

**Franklin Conservation Commission
Minutes of Meeting
March 14, 2019**

To: Town Clerk
cc: Members
File

Members Present: Bill Batchelor, Jeff Livingstone, Paul Harrington, Jeffrey Milne, Staci Dooney, Alan Wallach, Braden Rosenberg.
Also Present: George Russell, Conservation Agent
Members Not Present: None.

Chairman Batchelor announced the meeting would be audio and video recorded. He introduced new Commission members Mr. Braden Rosenberg and Mr. Alan Wallach. 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 – 38 Pond Street – G&H

Chairman Batchelor stated that he understood there was an issue with ownership of the parcel.

Ms. Amanda Cavaliere, Guerriere & Halnon, Inc., representing the applicant, addressed the Commission and stated they were in discussions with Brendan Properties and are waiting for a letter from that legal team to do the proposed work.

Chairman Batchelor confirmed that the applicant does not have certification at this time. He stated that, therefore, it would be in everyone's best interest not to take testimony.

Mr. Russell pointed out that besides the ownership issue, he does not believe that peer review is warranted, but peer review will be done on the engineering portion for the Planning Board by BETA. He recommended the hearing be held open until such time as BETA has completed the engineering review as there will be significant drainage changes that go into the jurisdictional area.

Ms. Cavaliere stated she is aware and agrees.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 38 Pond Street to March 28, 2019, at 7:00 PM. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-0.

Public Hearing – NOI – Amego Schools – Washington Street – EcoTec

Mr. Russell stated he just received the NOI number from DEP and there are a significant number of comments. Given that DEP has comments, he strongly recommended to the Commission peer review on this item because it has to be established that the wetlands line shown on the plans is correct. Plus, based

on the DEP comments, there may be significant plan changes concerning drainage. He recommended the hearing be continued with the consent of the applicant, and the peer review be authorized.

Mr. Scott Jordan of EcoTec and Mr. Chris Keenan of Quinn Engineering addressed the Commission. Mr. Jordan stated that they agree that continuance would be in order.

Chairman Batchelor reiterated that taking testimony before all reports and studies are in is a dangerous thing to do. He strongly suggested the continuance of this hearing. He stated he would take questions from the public, but the Commission cannot answer anything as there is nothing to rule on.

Mr. Edward Ensor, 15 Grace Lane, asked if there was a contact person from Amego to address questions.

Chairman Batchelor stated that Mr. Russell or Ms. Celorier would be a good source for that information.

Mr. Russell asked that residents call his office and they would work to answer questions.

Ms. Marilyn Souza, 17 Warwick Road, asked how long this hearing would continue to be postponed.

Mr. Russell stated the application will be continued until all reports have been completed and addressed. The Commission's policy is to continue the hearing from meeting to meeting. He recommended the public call the Conservation office prior to the next meeting to find out if all the reports are in.

Chairman Batchelor stated they will not vote until all the information is in.

There was a motion made by Jeffrey Milne for peer review for the NOI for Amego Schools, Washington Street. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for Amego Schools, Washington Street, to March 28, 2019 at 7:05 PM. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-0.

Public Hearing – Continued - NOI – Upper Union Street Solar – Industria Eng.

Mr. Russell stated he has talked to the applicant about this item. The wetlands peer review has not been completed due to the snow cover. He recommended continuance and the applicant has agreed.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for Upper Union Street Solar to March 28, 2019 at 7:10 PM. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-0.

GENERAL BUSINESS

Minutes: February 14, 2019

There was a motion made by Staci Dooney to accept the meeting minutes for February 14, 2019. The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-2. (Mr. Rosenberg and Mr. Wallach abstained.)

Public Hearing – Continued - NOI – Spring Street Renewables – Andrews Eng.

Mr. Milne recused himself.

Mr. Russell stated they are still waiting for peer review finalization. He pointed out, as outlined in his Agent's Report, there are still pending wetlands issues from January 16, 2019, that have not been addressed. Therefore, with the consent of the applicant, he thinks the hearing should be continued.

Mr. Steven O'Connell of Andrews Survey & Engineering Inc., representing the applicant, stated the applicant is in attendance at tonight's meeting. He stated that this is his fifth trip to the Commission; with the Commission's permission, he would like to make a presentation about the project. He stated that they have addressed BETA's review comments on behalf of the Planning Board. They are substantially complete with two or three outstanding comments; he has been working on them with BETA. He stated the stormwater issues are substantially resolved. He thinks it needs input from this Commission before it can be resolved. He does not know how they can proceed without having a dialogue with this Commission.

Mr. Russell stated he disagreed in the context that the engineering review is accepted by the Commission when the applicant complies with what BETA wants. This Commission has never given input in terms of technical drainage information

Mr. O'Connell stated that he is not looking for technical drainage information, he is looking for general project information so they can prepare what they would consider the final set of plans and this cannot be done without the Commission's input, which they have not had to date.

Chairman Batchelor stated they do not vote until all issue are resolved. He said we have discussed this before. He stated that until all the issues are buttoned-up, it is your right to give testimony and it is the public's right to ask questions. The problem is so frequently he has seen these things go down in flames because all of a sudden an engineering report comes in that is contrary to testimony given, and now we have a mess on our hands.

Mr. O'Connell asked if Chairman Batchelor had reviewed the BETA report.

Chairman Batchelor stated he has not and he will not until it is final.

Mr. O'Connell stated that if anyone had reviewed the BETA report, they would see that there are two outstanding issues: one is soil testing which is completed and he spoke with BETA and they are satisfied, and another is an offsite issue, unrelated to this Commission.

Chairman Batchelor stated he does not have any report to look at, nor do the commissioners.

Mr. Russell stated that the general policy is to not overload the Commission members with paper; we only give the members the final reports.

Mr. O'Connell provided a scenario in which all the information was provided and BETA's blessing was given, and then the Commission and public gives input and they need to make changes. He stated that now is the time to seek input about aspects of the project.

Chairman Batchelor asked how the Commission can give input if they do not know what they are talking about.

Mr. O'Connell stated they could because they have had the application for two and one-half months.

Chairman Batchelor stated that was an application. He stated that he cannot ask commissioners to vote on issues that they do not understand, and we generally give an up and down vote. We are not here to debate and say we think you should do this or do that. The Commission does not help you do the study. The Commission votes on what is in front of us. If there is an issue that is unsolved, the Commission will do a down vote and then you have to start all over again.

Mr. O'Connell stated he is not looking for a vote, he is just looking for information.

Chairman Batchelor stated they do not have reports in.

Mr. O'Connell stated there are reports; he does not know why the Commission does not have them.

Chairman Batchelor stated the Agent said there is information that has yet to be delivered. Therefore, he takes Mr. Russell at his word. How can he ask commissioners to take a vote or listen to something that we don't know what is going on?

Mr. O'Connell stated he assumed the Commission would have copies of reports from the peer review consultants.

Chairman Batchelor stated that you may go ahead and give testimony, but I am warning you that we will be less patient if an issue comes up.

Mr. O'Connell stated he did not want to do that; he is baffled.

Chairman Batchelor stated that Mr. O'Connell was testing their limits. He cannot ask commissioners to listen to something that is not validated by peer review or by DPW, DEP, WSI, or whatever initials you want to put next to it. That is why we so frequently talk to engineers and consulting firms where we have a relationship with and say look, and the first thing they do is they understand what can happen.

Mr. Russell pointed out that there are six or seven comments from DEP on this project that are not addressed.

Mr. O'Connell stated those are overlapping comments from BETA which have been addressed.

Chairman Batchelor stated we have DEP, we have BETA, and a number of issues outstanding. As far as we are concerned, we don't have any input into a finality of anything. He cannot ask the commissioners, and he won't ask the commissioners, to take testimony on uncertain things. Not especially as critical as dealing with conservation issues, because once we vote it is law. He stated that if we make the wrong decision, I am in the town attorney's office the next day and in a bunch of trouble, and it would not be the first time.

Mr. O'Connell stated he understood the policies.

Mr. Alan Clapp, NEXAMP, addressed the Commission and asked at what point in time, going forward, do you need all the information so you will have time to review.

Chairman Batchelor stated that as long as the reports are out and being finalized, call Mr. Russell and he will give you an indication that everything is in and we are ready when you are.

Mr. Russell stated that once the final reports are in from WSI and BETA, and they have addressed all the concerns, if no plan revisions are necessary, the hearing will go forward as soon as we get them, even if it

is 6:30 PM on the night of the hearing. If plan revisions are necessary, then we wait until those plan revisions come in. BETA has to see them again to make sure they are right, then when they say everything is fine, then we go forward.

Chairman Batchelor stated that what you don't see before this meeting takes place is that generally, around 6:15 PM, we meet and say what do we know and what don't we know. Obviously, when the report is printed, there is still a lag of time when information filters in. Mr. Russell may walk in with additional information. He showed an example of all the notations he makes updating his report for the meeting.

Mr. Russell stated the Commission members will get the final reports that comply with the final plans in their packets.

Chairman Batchelor stated he is just trying to keep everyone safe. He knows what can happen; it is just wisdom. He stated that he understands their sense of impatience; he would want this thing over with. He stated that the residents have a right to hear and question, but all of a sudden they are going to walk away thinking A happened and they don't come back and then they hear that B happened, then there is a fire storm in the Town Administrator's office and we are all called up and now we have a mess.

Mr. Russell stated that they also run the risk of designing the project. The other option is to take the testimony, close the hearing, and deny the NOI for lack of information.

Chairman Batchelor stated that is why he said do not test their limits as he can close the hearing.

Mr. Clapp stated they will continue and work with Mr. Russell prior to the next meeting.

Chairman Batchelor stated he wants to hear the testimony once; he wants it to be accurate and he wants the public to listen and have a chance to ask questions. So, with the applicant's permission, they will continue without testimony.

Mr. Livingstone entered the meeting.

There was a motion made by Staci Dooney to continue the public hearing for the NOI for Spring Street Renewables to March 28, 2019 at 7:15 PM. The motion was seconded by Paul Harrington and accepted with a vote of 5-0-2. (Mr. Milne and Mr. Livingstone abstained).

Public Hearing – Continued - NOI – 27 Forge Parkway – Guerriere & Halnon

Mr. Russell stated that with the consent of the applicant they received an email from BETA Engineering this afternoon that said they were recommending potentially significant changes that the applicant, the town engineer, and BETA are going to be working on.

Ms. Amanda Cavaliere, Guerriere & Halnon, Inc., representing the applicant, addressed the Commission and stated she did not have any difficulty with continuance.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 27 Forge Parkway to March 28, 2019 at 7:20 PM. The motion was seconded by Staci Dooney and accepted with a vote of 7-0-0.

GENERAL BUSINESS (continued)

Violations/Enforcement: 800 Washington Street

Mr. Russell stated the Commission members have received in their packets several pieces of correspondence. He summarized that the property owner placed some minor fill adjacent to the driveway, but the location is in the 25 ft. no-touch zone to both an isolated wetland and a riverfront. It is his opinion that because it was in the 25 ft. no-touch zone, the minimum permitting required would be an RDA and a variance request on a permit. The property owner has appealed Mr. Russell's determination to the Commission and thus he is here today. He stated that he has never gone on the property because he has been threatened with arrest by the property owner.

Mr. Joseph O'Koren, 800 Washington Street, stated that regarding the arrest thing, a lady that works for him was at his house with his dogs and some person in a car with CT plates parked across the road and sat there. The lady that works for him brought the dogs in because they were barking at him; she called him asking who this person was. Then the person crosses the road, stands on the sidewalk, and stares at the house. Mr. O'Koren said she was still on the phone with him and she said the person was staring at her and he did not say anything. Mr. O'Koren stated that six months before this happened, someone broke into his neighbor's house and stole property. So, he said he told her to call the cops as he had no idea who the person was. There were no town plates, no town sticker, nothing saying he was from the Town of Franklin. After about an hour thinking about it, he thought it could be Mr. Russell as he knew he was from CT. There was no proof it was him until he got a letter the next day stating it was him. He talked to one of his friends who is a policeperson about this. He stated that he did tell Kathy Celorier that if Mr. Russell did this again, because it is creepy having someone stare at someone's house, he would call the cops. He asked the Commission members if they might call the cops on someone staring at their house while standing on the public right of way. He did not know it was Mr. Russell until after the fact.

Chairman Batchelor stated he was asked by the Town Administrator to inspect the site. He called Mr. O'Koren to go on the site and to meet him. He stated that Mr. O'Koren said he could not meet him. He did inspect the site in detail. He has some very interesting information to provide to the Commission. But, he would like Mr. O'Koren to summarize why he did what he did.

Mr. O'Koren provided a summary. He stated he brought the gravel to his property to replace gravel that was existing before he purchased the property. The gravel was eroding due to the town raising the road two inches in front of his driveway. When he bought the property there was about a 2 in. lip to divert the water coming down Washington Street from going into his driveway. His solution was to fix this problem instead of calling the town. He brought in 1-2 yds. of gravel to raise that area that had previously had existing gravel to fix the problem as he did not want to damage his vehicles.

Chairman Batchelor stated this is the interesting perspective on this property which he found absolutely startling. Mr. O'Koren's paved driveway is in the 25 ft. no-touch zone. He does not know who permitted that. He explained the location of the driveway and how it is washing out because the road was raised 2-3 in. by the town. He noted Mr. O'Koren put in the crushed stone just to stop the erosion. He can see how this happened. The bigger problem is that the town has to do something.

Mr. Livingstone summarize that the road work was done in the 25 ft. no touch zone, so the DPW would have had to come before the Commission to do the work. Has anyone looked up to see if the DPW came before the Commission for this work? He does not remember the DPW coming before the Commission for raising the road. If it turns out that this project was not permitted or was not done to the actual conditions upon which it was based, it is a problem. If it is the case, it would have forced Mr. O'Koren to take action that he would not have otherwise needed to take. This would be a real problem as now the Town would be liable.

Chairman Batchelor stated that if it was his house, he would be livid.

Mr. Russell stated that a repair of an existing road within the right of way is exempt from regulations.

Mr. Livingstone asked if that work had caused or was causing persistent problems to wetlands adjoining that roadway.

Mr. Russell stated that the work itself can be undertaken without a permit, but if it can be proven the work caused subsequent problems, then it comes back on the town. It is incumbent on the property owner to go to the town for redress.

Mr. Livingstone stated he opinion that if the Town does a project that turns out to be causing harm to an area under the Commission's control, then it should be up to the Commission to approach the town for remediation to stop the erosion or the problem.

Mr. Russell stated the solution is the individual property owner gets the permit and then goes to the town to take care of the problem including any reimbursement for costs for the permit, etc.

Mr. Livingstone stated there are two independent issues: between the property owner and the town and the work that was done, and between the Commission and the town. The Commission's onus is to protect the wetlands.

Mr. Russell stated the Commission could take action against whomever did it, independent of this issue.

Mr. Livingstone stated that technically, if the homeowner had witnessed this, and come to the Commission and stated that this is what is happening, the Commission could have taken action to get it remediated and potentially made it not necessary for the homeowner to take action.

Commission members discussed the issue.

Mr. O'Koren stated that since he put the gravel in the week after Christmas, it has not washed out. When he contacted the DPW, they said they were going to replace the manholes that are on both sides of his driveway. He explained some of the work the town did on the road.

Chairman Batchelor explained the slope and terrain.

Mr. Russell stated it is not just in a buffer, it is in a resource area, a riverfront. It is his opinion that if he had the authority, he would have approved this administratively. He does not have the authority as it is in the 25 ft. no-touch zone and in a resource area. He referred to the notes in his Agent's Report. He said he has no problem reaching out to the DPW and the town engineer to outline what has transpired and how they intent to fix it.

Chairman Batchelor stated that punishing someone for putting in crushed stone so their driveway does not wash away, he has a problem with that.

Mr. Livingstone stated an RDA would be reasonable. It would also document the issue.

Mr. O'Koren explained that he had previously been before the Commission when installing a fence. He had taken notes but could not find them. He said he was told that he had 100 ft. from the pond or stream that he does not have to come to the town every time he wants to do something. He cannot find that in any of the minutes from the 2017 meeting.

Mr. Livingstone told Mr. O'Koren that the meetings are recorded.

Ms. Celorier stated she has the DVDs in the office back to 2010.

Chairman Batchelor stated Mr. O’Koren can call Ms. Celorier and she will get out the DVD.

Mr. Russell stated there is a river on the other side of his house so it would be a 200 ft. riverfront zone.

Mr. O’Koren stated that from the river to the gravel is 137 ft. and from the pond is 113 ft.

Mr. Livingstone suggested pursuing an RDA for the crushed stone which would start the process.

Mr. O’Koren stated he would do that, but his plan is to this spring bring paperwork to build a garage and he wants to re-asphalt the driveway and he would not have to put more gravel in.

Chairman Batchelor stated that may help him. He suggested an RDA.

Mr. Livingstone suggested that in the meantime, the Commission could get someone from DPW to look at the road.

Mr. Russell requested a formal vote of the Commission to require the RDA.

There was a motion made by Jeff Livingstone to approve an RDA and that there is a need for an RDA for 800 Washington Street. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

Violations/Enforcement: Franklin Heights

Chairman Batchelor and Alan Wallach recused themselves.

Mr. Russell stated the Commission members’ packets contain information and the enforcement order that he issued. There is a point source discharge in the rear of one of the new units in the complex. He does not know what is being discharged or where it is coming from. He had brought this to the attention of the property owners and the engineer which is G&H. It was a 4 in. pipe coming out of the bank. That pipe was removed. Since that pipe was removed, the flow was diminished, but still continuing. The permit has expired. In order to allow the property owner to find out where the water is coming from, the enforcement order was issued requiring them to find the origin of the water and more importantly to sample the water to find out what is going into the BVW. He stated the engineer is at tonight’s meeting. He met onsite and he has talked to all the parties involved. They all agreed this was the best course of action. The enforcement order gives them the ability to go in and find out what they need to find out. He stated that it is his opinion that it is a curtain drain to the structure. He noted there is still a lot of work to be done out there. The applicant will eventually be filing another permit, probably an RDA. The Commission must vote on the Enforcement Order.

Ms. Amanda Cavaliere, Guerriere & Halnon, Inc., representing the applicant, addressed the Commission. She stated the pipe has been removed and they are working to come up with a resolution to find out what was going on there. She noted there have been heavy rains this season. Moving forward, they did agree to the Enforcement Order on behalf of their client and are working to resolve this issue. They will be monitoring the area since the pipe is no longer there. Someone was out this week to take a sample; however, a sample could not be taken as there was snow and cold. Over the next few weeks, they will sample the water to determine if it is groundwater and where it is coming from. They are proposing to the Commission that the applicant work under an Enforcement Order and work to get a water sample to have it analyzed. Once the water quality results are obtained, they will forward them to the Commission. Then G&H will propose a solution. She noted that there is still a great amount of work to be done on the old

order that has expired. Much of the work will never be constructed as part of this development. That leaves the work to be done such as loam and seed, landscaping, deck constructions on units to be done; the footings are already installed. It is her opinion that the work left in the buffer zones of the resource areas will not impact the resource areas significantly. She reviewed G&H's plans to complete the remaining work and close out the project.

Mr. Livingstone asked where the pipe was from.

Ms. Cavaliere stated they could not determine where the pipe appeared to be originating from. The pipe was removed and the area backfilled with crushed stone. They believe that overtime, the groundwater will lower itself.

Chairman Batchelor, as an audience member, homeowner, and resident of Franklin Heights, discussed the history of Franklin Heights, and noted that the piping was not shown anywhere and the current developer did not know where it was from. He reiterated that this piping was taken out, and he stated no one knows where the pipe was from. He stated this is the final stage of the development, roughly eight units.

Mr. Rosenberg stated that since so little is known about this pipe, should the other houses be checked for more pipes.

Mr. Russell stated he has done that.

Ms. Cavaliere stated they do erosion control inspections routinely and nothing had been flowing prior to this.

Mr. Russell recommended the Commission vote to approve the Enforcement Order with the caveat that as long as the property owner, through their engineering firm, is diligently pursuing what is required, the Agent be allowed to extend the dates in the Enforcement Order. A second issue the Commission will have to address is that under their policy of expired permits, they will need to give Ms. Cavaliere some guidance as to whether they are going to require an NOI or RDA for the remaining work. He recommended it be an RDA. As the existing notice has expired, it still shows up in the chain of title; that loop will have to be closed somehow. The full release cannot be granted because the work is not done. He stated there has been a lot of cooperation from the developer's perspective that they want to get the problem resolved. He has agreed that if they diligently pursue this, his office will sign off on certificates of occupancy for those three units because there is no sense holding it up as suppose it is found out to be just rainwater. He caveated this by saying that if we find out they do need the drain and it is going to drain into the BVW, that is probably going to be an NOI because it would be a point source discharge. The immediate thing is to approve the Enforcement Order with the authorization for the Agent to extend the deadlines if the work is being pursued diligently.

There was a motion made by Jeff Livingstone to approve the Enforcement Order with the authority for the Agent to extend the deadlines for Franklin Heights. The motion was seconded by Staci Dooney and accepted with a vote of 5-0-0.

Chairman Batchelor and Mr. Wallach re-entered the meeting.

Discussion: Del Carte Earth Day Event

Chairman Batchelor stated that Earth Day will be April 27, 2019, at DelCarte. He was informed by the Town Administrator that he could have up to \$300 to create an event on that Saturday from 9:00 to 12:00 PM. He will Chair it, although as he has dual surgeries coming up, he probably won't be able to do much.

Mr. Livingstone discussed that last year they were very successful. They had done a lot of out reach to many groups.

Chairman Batchelor stated they could use social media. He has a relationship with the administrator of the "All About Franklin" blog and he could get a posting per week regarding an event at DelCarte.

Ms. Dooney suggested that community service hours be approved for this event in order to get more attendance.

Commission members discussed if there was anyone at the high school to reach out to.

Ms. Dooney stated she would help to communicate this to the high school.

Chairman Batchelor stated he is going to get Starbucks to come down to set a booth like they did two years ago. He is also going to go to the Cake Barn and a cupcake establishment.

Commission members discussed they have the parking lot, playground, and driveway area.

Mr. Livingstone suggested contacting the Downtown Partnership and that they would be interested in this as a way to promote business in and around Franklin. He discussed the idea of a possible Farmer's Market at DelCarte on Earth Day. Mr. Livingstone said he could contact his daughter about this, to see if it was feasible to do, so early in the growing season.

Commission members discussed other ideas for the event.

Chairman Batchelor stated the sub-committee would be Jeff, Braden, Alan, and himself.

Mr. Wallach stated he would go to Starbucks.

Mr. Rosenberg stated he would work with Ms. Celorier on the bags.

Mr. Livingstone stated he would do Farmer's Market. He stated the Health Commissioner regulates what can be sold. He asked that if there were a Farmer's Market, would permits be needed or could we get a waiver.

Ms. Celorier stated she would check into it.

There was a motion made by Jeff Livingstone for Earth Day activities. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

There was a motion made by Jeff Livingstone to adjourn the meeting. The motion was seconded by Braden Rosenberg and accepted with a vote of 7-0-0.

The meeting adjourned at 8:25 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary