

Town of Franklin



Conservation Commission

**July 15, 2021
Meeting Minutes**

As stated on the agenda, due to the concerns regarding the COVID-19 virus, this meeting will be conducted as a hybrid virtual/in-person 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. This meeting will be held in the Council Chambers, second floor of the Municipal Building, for citizens wishing to attend in person.

Commencement

Chair Batchelor called the above-captioned meeting to order this date at 7:00 PM as a hybrid virtual/in-person meeting. Members in attendance: Bill Batchelor, Jeffrey Milne, Jeff Livingstone, Paul Harrington (via Zoom), Patrick Gallagher (via Zoom), Andrew Mazzuchelli. Members absent: None. Also present: Jen Delmore, Conservation Agent; Maxine Kinhart, Administrative Staff.

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

Election of Officers

Chair and Vice Chair Elections

There was a motion made by Andrew Mazzuchelli to nominate Jeffrey Milne to continue as Vice Chair of the Conservation Commission for another year. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

There was a motion made by Patrick Gallagher to nominate Bill Batchelor to continue as Chair of the Conservation Commission for another year. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

PUBLIC HEARINGS

Public Hearing – Continued - NOI – Lot 34 Mastro Drive

Mr. Rick Goodreau of United Consultants, Inc. addressed the Commission for a wetland crossing associated with a single-family house and barn which are proposed outside of the 100' buffer zone to the bordering vegetated wetland (BVW). He provided an update of the project. He stated that the field work has been completed for the bordering land subject to flooding, the flood plain elevations have been established, and revised calculations provided. He stated that Ms. Lenore White's comments have been added to the alternatives analysis, and the fee for review was dropped off today at the Town Hall. He stated that the Commission and consultants can commence with their review, and he will return to the next meeting for further discussion.

Ms. Delmore recommended continuing the public hearing.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for Lot 34 Mastro Drive to July 29, 2021, at 7:01 PM. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Public Hearing – Continued - NOI – 0 Cottage Street, 0 Cottage Court, 21 Peck Street (Madalene Village)

Mr. Scott Goddard, wetland scientist of Goddard Consulting, addressed the Commission for the construction of an affordable housing development including infrastructure, drainage, and relocation of the existing intermittent stream and bordering vegetated wetlands (BVW) on the property. He stated that Ms. Amanda Cavaliere of Guerriere & Halnon, Inc. and Mr. Rich Whittington, representing the applicant, were in attendance at the meeting. Mr. Goddard stated that he would provide an update of where they are in the peer review process. He stated that the project has not changed, and the key piece from the Conservation Commission is the relocation of the channel that exists on the site. He stated that the additional fee requested has been taken care of and he has comments to Ms. Lenore White's recent letter.

Ms. Delmore stated that the Commission members do not have Ms. White's recent letter; however, Ms. White has been holding the same position, and each letter indicates the same response. In response to Mr. Livingstone's question, Ms. Delmore confirmed the issue is stalemated at this point. Ms. Lenore White of WSI stated that her position has not changed regarding whether or not this project can meet the relevant performance standards. She stated that her position all along has been that the regulations are clear; they are meant to protect resource areas. She stated that at this site, we have an intermittent stream that is protected as much as any other stream is protected. Although it is intermittent, it still has an inland bank and land under water which are both wetland resource areas. Whether or not a stream is perennial or intermittent, those two resources are protected under the regulations and the bylaw. She stated that the regulations are clear that these resource areas have to be protected; it is not an act to redesign, re-engineer, or recreate these resource areas. There is nothing in the regulations that would allow these areas to be filled and the impacts that go along with that, and moved to a different location; it is not permissible. She stated that these are wetland protection regulations; if you fill it, you destroy it. This project is proposing to fill an intermittent stream and replication elsewhere; however, the regulations do not allow this. She stated that her memo points this out.

Mr. Goddard commented that he is a professional wetland scientist and provided his career background. He stated that he has worked on stream bank alterations. Although not common, stream bank alterations have been done. He discussed the flexibility in the regulations to alter the resources. He provided an example in another town where a brook was relocated and rebuilt. He stated that there are ways to do such projects to allow the project to proceed and protect the wetland resource areas. He discussed 310 CMR 10.5 and reviewed the sections that govern inland banks in regard to the proposed project. He discussed that it is not only implied, but explicitly stated, that projects are and can be presented to Conservation Commissions that involve removing, filling, dredging, or altering. He stated that functions and values worthy of protection are outlined in his report. He discussed 310 CMR 10.54(4) and stated that this section is applied when an applicant proposes to remove, fill, dredge, or alter the bank where that bank provides some functions and values as stated in the preamble. He read aloud and discussed each of the six standards in 310 CMR that the Commission is to review when work is proposed on a bank. He stated that based on the regulatory interpretation, he believes the regulations are crystal clear, and they do allow bank alterations; he disagrees with Ms. White. He stated that this project is appropriate and a benefit from a wetland resource perspective.

Ms. Delmore stated that the regulation indicating that "you shall not impair" is important. As well, the stream is being widened, so it is changing the flow. She stated that both Ms. White and Mr. Goddard have presented information. Mr. Livingstone stated that this was a legal debate in front of the Commission, and it was not fair to Ms. White. If this is a legal interpretation mismatch, the Commission does have legal resources to review, which he highly recommends the Commission call on at this time. Mr. Mazzuchelli stated that he

would need to review the materials before he could weigh in. Mr. Gallagher stated that he would appreciate something in writing regarding the interpretation of the sections noted by the applicant so Ms. White would have an opportunity to respond. Ms. Delmore stated that there is a letter from the applicant dated June 25, 2021, that goes through the performance standards that Mr. Goddard was discussing.

Chair Batchelor recommended continuing the public hearing. He stated that he would like both WSI and the project engineer to reach some accommodations instead of explanations about what each believes the law indicates. He stated that if that cannot be done, the Commission will refer it to the Town Attorney for a ruling. He stated that he hopes this will be ironed out by July 29, 2021. Ms. Delmore stated that she agreed. Ms. White stated that she understands the regulations, and she does not know of any other project where this has been done. She stated that she does not believe that this was a man-made stream; she has data from 1946. She stated that a project can be proposed, but that does not say it should or can be approved. She stated that this project is not permissible. Mr. Goddard stated that he will put together his comments in written format. He asked if he could speak directly to Ms. White about this. Ms. White stated that she would be willing to speak with Mr. Goddard, but it is unlikely that she will change her position. Mr. Mazzuchelli agreed that Ms. White and the applicant should have a conversation, and if they cannot come to an agreement, then the Town Attorney should be consulted; he requested something from both the applicant and Ms. White in writing. Mr. Gallagher agreed that if the parties cannot agree, then it is Town Counsel's responsibility.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 0 Cottage Street, 0 Cottage Court, 21 Peck Street (Madalene Village) to July 29, 2021, at 7:02 PM. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

GENERAL BUSINESS

Minor Buffer Zone Activity: 13 Parliament Drive

Ms. Karon Skinner Catrone on behalf of the applicant addressed the Commission for the removal of an in-ground pool, approximately 556 sq. ft. of impervious area.

Ms. Delmore stated that the areas of proposed new patio and walkways are currently disturbed impervious area. Biodegradable erosion control is proposed between the activity and the resource area. She conducted a site visit on July 8, 2021. She recommended approval.

There was a motion made by Jeffrey Milne to approve the MBZA for 13 Parliament Drive. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Minor Buffer Zone Activity: 17 Cherie Lane

Ms. Delmore stated that the applicant requested a continuance; the applicant submitted a new plan but not in time for the Commission to review for this meeting.

There was a motion made by Jeffrey Milne to continue the MBZA for 17 Cherie Lane to July 29, 2021. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Permit Modifications/Extensions: None.

Certificates of Compliance: 1 Woodland Park, CE159-1157

Ms. Delmore stated that this project was for the restoration of the bridge crossing the Charles River that leads to 1 Woodland Park in Franklin from Medway; it is a one-lane driveway crossing. She noted that she performed a site visit on July 8, 2021. A stone wall about 2' high with granite posts was added on the

Franklin side as well as 13 shrubs. She stated that she believes the stone wall was added for safety. She recommended issuance of a complete Certificate of Compliance.

There was a motion made by Andrew Mazzuchelli to approve the Certificate of Compliance for 1 Woodland Park, CE159-1157. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 5-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-was not asked by the Chair to vote; Batchelor-Yes.

Certificates of Compliance: 20 Woodhaven Drive, SE159-545

Ms. Delmore discussed that this Certificate of Compliance (CoC) was issued in 1999 but the original was never recorded by the applicant and now an attorney from Law Offices of Roche and Roche is asking for a new copy to record to clear the title. The copy available from 1999 was too blurry for the Registry of Deeds to except. Town Attorney Mark Cerel indicated the correct path forward is to have the current Commission resign a new copy of the CoC.

Chair Batchelor asked if any Commission members had an issue with signing this document. All Commission members indicated they had no issue with signing.

Certificates of Compliance: 1256 West Central Street, CE159-1206

Ms. Delmore stated that the applicant requested a continuance to July 29, 2021.

There was a motion made by Jeffrey Milne to continue the Certificate of Compliance for 1256 West Central Street, CE159-1206, to July 29, 2021. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Violations/Enforcement: 455 Maple Street

Ms. Delmore provided an overview; she discussed that she responded to a complaint about trees being cut at 455 Maple Street within Conservation jurisdiction. She performed a site visit on June 30, 2021, with the homeowner, Paul Pomarico, who was not aware he needed a permit for the activity. She stated that she observed at least 11 mature trees cut within the 100' buffer to the wetland edge and wood chip piles from chipping the trees. She recommended issuance of an Enforcement Order for the homeowner to hire a wetland scientist and land surveyor to delineate the wetlands and locate the wetland flags and cut trees, then submit that plan and return to the Commission. An after-the-fact Notice of Intent with restoration plantings might be necessary depending on the proximity of the cut trees to the wetland.

Mr. Pomarico addressed the Commission and stated that he did not know a permit was needed to take down the trees. There were some white oaks and pines with branches continuously falling off. The trees around the driveway were removed so falling branches would not hit the cars. He stated that he did not know he was in a buffer zone; he wants to be in compliance.

Chair Batchelor stated that there is a lot of debris and it must be determined how to take out the debris. He stated that he thinks Ms. Delmore has a good solution. He asked Mr. Pomarico to work with Ms. Delmore on the process. Ms. Delmore requested that Mr. Pomarico not dig up any more wood chips until a wetland scientist gets out there. Commission members recommended the NOI be filed. Chair Batchelor stated that there would be no violation fine. He stated that Ms. Delmore would walk the homeowner through the process. He stated that Mr. Pomarico has until August 12, 2021, to return to the Commission to satisfy the filing of an NOI and having a wetland scientist report submitted. Ms. Delmore reviewed the NOI process.

There was a motion made by Jeff Livingstone to continue this item and waive any fine for the violation for 455 Maple Street with the understanding that the homeowner will return to the Commission with an NOI and a suitable wetland report by August 12, 2021. The motion was seconded by Jeffrey Milne and accepted with

a roll call vote of 4-0-0. Roll Call Vote: Milne-was not asked by the Chair to vote; Livingstone-was not asked by the Chair to vote; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Violations/Enforcement: 8 Farm Pond Road

Ms. Delmore provided an overview; she reviewed that she performed a site visit on July 21, 2021, in response to the homeowner complaining about his neighbor dumping yard waste onto his land near wetlands. She stated that she observed multiple piles of yard waste including branches and grass clippings within the 25' buffer zone to the wetlands. She recommended issuance of an Enforcement Order for the piles of debris to be removed by hand with no machines. She let the homeowner know there should be no more dumping.

There was a motion made by Jeff Livingstone to approve the enforcement order for 8 Farm Pond Road for the debris to be removed by hand, not by mechanical means, and that the applicant and the individual involved should work with the agent on getting that accomplished. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-Yes; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Mr. Suresh Chinnappan, homeowner, thanked Ms. Delmore for her help on this matter.

Minutes: None.

Discussion Items: None.

Chair and Commission Comments: None.

Executive Session: None.

There was a motion made by Jeff Livingstone to adjourn the hybrid virtual/in-person meeting. The motion was seconded by Jeffrey Milne. No roll call vote taken.

The meeting adjourned at 8:22 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary