

Town of Franklin



Conservation Commission

**October 1, 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.*

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

**Commencement**

Chair Batchelor 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 Vegetation Management**

Ms. Clary Coutu, Director of Environmental Compliance for Keolis, addressed the Commission for the Request for Determination (RDA) in relation to vegetation management on the railroad right-of-way operated by Keolis Commuter Services (Purple Lines). In order to get their Vegetation Management Plan approved by the Mass Department of Agricultural Resources (MDAR), and in accordance with 310 CMR 10.05(3)(a)2, an RDA may be used to determine the resource area boundaries. She stated the RDA process is something they do every five years when they initiate the Vegetation Management Plan permit. She stated that the RDA includes the maps for the Commission's jurisdiction which she reviewed as part of her slideshow presentation. She noted that this application goes to Franklin as well as approximately 100 communities throughout the State. Within the Commission's jurisdiction is approximately 10 miles of track systems including approximately five miles of limited spray area for the application of herbicides and three miles of no spray of chemicals; she reviewed the spray zones and the mechanical removal method. She stated Keolis works to reduce the impact to the environment. For all railroad ROWs, they are obliged to maintain the ROW for line of sight and avoid any kind of potential hazards such as trees falling on the ROW that could cause derailment or other situations.

Ms. Delmore stated she has concerns about the mechanical method of removal. There was correspondence with MACC and Keolis. She referenced the determination of applicability this Commission issued in 2016. They had issued a negative 5 determination; however, under that application it was on the herbicide method that was described. Now in 2020, a mechanical removal method is also begin described in the application. She stated that she thinks the best way forward without requiring an NOI is to issue a positive determination for resource boundaries and also a negative 5 for only the herbicide method to be allowed and no mechanical means be used. Ms. Coutu reviewed the physical methods of vegetation control. Ms. Delmore said that going mechanical where herbicides cannot be used would be good for vegetation hanging over the railroad. She is not against mechanical methods; however, she is concerned about what is and is not exempt under the RDA.

Chair Batchelor discussed the conundrum that herbicides will not be enough to control vegetation that may impede the MBTA. He stated that he wants there to be no needless cutting, but there are things that cannot be handled by herbicide alone. Ms. Delmore agreed with Chair Batchelor that it is something that needs to be done. Their plan is a good plan, but it is tough because under the RDA it says the herbicide is exempt, but it does not exempt the mechanical method. She stated that she does not want to recommend something that is not clearly exempt.

Ms. Coutu said that from the perspective of the operator, where we can avoid spraying, we will. She reviewed the areas on the map. She said her main focus is to make sure the road bed and shoulders are clear of vegetation. They will do selective pruning and cutting and will avoid chemical application in sensitive areas.

Chair Batchelor confirmed an RDA has been accepted in the past for this. Ms. Delmore said that usually a negative 5 determination is made; she recommended a negative 5 and positive 2A determinations. Ms. Coutu stated she was agreeable to this. She explained there are two types of RDAs: one for work and one for boundaries. The one submitted to the Commission was for boundaries. However, maybe she should have applied for work as well. The RDA here for approval is for the boundaries being delineated. She noted that technically, a positive 2A is not needed.

Commission members asked questions. Chair Batchelor stated an NOI was not needed for mechanical cutting. Ms. Delmore stated that the RDA in 2016 did not have the same language regarding the use of mechanical means. Ms. Coutu stated that mechanical means were used. She reviewed the language in the 2016 RDA and stated that she believed this RDA should include all the language including the use of mechanical means. Chair Batchelor stated that in reality there is no difference in the way they are going to approach vegetation management. Ms. Delmore stated the information provided in the Form 1 is more clarifying than in the cover letter. Ms. Coutu confirmed that she wants to make sure both herbicide and mechanical methods are allowed. Mr. Harrington requested that the cutting and herbicide use should be monitored with communications from the applicant to the Commission.

There was a motion made by Jeffrey Milne to close the public hearing for the RDA for MBTA Vegetation Management. The motion was seconded by Paul Harrington and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

There was a motion made by Alan Wallach to approve the RDA for MBTA Vegetation Management with a Positive 2A and a Negative 5 with the stipulation that we do not restrict mechanical methods where necessary and only use the exceptions for herbicide. Mr. Gallagher requested the following be added to the approval: if there are any substantial mechanical methods work by the MBTA, they would provide advanced notice and related information to the Commission. The amended motion was seconded by Alan Wallach and accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-did not vote; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

#### **Public Hearing – NOI – 22 Mount Street**

Ms. Jessica Correia, applicant, and Ms. Debbie Anderson, representative for the applicants Jason and Jessica Correia, addressed the Commission for the construction of an attached 500 sq. ft. garage within the 100 ft. buffer zone to Bordering Vegetated Wetlands and within the 200 ft. Riverfront Area of an unnamed perennial stream. There is 460 sq. ft. of disturbance proposed within the inner riparian zone and 60 sq. ft. of disturbance proposed within the outer riparian zone. No work will take place within the 50 ft. no-build buffer to the wetlands. They are not going to do any paving; the garage will be accessed over a gravel driveway. An existing deck will be removed where the construction of the garage is proposed. Other than the deck, the area is lawn. The closest work to the BVW is 51 ft.

Ms. Delmore stated she performed a site visit on September 23, 2020, and is in agreement with the resource area delineations. An unpermitted pile of soil, relocated from the basement walkout area, was noted within the buffer, and the applicant has since put erosion control measures around the soil to prevent any sediment from migrating toward the wetland while the project is before the Commission. She stated the DEP file number and comments were issued today and therefore the comments have not been addressed yet. She recommended continuing the public hearing.

Ms. Correia asked for an explanation about the DEP number and comments. Ms. Delmore explained that the State issued comments regarding this application; she reviewed the comments. She stated the Commission members have not had a chance to review the comments, and the applicant has not responded in writing to said comments. Ms. Anderson addressed the comments. Chairman Batchelor reiterated that the Commission needs the response in writing.

There was a motion made by Alan Wallach to continue the public hearing for the NOI for 22 Mount Street to October 15, 2020, at 7:02 PM. The motion was seconded by Patrick Gallagher and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

**Public Hearing – Continued - ANRAD - 0 Cottage Street, 0 Cottage Court, 21 Peck Street**

Mr. Mark Arnold of Goddard Consulting, on behalf of the applicant, addressed the Commission for the confirmation of 40 linear feet of Bordering Vegetated Wetlands and 910 linear feet of bank of an intermittent stream. He stated this is a continued public hearing; they were waiting for peer reviewer Wetland Strategies to provide a response. WSI submitted a memo dated September 21, 2020, in which they agree with the resource area delineations and agree the stream is intermittent.

Ms. Delmore commented that it appears that the previous conservation agent, the Director of Planning and Community Development Bryan Taberner, and a few neighbors adjacent to the project have expressed concern that the stream is perennial. She stated a resident who could not attend tonight's meeting requested Ms. Delmore make a statement on his behalf that there should be a one-month continuance or wait until drought conditions have subsided to reevaluate the stream to determine if it is perennial or intermittent. She noted the DEP file number has not been received; she recommended continuing until the DEP file number is issued.

Chairman Batchelor said he is not sure one month is going to tell us anything unless we get some extremely wet weather; he thinks we are going to need more time to study this. Mr. Arnold stated that regarding the question of the status of the stream, it is under the regulations of 310 CMR; the regulations are explicit about the determination of an intermittent stream. He stated that based on the regulations, the stream is intermittent based on the scope of the ANRAD filing.

Ms. Delmore stated that WSI stated in their memo that the stream is intermittent. She explained that she just wanted to convey the concerns she has heard from Town employees, the former conversation agent, and residents.

Mr. Gallagher suggested WSI be asked for brief clarification on their conclusion and noted the drought conditions. Mr. Arnold stated that the regulations are clear and explained how an intermittent stream is determined. He encouraged the Commission to read the regulations and the letter provided by WSI regarding the designation of the intermittent stream. Chair Batchelor asked Ms. Delmore to confirm with Ms. Lenore White of WSI to clarify her decision of intermittent stream.

Ms. Jennifer D'Angelo, 34 Wachusett Street, stated she reached out but was told the site walk already happened. She noted she has been provided with information from Ms. Delmore and Mr. Taberner.

Ms. Delmore clarified that WSI did their site visit and they go out independently. If the Commission members would like to go out, there is another visit scheduled. However, none of the Commission members have

requested to do that. Therefore, if Ms. D'Angelo wanted to participate in a site visit, it would be between her and the applicant. Ms. Delmore stated that she has no authority to bring the resident out to the site. Mr. Arnold suggested Ms. D'Angelo contact his office.

There was a motion made by Patrick Gallagher to continue the public hearing for the ANRAD for 0 Cottage Street, 0 Cottage Court, 21 Peck Street, to October 15, 2020, at 7:03 PM. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

### **Public Hearing – Continued - NOI – Franklin Line Double Tracking Project (Phase II)**

Ms. Clary Coutu, Director of Environmental Compliance for Keolis; Mr. Nicholas Henke, environmental scientist of HDR; and Mr. Kevin Slatery 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. Ms. Coutu stated that at the last public hearing they were lacking the DEP file number. The DEP number and notes have been received. She stated they developed a technical memorandum in response to DEP's questions. She stated she believes they have exhausted the burden of proof and there are no alternatives.

Ms. Delmore stated DEP's comments have been received. However, the applicant's response was not received in time to be part of the Commission's meeting packet.

Chair Batchelor stated that until the Commission members have the opportunity to receive and study the information in writing one week prior to the meeting, the Commission will not take a vote.

Ms. Coutu asked to go through their response to DEP; Chairman Batchelor stated they are taking a hard line on this that all paperwork must be filed with the Commission one week prior to the meeting.

There was a motion made by Paul Harrington to continue the public hearing for the NOI for Franklin Line Double Tracking Project (Phase II) to October 15, 2020, at 7:04 PM. No second was made. It was accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

### **GENERAL BUSINESS**

#### **Minor Buffer Zone Activities: 5 Delta Court**

Ms. Susan Keays and Mr. Scott Keays, applicants, addressed the Commission for the construction of a 221sq. ft. room in place of the 144 sq. ft. deck that currently existed off the back of the house. They would like to use as much of the existing footings from the deck to support the room and will not dig and pour a foundation.

Ms. Delmore expressed concern as an MBZA is used for accessory structures to a home. She questioned the type of ground disturbance that was going to take place. She stated that this activity is within the 50 ft. to 100 ft. buffer zone to Bordering Vegetated Wetlands and within Riverfront Area to an unnamed perennial stream.

Chair Batchelor suggested this is stepping outside of an MBZA, and this project may require an NOI. Ms. Delmore stated she would work with the applicant on an NOI filing.

There was a motion made by Jeffrey Milne to deny the MBZA for 5 Delta Court. It was seconded by Paul Harrington and accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-did not vote; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

#### **Minor Buffer Zone Activities: 36 Jackson Circle**

Ms. Amanda Cavaliere of Guerriere & Halnon, Inc., on behalf of the applicant, addressed the Commission for the construction of a 392 sq. ft. partially covered pergola in a pre-disturbed area next to the existing in-ground pool. The construction will take place within the fenced in area and is within the 100 ft. inner riparian zone to a perennial stream and within the 100 ft. buffer zone to Bordering Vegetated Wetlands. Almost all of the activity is proposed outside the 50 ft. no-build buffer zone. The ground is currently bare and gravelly with no vegetation. There used to be a shed in this location. She stated that erosion control will be installed.

Ms. Delmore stated she performed a site visit on September 23, 2020, and recommended approval.

There was no motion or second made. A vote was taken to accept the Minor Buffer Zone Activity for 36 Jackson Circle. Vote 5-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

**Permit Modifications/Extensions:** None.

**Certificate of Compliance: 31 Hayward Street**

Ms. Amanda Cavaliere of Guerriere & Halnon, Inc., on behalf of the applicant Mosley Mills, addressed the Commission for the redesign of a parking lot and drainage system. She stated the project is finished, and they request to close out the project.

Ms. Delmore stated she performed a site visit on September 29, 2020. She stated the area is stable and grass is growing; she recommended approval.

There was a motion made by Patrick Gallagher to approve the Certificate of Compliance for 31 Hayward Street. No second was made. It was accepted with a roll call vote of 4-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-did not vote; Batchelor-Yes.

**Certificates of Compliance: The Village at Cooks Farm – 636 & 664 East Central Street**

Ms. Amanda Cavaliere of Guerriere & Halnon, Inc., on behalf of the applicant, addressed the Commission for the project to construct 55 single-family homes. There was buffer zone and resource area filling and mitigation. She stated that at the last meeting there was some minor work left to be done. They have completed that work and are ready to close out the project.

Ms. Delmore stated that she performed site visits on September 16, 2020, and September 23, 2020, and can confirm the replication areas are well established with the proper wetland indicator species, and the entire site is stabilized. She recommended approval.

There was no motion made. Paul Harrington stated he seconded. A vote was taken to approve the Certificate of Compliance for the Village at Cooks Farm at 636 & 664 East Central Street. Vote 5-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

**Violations/Enforcement:** None.

**Minutes:** None.

**Discussion Items: Administrative Approvals**

Ms. Delmore provided a review of the administrative approval for 32 Red Gate Lane for the installation of a fence around part of the existing lawn area for dogs and small children, and construction of a 100 sq. ft. shed in lawn area outside of the 25 ft. buffer. She recommended ratification.

There was no motion or second made. A vote was taken to ratify the administrative approval as listed above for 32 Red Gate Lane. Vote 5-0-0. Roll Call Vote: Milne-Yes; Harrington-Yes; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

**Chair and Commission Comments:** None.

**Executive Session:** None.

There was a motion made by Jeffrey Milne to adjourn the Remote Access Virtual Zoom Meeting. The motion was seconded by Paul Harrington and accepted with a roll call vote of 3-0-0. Roll Call Vote: Milne-did not vote; Harrington-did not vote; Wallach-Yes; Gallagher-Yes; Batchelor-Yes.

The Remote Access Virtual Zoom Meeting ended at 8:36 PM.

Respectfully submitted,

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Judith Lizardi  
Recording Secretary