

11/16/2017

**Franklin Conservation Commission  
Minutes of Meeting  
November 16, 2017**

To: Town Clerk  
cc: Members  
File

Members Present: Bill Batchelor, Tara Henrichon, Angela Gelineau, Jeff Livingstone, Jeffrey Milne, George Russell, Conservation Agent.  
Members Not Present: Staci Dooney, Paul Harrington.

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 – 338 Maple Street – Goddard Consulting**

Mr. Russell stated that the DEP number has not been received; therefore, the hearing must be continued.

Mr. Thomas Rebula from Goddard Consulting, LLC, on behalf of Peter and Leslie Short, addressed the Commission and stated they agree to a continuation to the next meeting.

Chairman Batchelor discussed continuation of the public hearing for the NOI for 338 Maple Street to December 7, 2017 at 7:25 PM, but no motion or vote was taken.

**Public Hearing – RFD – 49 Hutchinson Street – Kennedy**

Mr. Russell stated that he had received a complaint. He investigated the complaint and found significant vegetative debris in a jurisdictional area. He stated that he contacted the property owner who was extremely responsive. They had a number of time extensions to file the application; they have followed the standard operating procedures and filed the RDA.

Ms. Beth Kennedy of 49 Hutchinson Street addressed the Commission and stated the pile of debris in the very back of the yard is grass and bush clippings. They have been deposited there for years; it abuts a stream. The debris keeps people from walking through her yard; her yard has been a cut through from the abutting commercial property to another store on the other side of her property. As well, new clippings are added to the front of the pile, not the back. They would like to keep putting grass clippings there, or at the very least, not have to remove the current pile that is already there.

Chairman Batchelor stated that there is no recommendation from the applicant's wetland scientist as to whether to keep or remove the debris.

Mr. Russell requested the Commission look at the submitted photographs which show vegetative debris piled up as well as significant tree cutting. He recommended that the vegetative debris that is currently

there be left in place; however, he recommended against the applicant continuing to store grass clippings there without the filing of an NOI.

Ms. Kennedy stated that on the other side of the stream the trees and shrubs were cut and cleared away mistakenly. Her property abuts a commercial property. Since that area has already been cleared, she would like permission to keep it cut down as when it gets overgrown it looks horrible and collects trash. She noted that she hires someone to cut her grass and sometimes they mulch it into the grass.

Committee members and Mr. Russell discussed the tree cutting, grass clipping placement, nitrogen affecting the stream channel, the letter from the wetland scientist, and if an NOI should be filed.

Mr. Russell summarized that the commercial side of the property was cleared by somebody, not the applicant. That is the side that they are recommending be maintained in its cleared state and the brush not be removed. For the NOI filing, he is referring to deposition of material on the residential side of the property.

Mr. Russell stated an NOI is good for three years and can be extended for three more years at one-year intervals.

Chairman Batchelor noted that as this is within 20 ft., it is actually in a violation area.

There was a motion made by Jeffrey Milne to close the public hearing for the RFD for 49 Hutchinson Street. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

Mr. Russell suggested that should the Commission decide that the vegetative debris that is there can remain, but no additional vegetative debris can be deposited without the filing and approval of an NOI, the motion should state that; as well, the motion should state a negative #3 for the RDA.

There was a motion made by Jeff Livingstone for a negative #3 determination for the RDA for 49 Hutchinson Street with the stipulation that the vegetative debris that is there can remain, but no additional vegetative debris can be deposited without the filing and approval of an NOI. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

#### **Public Hearing – RFD – 39 Peck Street - Mezzadri**

Mr. Michael Mezzadri of 39 Peck Street addressed the Commission for a proposed addition. He stated that a letter was provided by his wetland scientist; the stream was determined to be intermittent.

Mr. Russell stated that the applicant was before the Zoning Board of Appeals. He generated a letter to the property owner indicating that based on the ZBA agenda, the applicant may need a permit from the Conservation Commission as jurisdictional areas may be impacted. He discussed this issue with the applicant. He stated that there is the issue of whether the stream is perennial or intermittent; this changes the application and whether it is a resource area permit or buffer zone permit. If intermittent, the applicant is within the 100-ft. buffer zone. He stated that the applicant has submitted a letter from a wetland scientist indicating intermittent stream status. He stated that he has seen the stream dry. He noted the date of the letter is very old.

Mr. Mezzadri stated that a previous Conservation Agent signed off on his permit to put in a pool in 2011 without coming before the Conservation Commission.

Mr. Russell recommended the Commission take two votes: to find the stream intermittent for the area between the street and the rear property line of 31 Peck Street; and to vote on the RDA to build the

11/16/2017

addition. He noted that the Commission has always taken the position that even in a buffer zone, work that would require excavation such as a foundation would require a Notice of Intent.

Commission members and Mr. Russell discussed the location of the buffer zone and the proposed addition.

Ms. Henrichon confirmed that Mr. Russell disagrees with parts of the letter from Judith Schmitz.

Mr. Russell stated that the map submitted by the engineering firm with the application shows the buffer zones.

Mr. Mezzadri stated that according to Judith Schmitz, the section that they are talking about is not considered wetlands and does not require a 100-ft. buffer zone; this front part is not considered intermittent stream and wetlands.

Mr. Livingstone confirmed that based on Judith Schmitz's letter of March 2011, when she went out and looked at it, the dominant species would not be consistent with a BVW. Based on that, it would not be considered a BVW. Therefore, there is not buffer, and the applicant does not even need to be here. He asked if the Commission accepts these observational results.

Mr. Russell stated the letter was written in 2011, and he has observed skunk cabbage growing there which only grows in wetlands.

Mr. Livingstone stated he has a problem with the date of the letter. He reviewed the topography of the site and stated that over these several years there could have been changes to this site. He stated it seems like the Commission does not have the most recent data to make an educated decision; such data is needed. He would like a reassessment and evaluation of the area as it is today. He stated that the data that the Commission has at this time is not consistent and there are discrepancies that need to be resolved before a decision can be made.

Mr. Russell stated that based on the information provided, he recommends that the Commission keep the hearing open and allow the applicant to submit a current report from a wetland scientist with their opinion if it is a BVW or intermittent stream.

Mr. Mezzadri stated that the town sent him to Judith Schmitz when he put his pool in. He asked the Commission if they have a wetland scientist he should contact at this time.

Mr. Russell stated that the Commission does not send an applicant to any particular wetland scientist; he does not recommend one over another. He noted that if it is determined to not be a jurisdictional area, the applicant would not need a Conservation Commission permit.

Chairman Batchelor stated a continuance of the hearing would be in order while the applicant obtains a current report from a wetland scientist.

There was a motion made by Jeff Livingstone to continue the public hearing for the RFD for 39 Peck Street, based on receiving a new report from a wetland scientist, to December 7, 2017 at 7:30 PM. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

**Public Hearing – RFD – 62 Elm Street - Cobb**

Mr. Christopher Cobb, owner of 62 Elm Street, addressed the Commission for vegetative debris in a jurisdictional area. He stated that he would like to remove the vegetative debris and with the permit add a fence within the next three years.

Mr. Russell stated this came as a result of an observation he made when he conducted a site inspection for the next-door neighbor. The applicant has followed the Commission's policy, retained a wetland scientist, and filed the RDA. He recommended the RDA be approved with a negative finding and the debris be removed in accordance with the October 24, 2017, letter from Pinebrook Consulting.

There was a motion made by Jeff Livingstone to close the public hearing for the RFD for 62 Elm Street. The motion was seconded by Angela Gelineau and accepted with a vote of 5-0-0.

There was a motion made by Jeff Livingstone for a negative finding for the RFD for 62 Elm Street with the condition that the debris be removed in accordance with the letter of October 24, 2017, from Pinebrook Consulting. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

**Public Hearing – NOI – 167 Conlyn Avenue – Bertoni/Catrone**

Ms. Karen Catrone, wetland consultant, representing Ms. Elizabeth Bertoni of 167 Conlyn Avenue, addressed the Commission for an approximately 24 ft. x 30 ft. in-law addition to the house. She stated she delineated the wetlands on October 12, 2017. The back lawn is very flat until the end where it slopes down 4 ft. to 5 ft. to the wetland line. The addition is proposed at 88 ft. from the wetland line; erosion control is proposed. The access will be from the front. There is 134 sq. ft. of impervious within the 100-ft. buffer. She stated the contractor is present at the meeting; he is aware of the sensitivity of the area.

Mr. Russell stated he visited the site and agrees with the flagging. He recommended the NOI be approved with the stipulations as listed on his Agent's Report and additional stipulation #38.

Ms. Catrone added as information only that the applicant would like to add a driveway in front of the in-law addition; it is outside the buffer zone and not in jurisdiction. She provided pictures to the Commission.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for 167 Conlyn Avenue. The motion was seconded by Angela Gelineau and accepted with a vote of 5-0-0.

There was a motion made by Jeffrey Milne to approve the NOI for 167 Conlyn Avenue with special conditions #20, 24, 27-30, 34, 38, 44 and 51. The motion was seconded by Angela Gelineau and accepted with a vote of 5-0-0.

**Public Hearing – Continued - NOI – Franklin Country Club – G & H**

Mr. Dale MacKinnon of Guerriere & Halnon, Inc. addressed the Commission and stated that when he was before the Commission two weeks ago, he was asked to remove the proposed work outside the 25-ft. buffer. He stated National Grid will be removing five power poles. National Grid has not provided information on how they will be removing the power poles; when they do, the applicant would like to return to address the Commission with that information. Currently, the only work is to install an underground electric wire going from a transformer constructed in the Cook's Farm subdivision. It will be extended to the Franklin Country Club to supply power to their clubhouse. The existing line is overhead and crosses over the wetlands. One pole is in the wetlands; the other poles are on the edge of the BVW. They would like to get the underground electric wire installed within the next few weeks. The conduit will be about 3 ft. deep; the excavation for this will be put on the fairway side. Erosion control will be installed.

Mr. Russell stated that a representative from National Grid who is in charge of removing these poles was in his office last week. He told her that it would be critical for National Grid to have an indication by this meeting as to how those poles were going to be removed. She said the information would be here; it is not. He stated that he thinks the cleanest thing to do would be to continue the hearing until such time that the input from National Grid is received; then, approve the whole thing as one NOI. He stated that adding a stipulation as the applicant has requested would still condition the NOI on a third party over which no one has control; he does not recommend doing that.

Mr. MacKinnon stated that he needs to put the wire in the ground. National Grid can file their own thing; they are their own company. He was just letting the Commission know what he believed National Grid would be doing regarding the removal of the poles.

Mr. Russell stated that these can be considered two different projects. The Commission has the jurisdiction to grant the NOI as proposed for the wire installation and make implicitly clear that it does not cover the removal of any of the overhead wires or infrastructure that National Grid must tend to. Then, National Grid would have to come in and do their own NOI.

Chairman Batchelor confirmed that this NOI would be focused only on the installation of the underground electric line.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for Franklin Country Club. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

There was a motion made by Angela Gelineau to approve the NOI for Franklin Country Club based on the plans dated November 3, 2017, limiting the scope for only the installation of the underground electric line, specifically excluding the removal of poles, with special conditions #20, 23, 24, 27-30, 34, 38, 44 and 51. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

## **GENERAL BUSINESS**

### **Minor Buffer Zone Activity: 18 Clearview Drive**

Ms. Carol Perlman of 18 Clearview Drive addressed the Commission for removal of trees in the rear of the house and just outside of the 50-ft. buffer. A tree fell on her house two weeks ago and she would now like to have other trees removed to prevent additional tree damage.

Mr. Russell stated the property has an active NOI. It is the Commission's policy that MBZAs will not be approved for a lot that has an active NOI unless there is a demonstrated threat to health, safety, and welfare; this meets that test. He recommended the approval of the MBZA.

There was a motion made by Jeffrey Milne to accept the MBZA for 18 Clearview Drive. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

### **Certificate of Compliance: Keolis Commuter Service**

Mr. Russell stated all is ready for the release to be granted.

There was a motion made by Jeffrey Milne to release the certificate of compliance for the Keolis culvert replacement. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0.

**Certificate of Compliance: 5 Kenwood Circle**

Mr. Russell stated that the section of state regulations that govern the release of conditions, 310 CMR 10.05 (9), states that the Commission must act on a request for release within 21 days of submission and this time period cannot be extended. He stated that his office recommends to everyone that before they come in for release of conditions, they let him know they are ready to come in so he can do an inspection and go over the conditions of approval to make sure everything is in order to be released. He stated that there is a letter attached to his Agent's Report addressed to the project manager of 5 Kenwood Circle. They have added significant amounts of rip rap and fill in a jurisdictional area that was not on the approved plans. He stated that was done to stabilize the slope; from an engineering perspective, it may have been warranted. The problem is that it was never approved. In his letter to the project manager, he indicated that this item will be put on the next Commission meeting agenda for the potential issue of an enforcement order because of the rip rap. He stated that there is usually very little compliance until he starts threatening legal action. He recommended that the Commission not approve the release of conditions because the project does not comport with what was approved. He confirmed there is a stop work order in effect and stated they have not done any work since it was issued. They knew this was on the agenda for tonight. Their option is to return to the Commission and ask if the Commission wants a new NOI or an amendment to the existing NOI. He stated his recommendation will be for an amendment.

There was a motion made by Tara Henrichon to deny the request for the release of conditions for 5 Kenwood Circle. The motion was seconded by Angela Gelineau and accepted with a vote of 5-0-0.

**Certificate of Compliance: 2 Maria Circle**

Mr. Russell stated that the request to release the conditions came in without any notification to his office that they were going to come in for the release. They put in the impact of approximately 70 sq. ft. of buffer that was not approved. The Commission could determine that 70 sq. ft. is not a big deal, but where is the line drawn? He recommended that the request for release be denied and the applicant submit an amendment to the order of conditions.

Mr. Thomas Rebula, Goddard Consulting, LLC, the owner's representative, requested clarification on future requirements for the submittal.

Mr. Russell explained the process. He stated the applicant can submit the as-built plan and narrative.

There was a motion made by Jeffrey Milne to deny the request for the release of conditions for 2 Maria Circle and require a modification to the existing NOI. The motion was seconded by Jeff Livingstone and accepted with a vote of 5-0-0.

**Information on Violation at 5 Crystal Drive**

Mr. Russell stated he just added the violation at 5 Crystal Drive in his Agent's Report, which was not on the agenda, as it has been an ongoing issue. The applicant has filed the required request for determination. This will be on the next Commission's meeting agenda for a public hearing.

**Discussion: Con Com Managed Land**

Mr. Russell stated that the Commission members received a draft of the study he has been conducting of the land in town that is managed by the Commission. He reviewed a provided map that showed the town-owned parcels managed by the Commission as well as other land owned by the state or federal government or other town-owned land that is vacant. He would like the Commission members' input on the recommendations section of the study. He noted there are five parcels managed by the Commission that have dams on them; the location of three of them is not known. He pointed out parcels that have no public access. He stated these are the type of issues that are being looked at in the report. He noted the

11/16/2017

parcels managed by the Commission are widely scattered. He discussed the ways in which land comes to the town and who is designated to manage the parcel. He questioned if the Commission should open areas that have public access and are not environmentally fragile to the municipality for open space recreation. He asked the Commission members to read the information and provide recommendations to him.

Commission members asked questions and engaged in discussion with Mr. Russell about the map and the Conservation Commission managed parcels.

**Minutes:**

There was a motion made by Jeffrey Milne to approve the meeting minutes for November 2, 2017. The motion was seconded by Tara Henrichon and accepted with a vote of 4-0-1. (Mr. Livingstone abstained.)

**Chair and Commission Comments**

Ms. Henrichon asked Mr. Russell about the forest cutting plan.

Mr. Russell stated a letter had been generated.

**Signed Certificate of Compliance, Minor Buffer Zone Activity, Orders of Conditions,  
Determination of Applicability & Order of Conditions**

Certificate of Compliance – Franklin Branch – Keolis – CE159-1136

Determination of Applicability – 49 Hutchinson Street – Kennedy

Orders of Conditions – 672 East Central Street – CE159-1170

Minor Buffer Zone Activity – 18 Clearview Drive – Perlman

Orders of Conditions – 167 Conlyn Avenue – Bertoni

Determination of Applicability – 62 Elm Street – Cobb

There was a motion made to adjourn the meeting. The motion was seconded and accepted with a vote of 5-0-0.

The meeting adjourned at 8:55 PM.

Respectfully submitted,

Judith Lizardi  
Recording Secretary