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**Franklin Conservation Commission
Minutes of Meeting
November 15, 2018**

To: Town Clerk
cc: Members
File

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

Mr. Harrington announced the meeting would be audio and video recorded. He reviewed how the Commission operates. He stated that Mr. Russell, Conservation Agent, makes recommendations to the Commission based on law; the Commission interprets the law and the needs of the individual. Therefore, it is the Commission's responsibility to come to a decision, not Mr. Russell's decision; he is here in an advisory technical capacity.

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

Public Hearing – NOI – Map 212 Parcel 27 Pond Street – Colonial Eng.

Mr. Russell stated the address is 1111 Pond Street. He stated he strongly recommends this go to peer review due to the amount of disturbance in the riverfront, almost 35,000 sq. ft. He requested the Commission limit testimony tonight as peer review would take place.

Mr. Harrington explained that testimony would be best taken after peer review or at least limited at this meeting so the applicant would not have to repeat testimony as other Commission members may be present when the applicant returns.

Mr. Paul DeSimone of Colonial Engineering stated he would like to at least address the peer review. He stated there is a lot of disturbance. He asked if the peer review was to review the flagging or the entire project as far as the disturbance. They are trying to keep the costs down for the client.

Mr. Russell stated the application was sent to BETA and then to WSI. The scope of services would include reviewing the wetlands flagging and making sure the burden of proof is met for the disturbance in the riverfront zone; it would basically be a review of the entire project.

Ms. Gelineau stated that based on the square footage of the disturbance, she does not see how the Commission could not have peer review.

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Mr. Harrington stated he thought peer review was a reasonable request considering the size of the disturbance.

Mr. Russell stated that should the Commission vote for peer review, he will make sure that the reviewer knows that the applicant's expert would like to go with the peer reviewer.

There was a motion made by Angela Gelineau for peer review for the NOI for 1111 Pond Street. The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-0.

Mr. Terry Kinch, 1079 Pond Street, stated he would be directly next door to this proposal. He stated the previous owner of this piece of land tried unsuccessfully to put in a single-family house years ago. He asked what peer review meant. He said he had not seen any plans for the proposed house.

Mr. Russell stated a third party, a wetland scientist, would review this application.

Ms. Gelineau explained the charter of the Commission.

Mr. DeSimone showed Mr. Kinch and other audience members the plans and stated a 2,100 sq. ft. home is proposed.

Mr. Russell explained that the next meeting would be publicized on the website. As well, the continuation time and date for this hearing will be determined tonight. He noted that the paperwork the Commission has for this public hearing is available to the public during office hours.

Ms. Deborah Andrews Drew, 1110 Pond Street, asked what kind of studies would be done to determine the impact a house being built would have on the wetlands. She asked where and what kind of access road would be built and where the house would be located.

Mr. Russell stated the peer reviewer would determine the impact.

Mr. DeSimone stated it would be a gravel driveway.

Mr. Russell explained the location on Pond Street. He explained that when the peer review report is finalized and given to the Commission, the full hearing will take place providing any necessitated changes to the plans. He stated the public will have input in terms of the public hearing just like at tonight's meeting; the public can comment on the plans, but the process is established by law.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 1111 Pond Street to December 6, 2018 at 7:00 PM. The motion was seconded by Staci Dooney and accepted with a vote of 4-0-0.

Public Hearing – NOI – Lots 34, 35, 52 & 53 James Street – United Consultants

Mr. Russell stated he met with the applicant. There were some issues with the application that the applicant addressed and answered satisfactorily. He recommended approval. He stated it was a vacant lot; four small lots were combined into one lot to build on.

Mr. Rick Goodreau of United Consultants on behalf of the applicant addressed the Commission for a single-family home and septic system. He discussed the location of the property. He stated the BVW was delineated. He pointed out the 25 ft., 50ft. and 100 ft. buffer zones as shown on the plans. He explained the proposed plan to construct a house, garage, rear deck, driveway, water well and water line connecting to the house within the buffer zone. The water well and water supply line are located within the 25 ft. to

50 ft. buffer; it will be a temporary disturbance and will be revegetated once complete. He highlighted the limit of work and the erosion control barrier. He stated they have been before the Board of Health and are waiting for final approval of the septic system which is based on this permit from the Commission being issued. He stated there is no disturbance proposed within 0 ft. to 25 ft. of the BVW. The septic system and leaching fields are located outside the buffer zone as well as the majority of the driveway as shown on the plan. He stated the site was currently wooded. They would like to start work as soon as the appeal period is over.

Ms. Gelineau asked if it was typical to have the well supply located within the buffer zone.

Mr. Russell stated yes, it is not atypical.

Mr. Harrington asked if many trees were coming down for the project and if there would be any mitigation.

Mr. Goodreau stated there would be some tree removal.

Mr. Russell reviewed the circumstances for mitigation.

Ms. Kelsey London, 23 James Street, stated she was in favor of having a house built there and it would be nice to have neighbors. She stated the current tree area was not dense.

There was a motion made by Angela Gelineau to close the public hearing for the NOI for 21 James Street. The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-0.

There was a motion made by Jeffrey Milne to grant the Order of Conditions for the NOI for 21 James Street, Lots 34, 35, 52 & 53, with stipulations #20, 22, 24, 27-30, 34, 35, 41, 44 and 51. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Public Hearing – Continued - ANRAD – 725 Summer Street - TRC

Mr. Russell reminded the Commission that this hearing was continued due to a problem with the abutter notifications; that has been corrected. The certified mail receipts have been received. It was also continued to allow for peer review; the peer review has been received and the plans were revised according to the peer reviewer's recommendations.

Ms. Cynthia Martin of TRC Environmental representing CCR addressed the Commission. She stated the purpose of the ANRAD is to identify the aquatic resources on and in close proximity to the site and come to an agreement of the jurisdictional resources near that site. The wetland areas have been field surveyed by TRC and flagged. One wetland was identified. She noted the peer review was conducted. The outcome resulted in a wetland previously identified as isolated being changed to bordering based on the identification of an intermittent stream. She explained where this was located on the provided map. She stated there has been no discussion yet as to the square footage and where the solar array will be located.

Commission members asked additional questions regarding the provided map.

Mr. Russell stated it was his understanding that the delineation of the wetlands was going to be used so the developer could avoid impacting any resource areas or buffer zones. Assuming that still holds true, this will not be seen by the Commission again because they are not in jurisdiction. It will only go to the Planning Board. He noted that at the bottom of the slope there is a resource area on the adjoining property and there is a buffer zone extending onto the subject property. He noted that it will not be known if that is impacted until the development plans are seen.

Mr. Joseph Brown, 737 Summer Street, stated he had concerns as every time it rains heavily, he gets runoff in his backyard from the hill behind him. He asked if there had been a study on the impact the array will have on the water absorption in the woods above his house.

Mr. Russell stated that is beyond the jurisdiction of this Commission and this application. He stated the Commission may not see this again if the applicant stays out of jurisdictional areas; they would only go to the Planning Board and those are the issues they would have to consider.

Mr. Kurt Cusack, 6 Woodchester Road, stated the seasonal stream is probably the one that cuts through his property. Right now, there are waterfalls on that stream. It runs all fall, winter, and spring. It dries up mid-summer. It feeds into a pond off Summer Street. His main concern is that if this is going to be a solar farm, it would mean clear cutting 25 acres of land. Does not that fall under the jurisdiction of this Commission?

Mr. Harrington stated only if it hits the wetlands. He noted this is just a first step.

Ms. Gelineau explained that if the project intersects with the wetlands or comes near the wetlands, then the applicant would have to come back before the Commission.

Mr. Russell stated that Conservation jurisdiction is limited by statute.

Mr. Mark Cerel, Town Attorney, stated that the Town has a general stormwater bylaw which states that if a developer is disturbing an acre or more it requires pre-construction, during construction, and post-construction oversight of stormwater management best management practices under the jurisdiction of the town engineer.

Mr. Cusack stated that based on what the town attorney said regarding if it impacts over one acre of land, what does that entail?

Mr. Russell stated that when they clear cut one acre plus one foot it kicks in.

There was a motion made by Angela Gelineau to close the public hearing for the ANRAD for 725 Summer Street. The motion was seconded by Staci Dooney and accepted with a vote of 4-0-0.

There was a motion made by Angela Gelineau to approve the ANRAD for 725 Summer Street. The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-0.

Public Hearing – Continued - NOI – 725 Union Street – Holmgren Eng.

Mr. Russell stated the applicant has requested a continuance.

There was a motion made by Angela Gelineau to continue the public hearing for the NOI for 725 Union Street to December 6, 2018, at 7:05 PM. The motion was seconded by Staci Dooney and accepted with a vote of 4-0-0.

GENERAL BUSINESS

Minor Buffer Zone Activity: 12 Addison Avenue

Mr. Russell stated that based on the materials in the Commission members' packets, he requests the applicant be present because this falls in with the policy to require a wetland scientist. He recommended

the item be continued to the next meeting to allow the applicant to be present. He stated the applicant will be notified.

Permit Modification: Emergency Certification Pine Street Culvert

Mr. Russell stated this emergency certification is requested because the Pine Street culvert is collapsing. It is carrying a perennial stream, but the DPW has to get in there to fix it.

There was a motion made by Jeffrey Milne to approve the permit modification for the emergency certification for the Pine Street culvert. The motion was seconded by Staci Dooney and accepted with a vote of 4-0-0.

Certificate of Compliance: 71 Lenox Drive

Mr. Russell stated this is an old subdivision and the partial certificate was never issued for this lot. This lot was not actually part of the subdivision by the stipulations of the Conservation Commission at that time. Nevertheless, the attorney for the buyer has requested the partial certificate; the attorney would like the issue closed for this real estate transaction. Mr. Russell does not see any reason why the Commission should not grant it. He noted there are no resource areas on the lot.

There was a motion made by Jeffrey Milne to grant the Certificate of Compliance for 71 Lenox Drive. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Violations/Enforcement: 880 West Central Street

Mr. Russell stated the issue stems around the reports required on April and October by the Commission that have not been forthcoming. A report from the owner's engineer, Mr. Holmes, was received for this past October. Mr. Russell said Mr. Wise would like to address the Commission concerning if that report issued in October will suffice for all of the missing reports, or should the Commission still require all the missing reports which basically cannot be generated. Should an amendment to the NOI be generated to eliminate the need for them? Mr. Russell stated he believes the Commission has three options: 1. Allow the owner to amend the NOI to eliminate the required reports that cannot be produced because they are from 2017 and one from 2018. 2. Accept the report from Mr. Holmes as covering all the reports which in effect would take the project up to current standards. There would still be ongoing need for the reports; for instance, next April there would be another report due. 3. Issue an enforcement order requiring that the applicant conform to the current stipulations. Mr. Russell recommended that the enforcement route not be taken because he does not see how an owner can be forced to do something that in essence cannot be done. How can an engineer produce three missing reports from a year ago? Either the option of the amendment or accepting the report would be viable. He thinks the cleanest thing to do would be to request an amendment to the NOI to delete the requirement for the missing reports. He stated he says this only in light of the fact that he has been getting extremely good compliance from other projects that have to submit these reports twice a year. He stated they have to be reminded sometimes, but the reports have been coming in. The reports are extremely valuable to the Commission and to himself because they tell from an engineering standpoint what is going on, where the problems are, what needs to be addressed, or that everything is fine.

Mr. Harrington asked why the reports were missing.

Mr. Frederick Wise, property owner, addressed the Commission and stated they just missed it; they just did not catch it. He stated it was not brought to his attention that the reports had been missed until he called Mr. Russell about another situation regarding beavers that had cut down a large tree. He had asked if it was ok to cut up the tree. He stated that Mr. Russell said no, do not do anything until I get back to you. Then, a letter from Mr. Russell came stating the reports had not been provided. Mr. Wise stated the report the Commission has from Mr. Holmes is very extensive. He stated the town's engineering

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department was there daily as all the work was being done. He stated they complied with everything that was supposed to be done; they just missed these reports.

Ms. Gelineau stated there is the meat of the project work and the administrative part of the project like creating these reports. She stated it was good they had the DPW there and professionals alongside them while doing the work. She stated that the Commission is trying to balance the need for the reports, which do help for any kind of project, with some common sense and some realization of what the reports could get us at this point versus what they could not get us. She agreed there is no need for an enforcement order; it will not make anything better. She reiterated that Mr. Russell noted three options. It is now between the other two options of allowing the applicant to amend the NOI versus accepting the report from Mr. Holmes. She asked Mr. Wise what his position on either of those options was. She also asked what remains of the project to be done.

Mr. Wise stated his position would be to have the Commission accept the report from Mr. Holmes as complying for intent and need for anything that the Commission would need to know about the project. This is a very small project involving running a force main from 880 West Central Street up to the intersection of Forge Parkway and West Central Street. He stated what remains of the project is to run a 24 in. length of 4 in. PVC pipe from the building to the suction line going to the pump station, getting the electrical inspector to inspect the electrical, and to pump out the existing cesspool and fill it in. This will probably take a couple of days.

