

Town of Franklin



Conservation Commission

**August 13, 2020
Meeting Minutes**

As stated on the agenda, due to the growing concerns regarding the COVID-19 virus, this meeting will be conducted as a Remote/Virtual Conservation Commission meeting. In an effort to ensure citizen engagement and comply with open meeting law regulations, citizens will be able to dial into the meeting using the provided phone number, or citizens can participate by using the Zoom link provided on the agenda.

Vice Chair Jeffrey Milne called the above-captioned meeting to order this date at 7:00 PM as a **Remote Access Virtual Zoom Meeting**. Members in attendance: Jeffrey Milne, Jeff Livingstone, Paul Harrington, Patrick Gallagher. Members absent: Bill Batchelor, Alan Wallach. Also present: Jen Delmore, Conservation Agent.

Commencement

Vice Chair Milne announced this meeting will be conducted as a Remote Access Virtual Zoom Meeting. This meeting will be video recorded.

Note: Documents presented to the Conservation Commission are on file.

PUBLIC HEARINGS:

Public Hearing – RDA – MBTA Franklin Line Right of Way

Mr. Nick Henke, environmental scientist of HDR on behalf of Keolis, and Mr. Kevin Slattery of HDR addressed the Commission for the maintenance of the MBTA line and construction of a second track within a 4.0 mile length of the MBTA ROW for the Franklin Branch from Norfolk station to the existing double track near Longfellow Drive in Franklin; approximately 1.5 miles are in Franklin. This is Phase II of the project which will commence where Phase I left off. The project proposes to restore a former second track, which was originally built in 1910 and later removed, on the existing embankment and ROW. One existing culvert in Franklin will be replaced. Mr. Henke reviewed the existing drainage and discussed the proposed improved drainage. He referenced an exemption from regulation under the Wetlands Protection Act through Chapter 79 of the Acts of 2014, the Transportation Bond Bill (Bridge Exemption) for the culvert. He reviewed the five resources areas. He stated that a general construction permit has been issued for the project by the EPA and erosion controls will be installed before the beginning of work. All work will be done outside the resource areas, and the work associated with the project will not negatively affect or conflict with the resource areas. He stated that they are seeking a negative determination.

Ms. Delmore questioned the exemption as it was not clear to her. She stated that she spoke with Ms. Kim Roth, the Town's circuit rider from DEP, and there are no exemptions for this railroad work in the Wetlands Protection Act. The only portion that might be exempt under the Riverfront section, 10.58, is if the work is only within Riverfront Area and no other resource area buffer zones. She stated that the

applicant should file a Notice of Intent and if an exemption applies to a section of work, it should be referenced in the application. She recommended a positive determination #1 and #3.

Mr. Livingstone stated he reviewed the material and agrees with Ms. Delmore. Mr. Henke confirmed he sent Ms. Delmore an email with additional information, today. Ms. Delmore stated the information was used when she spoke with Ms. Roth. Mr. Henke stated his understanding is that although it may not be called be out specifically in the exemption, it met the spirit and intent of what is being protected. They are offering drainage improvements. He stated that they have gone through this with other municipalities, including Norfolk, and they have been granted a negative determination.

Ms. Holly Palmgren, Manager of Environmental Construction at MBTA, stated she is concerned about the circuit rider's interpretation as they have received this exemption for a negative determination from other municipalities; it has been used numerous times throughout the State. She stated it is minor work in the buffer zone and does not have any impact. As well, they are making improvements to stormwater. Therefore, they do not feel it requires a full filing of an NOI. Ms. Delmore stated she thinks it is an improvement, but in filing an NOI the applicant would go through each function and characteristic and clarify how they are protecting each one. She thinks the NOI is the way to go forward for the Town of Franklin as they go through their process. She confirmed her recommendation for a positive determination.

Mr. Livingstone stated that going back some years, the Town had at least two projects with the MBTA regarding cleaning up debris, etc. around the areas and bordering the vegetative wetlands. Because the Town decided not to take the position of extensive oversight, those projects were delayed and work that was to be done was not done; the relationship between the MBTA and the Conservation Commission became difficult. He stated he understands the leniency the MBTA has been given by other towns; however, based on historical conduct, he agrees with Ms. Delmore's position. Mr. Harrington recommended a positive determination, as well. He noted the regulations identified do not specifically indicate railroads. He stated it is a good project, but the oversight is important. Mr. Livingstone stated that in the past when the Commission found things that were confusing, they asked the regulatory body to make clarifications. He recommended a letter to the regulatory agencies asking for language clarification. Mr. Gallagher stated it would be helpful to receive a letter of explanation regarding the exemption requested. He does not doubt this is a good project; however, he has not seen information from the applicant to support this. Ms. Delmore expressed concern about the conflicting opinions and interpretations. She noted that the NOI would provide the additional information requested by Mr. Gallagher.

Ms. Palmgren apologized for the ill feelings between the Conservation Commission and the MBTA from past projects. She understands the position the Commission is in regarding the different information received from DEP. In the interest of time, she is not sure it is beneficial to delay and wait for more DEP comments. She stated it would be better to close the public hearing tonight and return with the additional information for an NOI.

There was a motion made by Paul Harrington to close the public hearing for the RDA for the MBTA Franklin Line Right of Way. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes.

A positive determination #1 and #3 for the RDA for the MBTA Franklin Line Right of Way was accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes. No Motion or Second was provided.

GENERAL BUSINESS

Minor Buffer Zone Activities: 4 Cobblestone Drive

Ms. Mary Lynn Freedman addressed the Commission for the installation of a 452 sq. ft. above-ground pool 55 ft. away from the wetland edge in a previously disturbed lawn area.

Ms. Delmore stated she conducted a site visit today; she sees no issues with the pool. She noted that any yard waste or debris is not to be deposited in the wetland or within 25 ft. of the wetland. She recommended approval of the pool.

The MBZA for 4 Cobblestone Drive was accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes. No Motion or Second was provided.

Permit Modifications/Extensions: 0 Pond Street (Brookview) DEP #CE159-1147 Permit Modification

Mr. Nathan Mahonen of Bohler Engineering, and Mr. Tom Betts, applicant, addressed the Commission for a project that was approved on February 23, 2017, and was granted a one-year extension in February 2020, involving construction of 96 multi-family residential units and associated site improvements including an access road, driveways, utilities, stormwater infrastructure, landscaping, lighting, etc. Part of the approved project includes a gravel parking area near the trail that wraps around the property for recreational use. Mr. Mahonen noted this is a continuation of the hearing from the last meeting; they were waiting for the Town Engineer to provide a written report. The Town Engineer completed the report and indicated no concerns. Mr. Mahonen noted they received approval from the Planning Board.

Ms. Delmore confirmed receipt of a letter from the Town Engineer. She stated she has no concerns with this project.

The Permit Modification for 0 Pond Street (Brookview) DEP #CE159-1147 was accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes. No Motion or Second was provided.

Certificates of Compliance: None.

Violations/Enforcement: None.

Minutes: July 16, 2020 and July 30, 2020

The Meeting Minutes for July 16, 2020, were accepted with a roll call vote of 3-0-1. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Abstain. No Motion or Second was provided.

The Meeting Minutes for July 30, 2020, were accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes. No Motion or Second was provided.

Discussion Items: Administrative Approvals

Ms. Delmore reviewed the two administrative approvals in the last month: 36 Stewart Street for reconstruction of existing deck with 3 ft. extension towards wetlands, 50 ft. from the wetland edge, and 60 sq. ft. of new area, with no patio under proposed, and 54 Leanne Way for removal of a hazardous tree in the 25 ft. to 50 ft. buffer zone that part of the tree has already snapped off. She recommended ratification of the administrative approvals.

The Administrative Approvals for 36 Stewart Street and 54 Leanne Way were ratified with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes. No Motion or Second was provided.

Discussion Items: Legal Advertisement Fee

Ms. Delmore stated the legal advertisement fee amount for any project requiring the Conservation Commission to submit a legal advertisement to the paper is currently \$110. She stated that the cost of these legal advertisements is actually more than \$110. They are more typically between \$130 to \$160. She recommended changing the policy from requiring the \$110 at the time of submittal to requesting the exact amount from the applicant after receipt of the proof of legal advertisement from the paper. The cost/proof is typically received about two weeks prior to the meeting. The applicant would be notified immediately upon confirming the proof to the paper. The applicant would be required to pay the exact amount prior to their first meeting. She recommended the Commission vote to approve this change in administrative policy. She stated that there is nothing in the bylaws or regulations that indicates that the Commission cannot change the policy for this fee.

Commission members discussed the legal advertisement fee and a possible review of all fees charged by the Commission. Ms. Delmore agreed a periodic review of all Commission fees would be good. She confirmed that she would clarify the language in the application packet regarding this revised legal advertisement fee.

The increase in the Legal Advertisement Fee was accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes. No Motion or Second was provided.

Chair and Commission Comments: None.

Executive Session: None.

There was a motion made by Jeff Livingstone to adjourn the Remote Access Virtual Zoom Meeting. The motion was seconded by Paul Harrington and accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Livingstone-Yes; Gallagher-Yes.

The Remote Access Virtual Zoom Meeting adjourned at 7:53 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary