Dave Gorden, Wetland Scientist of Peer Consultants, addressed the Commission for the replacement of existing granite box culvert. They are hoping to do the project during the weekend of April 23-24. It will be about an 18-hour project. The culvert is in a state of failure, both the headwall and the granite box underneath, and want to make sure trains can safely pass in that area. He stated the town engineer has reviewed the plan and said it is sound. Requesting an order of conditions for this project.

Mr. Russell stated the NOI number has been received as well as comments from DEP.

Mr. Gorden addressed DEP's comments. He stated DEP requested a full-size plan which he will provide. DEP questioned the design which was answered by the engineer and found to be sound. DEP also questioned the 24 ft² of BVW that will be impacted. He stated this is the area behind the Mill. There is an area of sediment that filled in where a stream once was and vegetation has grown; this will be the only area that is impacted when replacing the culvert. He noted they were not seeking a federal permit, therefore no 401 Water Quality Certification required.

Mr. Russell stated that one of the reasons the NOI went forward was to have the town engineer look at the project from a drainage and stormwater standpoint. The town engineer stated what is proposed by the applicant will work. Based on that, the applicant does have the emergency certification in place and now has the DEP number. He stated he sees no reason to hold up any approvals for this project especially given the tight time parameters.

There was a motion made by Scott McLean to close the public hearing for the NOI for Railroad ROW off Hayward Street. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

There was a motion made by Scott McLean to accept the NOI for Railroad ROW off Hayward Street with stipulations #20, 21, 28, 34, and 44. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

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

Mr. Eric Dias, Professional Engineer of Tunison Dias Inc., addressed the Commission for construction of residential subdivision. He noted he did not bring the green cards tonight. He is aware Mr. Russell has suggested peer review for this project. He provided an overview of the project. They have worked closely with town departments regarding the design. It was presented to the Planning Board as a subdivision modification and approved in 2008. It did not come before the Conservation Commission at that time. There are questions whether that Planning Board approval is current or has lapsed. The subdivision in that form does not meet current zoning requirements. This has caused applicant to rework plan. The total land area is approximately 32 acres. He showed the lot plan sheet. Parcel B holds the bulk of the resource areas and walking trails. The total is about 22 acres to be conveyed to the Town of Franklin. So, if Town of Franklin accepts it, land will not be developed unless the Town develops it. With regard to open space, it has frontage on Lincoln Street. Proposing connection to the proposed Right of Way. Right now there is a trail that runs through; that connection to the trail will still exist. He stated there are three resource areas on site: a BVW, a bordering land subject to flooding, and a riverfront area. Work is proposed within 100 ft. buffer zone of the BVW constructed for stormwater management. It will serve as a detention basin intended to let the wetland expand and take it over. This is proposed rather than going with traditional stormwater management system of catch basins, manholes, and separators. Majority of proposed homes are outside the BVW. He noted they are not filling the bordering land subject to flooding so it will be of little impact if any at all. They designed the project to be under the 10% disturbance in the riverfront area.

Commission member asked about water mitigation plan for stormwater runoff. As applicant will not be using catch basins, what guarantee will people on Winterberry Drive or Lincoln Street have if there is more than average rainfall that it will not cause washout.

Mr. Dias stated the storm drainage system has been designed up to a hundred-year storm event. There is a culvert going under Winterberry Drive. Looking at slope area, it would have 10 ft. of ponding before it would overtop onto Winterberry. He stated the calculations show that everything will be contained within the forebay. There are catch basins at the end of the swale that will collect water and direct it where it needs to go. He stated he was confident that the wetland that exists will be able to absorb water as it has great capacity.

Mr. Russell stated he recommended peer review and has already received funding from applicant for such. Commission must formally authorize it. Therefore, hearing should be continued until at least the next meeting, but recommended continuation to May 12.

Mr. Dias indicated that as they have to meet with Planning Board, returning in two meetings rather than one makes sense.

Elizabeth Glover, 47 Winterberry Drive, stated she met with Mr. Russell on Tuesday and looked over the plans. She lives close to the outflow point. She expressed concern regarding the potential impact on the existing wetlands and flood zone with the building of these properties. Shepard's Brook is a tributary which feeds into the Charles River and Franklin is part of the Charles River Watershed. The proposed area is a wildlife corridor with vernal pools and endangered princess pine. The project could impact the flora and fauna. She asked if Commission members have walked the area and indicated it is quite beautiful. She asked about the ledge in regard to where the proposed homes will be.

Mr. Dias indicated soil testing has been done for the purposes of identifying where the ledge is located and the project has been designed with the knowledge of the ledge throughout the site. Some waivers have been requested from Planning Board with regard to being allowed to not impact the ledge. There will be some ledge excavation, but have tried to minimize that.

Mr. Russell stated there are no certified or potential vernal pools on the site. There are also no estimated priority habitats on site. The peer review will evaluate the stormwater runoff. To determine impact of this development on the wetlands, Natural Heritage maintains a database of the vernal pools within the state and none show up here. It is possible one could have been missed, but during the ANRAD process the wetland scientists would have noted it. Mass Wildlife also maintains a database of the priority and estimated habitats for endangered and threatened species and this site does not show up.

John Glover, 47 Winterberry Drive, asked if the Charles River Watershed has been notified. In regard to ledge excavation and potential runoff, he asked if anyone had been in the area or walked through. He noted concern regarding the ledge, grading, and potential runoff in the event of a storm. He also mentioned that an almost identical project at the site was proposed nine years ago and it was rejected by the Planning Board. He asked what makes this project different now.

Mr. Russell stated the legal requirement is that any property owner within 300 ft. of this site be notified by certified mail. It was also advertised in the newspaper and no response has been received. The Commission's peer review consultant and wetland scientist have been all over the site.

Mr. Dias stated there are steep slopes and they have put together a comprehensive erosion control plan and stormwater pollution prevention plan to protect the brook.

Mr. Russell stated he would be onsite at least once a week. The Planning Board consulting engineer will be on site probably every day or every other day. He noted that Mr. Glover would need to ask the Planning Board his question about the project. He noted that the prior project never came to Conservation Commission, it only went to Planning Board.

Mr. Dias stated this is scheduled for the Planning Board meeting on April 25. He stated he reviewed the old plan and it lacked a lot in terms of stormwater management and erosion control.

Margaret Auerbach, 57 Winterberry Drive, stated concern if runoff were to go to Winterberry Drive. She stated that when exiting Winterberry in the wintertime there is already a problem with the road freezing and slippery icy conditions. This development should be looked at and addressed to make sure it is not going to cause a further issue.

Mr. Russell stated the peer review consultants will look at that issue.

Mr. Dias stated there is a culvert that goes under Winterberry Drive and this runoff goes to that culvert. The stormwater runoff from this site cannot physically make it to Winterberry Drive as it is much higher in grade. This project's runoff will go under it and discharge to a brook on the other side. The current culvert is very oversized, so he does not foresee any issue with the additional runoff. BETA will confirm and determine.

There was a motion made by Scott McLean to authorize peer review for the Rolling Brook NOI by BETA. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-0.

There was a motion made by Scott McLean to continue the public hearing for the Rolling Brook NOI to the May 12, 2016 meeting at 7:15 PM. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

Public Hearing – Request for Determination – Charles River Farms – New England Gas Co.

Ms. Claire Staines of LEC Environmental Consultants addressed the Commission for the electric utility maintenance project. She provided an overview of the project. An RDA was submitted for work involved in replacing the existing electric underground residential distribution lines. She stated the work proposed is exempt from jurisdiction under the Wetlands Protection Act, however they are filing this pursuant to the Town bylaw. The site involves single-family homes with forested uplands and BVW border the site. The boundaries for the wetland resource areas that are shown on the plans are approximate. Proposed work is to replace the 7,200 linear feet of the URD utility lines within the footprint of the roadways. Trench will be excavated within the right of way used to install the conduits. Existing granite curbs will provide sedimentation protection to the adjacent wetland resource areas; therefore, have not proposed any erosion control barriers. The construction is targeted for the spring after the procurement of all the permits.

Mr. Russell stated this is subject to local bylaw only. Most of the work will be within the paved surface. Therefore, he recommended a negative #5 and negative #3 determinations be approved for the reasons outlined in his agent's report.

There was a motion made by Scott McLean to close the public hearing for the Charles River Farms – New England Power, RDA. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

There was a motion made by Scott McLean to make a negative #5 determination under the exemptions of 310 CMR 10.02 (2) (a) (2) and a negative #3 determination under the local wetlands bylaw, chapter 181, section 181-2 B for the Charles River Farms – New England Power, RDA. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Public Hearing – Request for Determination – Indian Rock Conservation Area Trails - DPW

Mr. Jay Mello, Assistant Town Engineer, addressed the Commission for trail clearing and maintenance at King Philip Road. He stated there are many geological features present in this area including ledge. Would like to make the trails connect together and rework off of private property. Mr. Mello and Eagle Scout Joe, who will be doing the project, walked and flagged the trail about one month ago. The trails will be cleared with hand tools and cutting down items will be avoided. They will clear off to the side, leaf blow afterwards to define path, and plan to mark trails when all done.

Chairman Livingstone pointed out many trails on the map that could be linked. He asked if there would there be a way to work the cul-de-sacs into the plan.

Mr. Mello stated the original plan was to connect Lost Horse Trail, but due to lawn debris situation that clearing would be beyond an Eagle Scout project. In the future, Mr. Mello stated he would like to revisit the plan that links a town-wide trail that will wind all through Franklin. There is additional planning involved in that.

Commission asked if the debris that would be taken down would be naturally molded into the landscape.

Mr. Mello stated most of the debris is on ground and low and gets chewed up when they go through. Will cut minimally and throw back into the landscape; will leave it looking natural. He noted the trail has already been flagged and scouted. He stated a lot of this trail has been developed from following the path the way the deer walk.

Commission asked what the traffic impact on the wetlands will be as one area of the proposed trail is very close to wetland area.

Mr. Mello stated when plan was initiated they used a compass and assumed property lines. Now that they know how close they are to the wetlands, he can move back that 500-600 ft. of trail.

Andrew Tolland, 740 Pond Street, said this is a great project and very excited about the trail. It is very interesting terrain. When walk in off of King Philip and take trail to the left, the trail is within 10 ft. of a vernal pool. He suggested the proposed trail to the right be pulled away from the resource area.

Mr. Mello stated there is an existing path that could be used, but it looks like it is close to someone's yard. Will stay away from that and move out of the buffer zone.

Chairman Livingstone asked about the private property that is owned, where the trails currently are, and have these people been part of the discussion.

Mr. Mello stated he has stayed away from that. In the future it will probably get to a point where will have to approach private property owners regarding easements for use if want to expand trails.

Mr. Russell stated originally this project came up as a way to eliminate the access over private property. While working with Joe, Mr. Mello and Mr. Russell morphed this to creating the trail system coming off of King Philip.

Joe stated that the duration of the project should be one Saturday and Sunday and possibly another Saturday. Will probably have about 20 scouts out there. They would probably not work in the rain. Would like to get started around April 28.

There was a motion made by Paul Harrington to close the public hearing for Indian Rock Conservation Area Trails, RFD. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

There was a motion made by Paul Harrington to approve the RFD for negative #3 determination for Indian Rock Conservation Area Trails, RFD. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Continued - Public Hearing - Notice of Intent – 911 Panther Way – Town of Franklin DPW

Mr. Russell stated this hearing was continued to receive the NOI number from DEP. The number has been received.

There was a motion made by Paul Harrington to close the public hearing for the Notice of Intent for 911 Panther Way. The motion was seconded by Scott McLean and accepted with a vote of 6-0-0.

There was a motion made by Paul Harrington to approve the Notice of Intent for 911 Panther Way with special conditions #20, 34, and 44. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

GENERAL BUSINESS

Discussion Item: Annual Report

Mr. Russell stated Commission members should review the first draft of the annual report which was in their packets. If any comments, questions, or suggestions, please give them to Mr. Russell no later than June 1, 2016. This report needs to be completed by end of fiscal year; just trying to get a start on it.

Discussion Item: Education & Outreach

Mr. Russell stated that the cleanup for DelCorte is posted on the social media sites. Much feedback has been received on the television show Chairman Livingstone and Mr. Russell did. Calls from the newspapers concerning the cleanup for DelCorte have also been received. The message the Commission is trying to project about non-wetlands enforcement issues is seeming to resonate.

Ms. Henrichon asked if there was any reason she could not advertise the cleanup on some other town's sites just as a resident and share the same language that is already on the Town site.

Chairman Livingstone stated it was already public by definition.

Discussion Item: Eagle Scout Trails Project: Indian Rock Conservation Area

This item was covered during *Public Hearing – Request for Determination – Indian Rock Conservation Area Trails – DPW* (see above).

Discussion Item: 860 West Central Street

Mr. Russell stated a report from the building commissioner was requested as to the status of the internal sewer system; there is no status. The building commissioner and plumbing inspector will conduct a site visit to see what is transpiring. It is beyond this Commission's jurisdiction. The town attorney has advised that as long as the system is functioning, there is nothing that can be done; will have to wait for it to back up and go into the brook again.

Chairman Livingstone stated he received from an anonymous source a first-hand account of the conditions inside the basement of this establishment. There are certain areas in which a person can walk on the floor and the floor sinks and the grease comes up. Also, he has it on good authority when there is going to be an inspection, things get moved around and covered, then uncovered and unmoved after the inspections.

Discussion Item: DelCorte Pond Cleanup

Mr. Russell stated the Town Council has approved \$100,000 for the DelCorte Pond Cleanup. BETA will be authorized to begin the permitting process. This will also require a permit from this Commission, NOI, possibly a 401 Water Quality Certification permit, and it may require an Army Corp of Engineers 404 permit. Have budgeted \$5,000 for permitting which may be too little. If so, will come back to Commission and request authorization for additional funds. Will start to prepare bid specifications for the herbicide treatments. Want to get this funding allocation before the end of the fiscal year. This is a three-year plan; it is only funded for the first two years.

Commission discussed that the fencing is not there; it is in the water and the woods. There is much trash and debris in the water. It was requested that a new map be produced and a tick and poison ivy identification sheet be placed in the kiosk. It was noted that there is another cleanup day this Saturday at 8:00 AM with just the Commission members to identify projects for the public next week.

Violation: 23 Longfellow Drive

Mr. Russell stated at a prior meeting the property owner had requested this continuation. Mr. Russell had expected the property owner to be at this meeting as property owner was told this would be on tonight's agenda. The property owner informed Mr. Russell that the additional clear cutting was done by the utility company. Mr. Russell stated that while the easement may give the utility company permission from the property owner to cut vegetation, it does not grant permission to do what they did without a permit under the Wetlands Protection Act. Still not sure what utility company did this; utility cable lines were taken down and still laying on ground. Mr. Russell stated the property owner has "refused" at this time to pay the peer review fee. Mr. Russell feels strongly that wetland scientist should look at this to determine best way to remove about 15-20 cu. yd. of material. He recommended that if Commission did not receive anything by the next meeting the Commission should reinstitute the enforcement order and fines. Waiting until the next meeting is warranted due to property owner's medical condition. But, would like to generate a letter to state pay fee or it will result in initiation of fines.

There was a motion made by Bill Batchelor that the agent send a letter to 23 Longfellow Drive stating one more continuation with that being the end. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-0.

Violation: 7 Briarwood Road

Mr. Russell stated that in the Commission members' packets there are a series of letters and photos outlining the issue. This property is owned by an attorney who has tenants. The tenants living there committed the violation. Have been extending the deadlines for filing the NOI as the attorney stated more time needed. Mr. Russell said he stated they could have until the end of March, but nothing has transpired. He noted the tenant is a landscaper and bringing the leaves he has picked up from his clients and dropping them here. As well, by looking at photographs provided, an area has been cut down by tenant. This area is an endangered species priority habitat; Mass Wildlife has confirmed this. Therefore, the NOI would have to be filed with them as well. He recommended to generate a final letter that if NOI is not filed by May 16, an enforcement order be issued and/or fines be imposed.

Chairman Livingstone disagreed with the recommendation and stated the enforcement order should be issued and fines begun right now. This is too blatant and willful.

Mr. Russell stated he would therefore like to generate a letter stating the Commission has voted to issue the enforcement order which will be signed by the Commission at the April 28 meeting, and if NOI is not filed by that date, fines will be issued.

There was a motion made by Paul Harrington to generate an enforcement order that Commission would sign at the April 28 meeting if an NOI is not submitted for 7 Briarwood. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Minutes:

There was a motion made by Paul Harrington to accept the minutes from the March 31, 2016 meeting. The motion was seconded by Bill Batchelor and accepted with a vote of 6-0-0.

Signed Orders of Conditions & Determinations of Applicability

Orders of Conditions – 911 Panther Way – Town of Franklin DPW – CE159-1121

Orders of Conditions – Franklin Branch Railroad Mile Post 28.68 – Keolis – CE159-1122

Determination of Applicability (Negative) Charles River Farms – National Grid

Determination of Applicability (Negative) Indian Rock Conservation Area – DPW

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

The meeting adjourned at 9:48 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary

Town of Franklin, 355 East Central Street, Franklin, MA 02038
Phone: 508-520-4949 | Fax: 508-520-4903

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