Mr. Russell stated the stipulation requires the reports be issued each April and October until a Certificate of Compliance is issued. Even if no work is taking place, the reports are still due.

Ms. Gelineau asked about the likelihood of the project wrapping up by next April when the next report is due.

Mr. Wise stated it depends on the contractor.

Ms. Gelineau asked if the Commission accepts this report from Mr. Holmes, but the project goes past April and is still not at the point of a Certificate of Compliance, how is the Commission supposed to feel confident that they are going to receive a report in April.

Mr. Wise stated they would receive a report in April because it is very close on his radar right now.

Commission members informally agreed with option number two.

Mr. Russell clarified that should the Commission decide on an amendment to the NOI, it could completely eliminate that stipulation for reporting.

Ms. Gelineau stated she would rather have the reports come in.

Mr. Wise stated he would appreciate if the Commission currently accepts Mr. Holmes's report; and, if the project is not done by April, the Commission will receive a report.

Commission members and Mr. Wise discussed the date on Mr. Holmes's report.

There was a motion made by Jeffrey Milne to accept the report dated October 1, 2018, submitted by Mr. Holmes, P.E., as covering all the previous reporting requirements up to and including October 2018, for 880 West Central Street. The motion was seconded by Angela Gelineau and accepted with a vote of 4-0-0.

Violations/Enforcement: 93 Elm Street

Ms. Carol Sellw addressed the Commission and stated she was here for a violation regarding some firewood down by the Charles River; her husband cut his firewood there for 30 years. Then, it was brought to someone's attention that we were not supposed to do that. She stated her husband dealt with Mr. Russell and filled out paperwork. Mr. Russell told him not to remove the firewood and that he was in violation. He wrote Mr. Russell a letter stating they lived in the town, raised their family, and cut firewood there for 30 years. She stated they offered to remove the firewood; they will never cut firewood there again. Mr. Russell did not accept that. He stated they were in violation and needed to fill out some paperwork. So, we filled out the paperwork and brought it to Mr. Russell who stated it was not filled out properly. Her husband asked what was wrong with the paperwork. She stated Mr. Russell said it was not his job, hire a lawyer. So, her husband filled out the paperwork a second time. He submitted it to Mr. Russell who said it was not correct, hire a lawyer. So, we did it three times. It was probably something with the numbers or figures. She stated they notified all the abutters. Her husband got nowhere. Then there was a court date. He appealed and he missed the court date by three days. He went to the court and they said they were going to issue him a new court date and it would be sent to him in the mail. She said they never got the second court date; her husband missed the second court date. Then the police came and arrested him, put him in handcuffs, and took him to the police station. This is over firewood. Then he had to go to court the next day which coincidentally his court date was that same day. So, he took care of both issues that day in court. They issued him a new court date for January 2019. She stated that during the summer they were divorced and they sold the house. This horrible nightmare is following us. The closing is tomorrow. The buyers want to back out or hold back money. She stated that her husband does not have a dime; he is a hardship case. She stated we just want to move on; we have finances to square away.

Mr. Harrington stated let's try to resolve this.

Ms. Sellw stated that all the firewood is gone; there is not one piece of firewood down there. Someone from the Conservation Commission came down to see that there is nothing there. She thinks the person was Tara. She stated she does not know what to do. This situation follows the property and she needs it to go away for the new buyers.

Ms. Gelineau stated that stuff happens if you ignore things. We are here now. Let's figure this out. She asked Mr. Russell what is needed?

Mr. Russell stated the Commission issued the enforcement order which required the property owner to file an NOI to either keep the firewood there or remove it. It is the lack of filing of the NOI that kicked off the citations, court hearings, etc. We are now asking the question given the fact that there are potential new property owners coming in and that the firewood which was much larger than firewood as it was logs. The court has ordered the property owner to file the NOI and engage a wetland scientist. The reason for the wetland scientist was because of the repeated incompleteness of the Notice. The court hearing has been continued to the 15th, but the NOI must be filed no later than the 3rd. The question remains is it worth it to go through everything and keep bringing the property owner back into court. The only one to make that decision is the Commission. Should the Commission decide to continue the current course of action, we go back to court on the 15th and the judge would have to be informed on what has transpired. He noted that the owner failed to appear at the first two hearings. At this point, it is probably in everyone's best interest if the Commission formally voted to rescind the enforcement order and instruct us to notify the

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court that the Commission has been satisfied. He stated he strongly recommended, per discussions with the town administration, that the \$475 of outstanding fines should be paid.

Ms. Sellew asked what the fines are for.

Mr. Russell stated they were in the citations that were delivered to the house.

Ms. Sellew stated she does not live there. She stated her husband has no money.

Mr. Russell stated the fines were for the citations that were issued.

Ms. Gelineau stated this was a small problem that became a bigger problem due to inaction. She stated that we are trying to help you. She stated she thinks it is the right thing to do to rescind the enforcement order. She asked what the condition of the land is right now.

Mr. Russell stated that was one of the advantages of the NOI because then the Commission gets a report on the condition. He stated he is not legally allowed to go on the property. So, he cannot answer the question. If the Commission rescinds the enforcement order, it is assuming, rightly or wrongly, that the removal of the logs did not do any damage to the resource area. It is probably a valid assumption as we are not getting any reports of erosion into the river which would come from downstream. Therefore, he thinks it is a logical assumption that the logs being removed eliminated the possibility that they could in fact fall on the river and damage the bank. Mr. Russell reminded the Commission that we never went looking for this, it was a complaint from DEP. When we went down there, we saw it and could not ignore it. As it turned out, the original complaint was for the adjoining property. Nevertheless, at this point, probably the best course of action would be for the Commission to rescind the enforcement order and then the Town will take the appropriate steps to cancel the court actions. He also recommended in the motion to rescind the enforcement order that the fines still have to be paid.

Ms. Sellew stated they can pay that when they close.

Mr. Russell stated he did not think it would be a financial burden for the sellers to hold back \$475 so the fines could be paid.

Ms. Gelineau stated it sounds like it could be managed.

Ms. Sellew stated she appreciates it more than you know.

Mr. Cerel suggested the rescission be subject to the receipt of the payment of the fine. Whenever they bring in the payment, which is in their control, they will issue the rescission and the direction to the Agent to dispose of the case.

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Ms. Sellew asked if she could do that now so that her closing can happen.

There was a motion made by Angela Gelineau for the Commission to rescind the enforcement order against the property at 93 Elm Street under the condition that the existing Town fines are paid, and once that has happened there be a motion to address the court and ask them to stop all court action. The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-0.

Ms. Sellew asked if there was something she could get to bring to the closing tomorrow to make them aware of this.

Mr. Russell stated probably not as the Conservation staff is not in on Friday.

Mr. Cerel stated this meeting is on live tape, couldn't somebody watch that?

Mr. Russell stated the tape is not usually up for about a week.

Mr. Cerel stated he would be in his office tomorrow from 8:00 AM to 1:00 PM and he could speak to someone as he is the town attorney; he will give Ms. Sellew his card before she leaves tonight.

Mr. Russell stated Ms. Sellew needs to pay the fine at the town clerk's office tomorrow which opens at 8:00 AM. Then the town clerk will notify the Conservation Commission the fine has been paid and they can take the appropriate action. Formal letters will be generated next week. He will work with the town attorney to make sure the appropriate message gets to the district attorney's office.

Mr. Cerel asked Ms. Sellew to ask the town clerk to notify the town attorney that the fine has been paid.

Mr. Jamie Hellen, Deputy Town Administrator, reiterated that Ms. Sellew could come in at 8:00 AM tomorrow to pay the fine.

Ms. Sellew thanked everyone.

Minutes: August 30, 2018

There was a motion made by Angela Gelineau to accept the amended meeting minutes for August 30, 2018. The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-0.

Chair and Commission Member Comments

Mr. Russell recommended to Mr. Harrington that tonight's Discussion Items be postponed due to the heavy snow. Ms. Gelineau stated she would not be attending the December 20, 2018, meeting.

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Discussion: Administrative Approvals

To be discussed at the next meeting.

Discussion: DelCarte Pond Treatments

To be discussed at the next meeting.

Signed Orders of Conditions, Order of Resource Area Delineation, Emergency Certification Form & Certificate of Compliance

Orders of Conditions – 21 James Street – Union Street Realty Trust – CE159-1191

Order of Resource Area Delineation – 725 Summer Street – Summer Heights Solar – CE159-1188

Emergency Certification Form – Pine Street (between numbers 170 & 186)

Certificate of Compliance – 71 Lenox Drive – Stephen Kenny, Esq. – SE159-675

There was a motion made by Angela Gelineau to adjourn the meeting. The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-0.

The meeting adjourned at 8:26 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary