

**Franklin Conservation Commission
Minutes of Meeting
July 13, 2017**

To: Town Clerk
cc: Members
File

Members Present: B. Batchelor, T. Henrichon, A. Gelineau, P. Harrington, J. Livingstone, J. Milne, Staci Dooney, George Russell, Conservation Agent
Members Not Present: None.

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

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

Election of Officers for 2017

There was a motion made by Tara Henrichon to nominate Bill Batchelor for position of Chairman. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

There was a motion made by Bill Batchelor to nominate Tara Henrichon for the position of Vice Chairman. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

Public Hearing – NOI – 10 Briarwood Road

Mr. Russell stated this hearing must be continued since Mass Fish and Wildlife has 30 days to respond and the Commission cannot make a decision until they do; that 30 days will expire after this meeting.

Chairman Batchelor advised that without the wildlife report, the applicant may choose to hold testimony until the report is published in case the report contradicts testimony.

Mr. Matt Schweisberg of Wetland Strategies and Solutions, LLC, representing the applicants, stated he understood the information Chairman Batchelor just stated. He noted that the information he has to present would not conflict with any finding with the mapped habitat.

Chairman Batchelor stated that if any testimony is given to the Commission and therefore goes on record, the Commission members that are currently present would have to be here for the quorum for the continued hearing.

Mr. Schweisberg stated they would wait to give testimony pending the report from Natural Heritage.

Mr. Russell advised the applicant that due to a quorum problem for the next meeting, the next meeting would be on August 10, 2017.

Mr. Schweisberg stated that was fine.

There was a motion made by Angela Gelineau to continue the public hearing for the NOI for 10 Briarwood Road to August 10, 2017 at 7:15 PM. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Public Hearing – Continued - ANRAD – 469 Maple Street – Carroll Construction

Ms. Lauren Gluck of Pare Corporation addressed the Commission and stated they submitted the updated plans yesterday. She described the site as approximately 83 acres and mostly wooded with some dirt paths throughout the parcel. She described the delineation of the wetland areas throughout the parcel which included, but not limited to, a ponded area BVW, intermittent stream channel, green wetland areas, and isolated wetland in the landscape.

Ms. Lenore White, peer reviewer of Wetland Strategies, Inc., provided an overview of her findings. She stated she agreed with Ms. Gluck to the extent that we looked at all the wetland flags. There was a number of changes made primarily along the B-series. Those changes have been incorporated in the plans. She noted that the revised plans were dated June 21, 2017, but she thinks the revised plans were actually revised more recently than June. She stated there are two dates on the plans and both dates show June 21; she does not want there to be any confusion with the dates. The two changes were made, but show the same date; it was an error in drafting. The date of the plan should be July 11, 2017, rather than the revision box date indicating revisions were in June. She said she looked at the streams on the property and discussed that the stream is intermittent, not perennial. She reviewed the additional resource areas on the parcel. She stated the plan is accurate that shows the wetland resource areas on the property.

Mr. John Cetrano, 64 Bridle Path, stated he would like to see a reference point on the map to see where the streets are.

Ms. Gluck showed Mr. Cetrano a locus map of the area.

Mr. Russell stated that based on the review by WSI, he recommends the Commission approve the ANRAD as presented with the map date of July 11, 2017. He also recommended that in the motion the Commission find that the streams onsite are intermittent.

There was a motion made by Angela Gelineau to close the public hearing for the ANRAD at 469 Maple Street. The motion was seconded by Tara Henrichon and accepted with a vote of 7-0-0.

There was a motion made by Angela Gelineau to approve the ANRAD at 469 Maple Street based on the amended July 11, 2017 maps and with the acknowledgment that the streams on the map are intermittent. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Public Hearing – RFD – 44 Townline Road – Lavoie

Mr. Russell stated he discovered a vegetative debris pile next to a resource area while driving past it. He contacted the property owner by letter. The property owner acknowledged he had put the leaves in the area in question; it is on town-owned Conservation Commission land. He stated that Mr. Lavoie retained the services of a wetland scientist who provided a report stating that the leaves should remain and no more should be added. Mr. Russell stated it is his opinion that the Commission in approving the RDA is giving de facto permission of the property owner for the application and with the understanding that the adjoining property owners will no longer deposit vegetative debris. He noted that technically Mr. Lavoie is the violator on someone else's property.

Commission members discussed the vegetative debris and the property line.

Mr. John Lavoie, applicant, addressed the Commission and stated he was all set.

Mr. Russell stated that he recommends a negative RDA.

There was a motion made by Jeff Livingstone to close the public hearing for the RFD at 44 Townline Road. The motion was seconded by Tara Henrichon and accepted with a vote of 7-0-0.

There was a motion made by Jeff Livingstone for a negative determination for the RDA for 44 Townline Road. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Public Hearing – Continued - NOI –Villages at Oak Hill – Heritage Design

Mr. Russell stated there is no NOI number yet. He has already spoken to the applicant and received permission to extend the hearing. He stated there will be no quorum for the next Commission meeting; therefore, he recommended the hearing be continued to August 10, 2017.

There was a motion made by Angela Gelineau to continue the public hearing for the NOI for Villages at Oak Hill to August 10, 2017 at 7:20 PM. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

GENERAL BUSINESS

Minor Buffer Zone Activity: 62 Elm Street

Mr. Russell stated the applicant has requested a continuation as they are out of town. He recommended a vote to continue to August 10, 2017.

There was a motion made by Tara Henrichon to continue the MBZA for 62 Elm Street to August 10, 2017. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Permit Modification: 39 Miller Street

Mr. Mark Bisson, applicant, stated he went to the building commissioner about 1 ½ years ago to start his backyard projects, including re-doing his deck, building a retaining wall, a shed and a patio. He stated when he brought his plans to the Building Department, they told him he needed to see Conservation. He stated he met with Mr. Russell on several occasions. He came before the Commission in December. He started the project this March with the retaining wall and then the shed; he also built the patio. All the projects except the shed are complete. He stated that just recently he received a stop-work order from Mr. Russell stating that the patio was an illegal structure; it was not originally submitted with the permit. He thought once he received approval from the Conservation Commission that he was able to do the projects. Both the Building Department and the Conservation Commission had been out to the site on several occasions and no one said anything about this until he got the notice. He stated that based on what he would have to do, this couple-of-hundred-dollar patio is going to end up costing \$3,000-\$4,000. He stated he hired an environmental scientist to review what he had done. He stated he provided information and pictures to the Commission. He would like to move forward on this.

Mr. Russell stated the original RDA was granted to build a retaining wall and allow some fill for the extension of the driveway and the shed in the rear yard. He stated he was out to the site a few times. Then, on June 22, 2017, he did an inspection of the property under the normal inspections and he noticed the erosion control failure and the patio which are outlined in his letter. He checked and there was not approval given for the patio. The patio is a substantial structure as shown in the pictures. He stated that it is about 5 ft. from the retaining wall. It is relatively close to the wetlands. It is his opinion that an NOI needs to be filed for the fill of this patio in the area that it is, and the regrading of the slope, as an RDA

cannot be amended. He stated he informed the property owner that it is his right to come before the Commission and present his side of the situation.

Chairman Batchelor asked the applicant if he understood at the time he took out the permit what he could and could not do.

Mr. Bisson stated he was under the impression that he needed to get permission from the Conservation Commission to do the work in his backyard; he did not know that to install something else he would have to go back and get another formal form of permission or permit. He stated that if someone had told him he needed something more to do that, he would have stopped. But, that did not happen.

Mr. Livingstone stated he remembered this project and remembers that it was pointed out to the applicant that the plan was the plan and deviations to the plan should not be done without further discussion with Conservation Commission because the RDA could not be modified. He stated that the Conservation Commission is always very clear that what is submitted is what is built. He stated he finds it disingenuous of the applicant to indicate he was not aware that adding the significant patio structure would require additional certifications or permissions.

Mr. Bisson stated the environmental scientist indicated the structure was 25 ft. from any wetlands.

Mr. Livingstone stated that is not the point; there was a plan. The Commission takes a dim view on applicants that add or alter the plan after-the-fact. He sides with Mr. Russell as that is the reason that the Conservation Commission exists.

Commission members discussed the approved plan, that the applicant added to the plan without approval, and the procedural issue that an RDA cannot be amended.

Mr. Russell stated his recommendation is that an NOI is required. It does not meet any of the tests for an MBZA, and should this permit come in with an RDA, he would recommend a positive determination, which means an NOI.

Chairman Batchelor noted that if the applicant had originally had an NOI, it would have offered much more flexibility in changing of plans.

Mr. Livingstone noted that during the previous Commission meeting with the applicant, it was discussed whether the amount of construction would rise to the level of an NOI. The level of risk for the applicant to choose the RDA route was discussed. The as-built is not the same as the plan that was approved.

Mr. Russell asked the Commission to take a formal vote that the NOI is required.

There was a motion made by Jeff Livingstone to take a vote of whether or not an NOI is needed for the existing changes to the RDA plan. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Chairman Batchelor stated the vote indicates this must go to an NOI.

Mr. Russell requested a formal motion to add *Item 2.3.1 for Certificate of Compliance for 656 King Street* to tonight's agenda. This item was inadvertently left off the agenda posted at the Town Clerk's office.

There was a motion made by Jeff Livingstone to add *Item 2.3.1 for Certificate of Compliance for 656 King Street* to tonight's agenda. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Certificate of Compliance: 656 King Street

Mr. Russell stated all is ready for the release to be granted. He advised the Commission that in the motion the following stipulations will continue in perpetuity: #46, 61, 62 as amended, 63, and 64.

There was a motion made by Jeff Livingstone to issue the Certificate of Compliance for 656 King Street with the stipulations in perpetuity #46, 61, 62 as amended, 63, and 64. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

Minutes:

There was a motion made by Jeff Livingstone to approve the meeting minutes for June 29, 2017. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-2. (Ms. Gelineau and Ms. Dooney abstained.)

Discussion: Policy on Land/Sale Acquisitions

Mr. Russell stated there was a discussion at the staff meeting yesterday on the policy on land/sales acquisitions for Chapter 61 land. The Town Administrator has agreed that there will be a 30-day period after the notification is received by the Town on the sale of any Chapter 61 land for land use bodies such as the Commission to make a recommendation or comment. As soon as the notification is received, Mr. Russell will put it on the next agenda for discussion. Therefore, he does not think at this time it is necessary for the Commission to adopt any formal request for a policy change by the administration.

Commission members discussed the agreement from the Town Administrator's office and informally agreed it was reasonable.

Discussion: Senate Bill 94

Mr. Russell stated this bill is currently in front of the Senate.

Chairman Batchelor stated it would essentially mitigate what towns could do regarding municipal wetlands and ordinances; it is another effort by the State to have sweeping legislation. He suggested all Commission members look at their emails regarding the information about the bill. He suggested this item be put on the agenda for the August 10, 2017 meeting so that as a Commission they can decide if they support or not support what is being suggested.

Chairman Livingstone summarized that the ultimate end result would be that the ability of ConCom to regulate certain bodies would then be limited or lessened, mitigated. As a principle, that is not something we would obviously want. But, the question then becomes, what does that mean in terms of Franklin.

Mr. Russell stated that in his opinion the bill is an attempt to remove "impediments" to development.

Commission members discussed Senate Bill 94, the bill process in legislation, and 40B projects.

There was a motion made by Jeff Livingstone to support the MACC position and ask for an email to be sent by Mr. Russell. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Ms. Henrichon asked if the Board of Health could also sign off on this.

Mr. Russell stated he would check on that and report back.

**Signed Certificate of Compliance, Determination of Applicability & Order of Resource Area
Delineation**

Certificate of Compliance – 656 King Street – Wegman Companies – CE159-1029

ORAD – 469 Maple Street – Carroll Construction – CE159-1165

Determination of Applicability (Negative) 44 Town Line Road - LaVoie

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

The meeting adjourned at 8:25 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary