

Town of Franklin



Conservation Commission

**August 12, 2021  
Meeting Minutes**

*As stated on the agenda, due to the 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. 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 remote/virtual/in-person meeting. Members in attendance: William Batchelor, Jeffrey Milne, Jeff Livingstone, Paul Harrington (via Zoom), Patrick Gallagher (via Zoom), Andrew Mazzuchelli. Members absent: None. Also present: Jen Delmore, Conservation Agent.

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

**GENERAL BUSINESS**

**Discussion Items: Franklin Commons Conservation Restriction**

Ms. Delmore reviewed that Franklin Commons Limited Partnership is requesting that the Conservation Commission sign the Conservation Restriction proposed so that they can officially record the document. The Town Attorney has been consulted to ensure this is the proper next step because this Conservation Restriction was created in 2002. She stated that she performed a site visit on July 28, 2021, and noted some trash in the Conservation Restriction land. Since then, the trash has been removed. She stated that a notary is present at tonight's meeting to witness the signing. She recommended approval and signing of the Conservation Restriction.

There was a motion made by Jeff Livingstone to accept and sign the Franklin Commons Conservation Restriction. 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.

Commission members attending the meeting in person signed the document, and it was notarized.

**PUBLIC HEARINGS**

**Public Hearing - RDA – 0 Spring Street Map 323 Lot 046**

Ms. Heidi Graf of BSC Group representing the applicant addressed the Commission for the installation of one new utility pole including the removal of five mature trees; the three red maples, oak, and ash trees are within 10' to the road's edge and roughly 50' from the wetland edge. Ms. Delmore stated that this work can be considered exempt under 310 CMR 10.02 (2)(b)(2)(h); she recommended the issuance of a negative determination number 5.

Mr. Harrington noted concern regarding the removal of five mature trees; however, it is under the exempt rules so he has no questions. Ms. Graf explained that this is part of a larger project replacing poles on Spring Street; the distribution line is being extended.

There was a motion made by Jeff Livingstone to close the public hearing for the RDA for 0 Spring Street Map 323 Lot 046. 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.

There was a motion made by Jeff Livingstone to issue a negative determination number 5 with exemption 310 CMR 10.02 (2)(b)(2)(h) for the RDA for 0 Spring Street Map 323 Lot 046. 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 – NOI – 22 James Street**

Ms. Amanda Cavaliere of Guerriere & Halnon, Inc., representing the applicant Christopher McVay, addressed the Commission for the construction of a 24' x 24' addition, which is proposed as a garage on the bottom and a great room on the top, and a paved driveway on an existing single-family home. The construction is within the 50' to 100' buffer zone to a Bordering Vegetated Wetland and within the 100' to 200' outer riparian zone to a perennial stream. The area is currently lawn. She noted that the majority of the work on this property was completed before 2006. She noted an existing septic system on the right side of the house. Erosion control will be installed around the perimeter of the work.

Ms. Delmore pointed out that the application states the property was developed prior to 2006 and the Wetlands Protection Act and Franklin's Wetlands Protection bylaw. She stated that the Wetlands Protection Act was enacted in 1972 and Franklin's Wetland Protection bylaw in 1997. She acknowledged that Ms. Cavaliere noted the application was incorrect regarding this item. Ms. Delmore stated that the addition and driveway are 1,180 sq. ft. which is 7 percent of the riverfront area on site which is less than the amount allowable under 310 CMR 10.58 (4)(d). She stated that she performed a site visit on August 9, 2021, and everything looks good. She recommended issuance of an Order of Conditions approval with special conditions #20, 21, 24, 27-30, 34, 41, 44, and 51.

There was a motion made by Jeff Livingstone to close the public hearing for the NOI for 22 James Street. 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.

There was a motion made by Jeff Livingstone for the issuance of an Order of Conditions approval with special conditions #20, 21, 24, 27-30, 34, 41, 44, and 51 for the NOI for 22 James Street. 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 – 4 Ashley Circle**

Mr. John Rondeau, applicant, addressed the Commission for the installation of an in-ground pool in the back yard.

Ms. Delmore stated that this item was started at the last Commission meeting; they were waiting for the DEP file number which has been received. She recommended issuance of an Order of Conditions approval with special conditions #20, 21, 24, 27-30, 34, 41, 44, and 51.

There was a motion made by Jeff Livingstone to close the public hearing for the NOI for 4 Ashley Circle. 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.

There was a motion made by Jeff Livingstone for the issuance of an Order of Conditions approval with special conditions #20, 21, 24, 27-30, 34, 41, 44, and 51 for the NOI for 4 Ashley Circle. 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 – Lot 34 Mastro Drive**

Mr. Rick Goodreau of United Consultants addressed the Commission for the construction of a single-family house and barn. He reviewed that this project had been issued an Order of Conditions about five years ago; the permit expired for that project. He discussed that there are two options for access which are proposed on the most recent plan submittal. In the original submittal on November 3, 2020, the access driveway was proposed to cross the wetland and stream by using a box culvert. About 2,350 sq. ft. of wetland disturbance was proposed with 4,900 sq. ft. of wetland replication. About 1,960 sq. ft. of 25' buffer zone area was proposed to be disturbed with 4,450 sq. ft. of "no-disturbance" buffer zone replacement. He noted that it was determined the stream is perennial. An alternatives analysis was provided. As such, the Site Plan was amended. New access was proposed for the house and barn. He stated that he reviewed peer reviewer BETA/WSI's letter. He stated that it appears that Ms. Lenore White reviewed the revised alternative analysis and is suggesting the Mastro Drive access and crossing would be more advantageous than the crossing from the Partridge Street side. He stated that a wetlands replication area has been provided.

Ms. Delmore stated that if this project is approved, the Commission should provide a condition that the Partridge Street crossing would not be part of the approval even though it is on the July 13, 2021 plan. She noted that this project can be approved under the regulations for limited projects 310 CMR 10.53 (3) (e). The Conservation Commission has the option to impose conditions in the Order and in the Certificate of Compliance that prohibits further activities. The DEP file number has been received. She recommended issuance of an Order of Conditions that along with the usual special conditions #20, 21, 23, 24, 27-30, 34, 41, 44, and 51, special condition #23 be added which requires a report every April and October, and special condition #52 be included indicating the July 13, 2021 plan is accepted provided that the Partridge Street crossing and proposed dwelling is not a part of any approval. She noted to Mr. Goodreau that the old Order of Conditions would need a COC to close out that work. She reviewed special condition #51.

Mr. Gallagher questioned if there was sufficient area for use of the property for farming and agricultural and if an additional condition should be added to an approval that these uses should be outside of protected areas. Ms. Delmore reviewed the location of the house and barn and the suggested conditions.

There was a motion made by Andrew Mazzuchelli to close the public hearing for the NOI for Lot 34 Mastro Drive. 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.

There was a motion made by Jeff Livingstone to approve the NOI for Lot 34 Mastro Drive with the issuance of an Order of Conditions that along with the usual special conditions #20, 21, 23, 24, 27-30, 34, 41, 44, and 51, special condition #52 be included indicating the July 13, 2021 plan is accepted provided that the Partridge Street crossing and proposed dwelling is not a part of any approval, and special condition #53 be added indicating no further agricultural activity within the Riverfront Area. This condition is to continue in the Certificate of Compliance perpetually. The motion was seconded by Paul Harrington 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, Ms. Amanda Cavaliere of Guerriere & Halnon, Inc., and Mr. Rich Whittington, applicant, 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.

Ms. Cavaliere provided an update of the peer review process regarding stormwater. She stated that the applicant's last submission was dated August 5, 2021. BETA provided a follow-up comment letter on August 6, 2021; she stated that there are only a few outliers remaining. They will provide a follow-up letter addressing those concerns. She noted that stormwater typically goes through Planning Board, as well. Mr. Goddard stated that at the last Commission meeting, he went through a lengthy review of the wetland regulations, specifically bank resource areas and alterations to bank areas. As well, he prepared a narrative dated July 29, 2021, as a response to the peer review comments. He stated that the Wetlands Protection Act does allow bank alterations. He stated that WSI peer reviewer Ms. Lenore White has taken a different position; the Commission will have to render a decision.

Ms. White stated that her original decision still stands regarding this project. She assured the Commission that the difference between her position and Mr. Goddard's is interpretation of the performance standards. As this project proposes to eliminate a stream and bank, it does not fit the performance standards. She noted that Mr. Goddard's position is that the area is going to be replicated. However, the regulations protect existing resource areas. She stated that Mr. Goddard's project is not protecting the resource area, it is destroying the resource area. She stated that her position is that this project cannot go forward. She recommended getting Town Counsel involved if a decision cannot be reached tonight.

Mr. Goddard reviewed the history of how the channel arose, which was provided in his information packet. He showed and discussed the USGS maps from 1937 forward. He stated that the only reason there is jurisdiction is that since 1938/1940 a small area of BVW developed adjacent to the drainage ditch. Without that, there would be no jurisdiction. He stated that it is really a stormwater feature being treated as a resource area; it is not a naturalized stream channel. He stated that he also attached the recent ZBA court case for this Cottage Street project. He discussed the court case decision. He reviewed page 36 of the court findings letter regarding the relocation of the stream channel. He noted that Ms. White cited page 36 of this document in her response letter. He stated that the court's decision indicated that the stream/ditch could be moved/relocated and could be approved by the Conservation Commission. He noted that DEP did not indicate the project was not approvable. Mr. Goddard provided and explained an example project regarding the Olde Shrewsbury Village Shopping Center that allowed stream replication relocation.

Ms. White stated that the ZBA approved the project; however, in the footnotes, it is indicated that the project does not meet the performance standards of the Wetlands Protection Act. She stated that the project in Shrewsbury is a very different project; she reviewed the differences. She stated that it does not matter when the stream came to be or how it got there; the stream is there now and is a protected resource area. As well, DEP does not prejudge a case, that is why their comments are vague. She stated that she has not changed her position on this project.

Ms. Delmore stated that she agrees with everything Ms. White said. She recommended denying based on Wetland Strategies' conclusion that the project does not meet the performance standards for Inland Banks and Land Under Waterbodies and Waterways.

Commission members provided their comments. Mr. Livingstone discussed the letter of the law versus the intent of the law and point in time. He noted that applicants delineate from what it is today, not from a point in the past or future. Mr. Milne stated that as Mr. Goddard and Ms. White have not come to an agreement, stormwater does not need to be discussed. Mr. Mazzuchelli noted that he understands where WSI is coming from; the design from Goddard is not existing. He stated that CMRs apply to existing. Mr. Gallagher commented that this question was not before the court; the ZBA court decision is not binding on this Commission. He stated that the decision of the Shrewsbury Conservation Commission does not bind the

Franklin Conservation Commission. He stated that he is sympathetic to the argument that the regulations could provide a pathway to this type of relocation; he discussed the regulations.

Ms. White stated that the regulations apply to existing resource areas; she discussed the regulations for fill and replication. She stated that this type of proposal to move the stream is not allowed. Mr. Goddard stated that every piece of evidence he has cited is clear that banks can be altered. Mr. Harrington stated that in looking at the project he looks at the risk. In the regulation terminology it refers to bank; he asked if that can mean altering the bed as well. Ms. White stated that there are two different resource areas: bank and the land under water which is the stream bed.

Mr. Robert Hurd, 8 Cottage Court, stated that this project is on two sides of his property. He reviewed where the stream is fed; he said that he has never seen the stream dry. Mr. Goddard stated that the stream is properly classified as an intermittent stream.

Ms. Suzanne Bonfilio, 13 Peck Street, agreed with Mr. Hurd's comments. She stated that her family has lived on the property for more than 100 years; they also owned Fletcher Field. She stated that area has always been wet in summer and winter.

Mr. Richard Ciccone, 185 Chestnut Street, stated that he is troubled by this going forward; this would set a dangerous precedent going forward if it were approved. He discussed the Shrewsbury project. He stated that this applicant should come in with a project that does not affect the stream. He thinks the Commission should deny this.

Mr. Whittington stated that if the Commission is satisfied that they have heard all the comments, he would be in favor of the Commission holding a vote to close the public hearing and taking a vote on the project. He stated that he thinks they have supplied a lot of evidence in support of the project. He understands that there is going to be an impasse that will never be resolved between the consultants, and financially, it is in the best interest of the project to have the vote and he will go from there.

There was a motion made by Jeff Livingstone to close the public hearing for the NOI for 0 Cottage Street, 0 Cottage Court, 21 Peck Street (Madalene Village). The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 5-1-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-No; Gallagher-Yes; Mazzuchelli-Yes; Batchelor-Yes.

Chair Batchelor stated that he is disappointed they are at an impasse. He is going to ask for a vote for a denial of the NOI.

There was a motion made by Jeff Livingstone to deny the NOI for 0 Cottage Street, 0 Cottage Court, 21 Peck Street (Madalene Village). 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. Livingstone commented that it is critical that the voices of the residents of Franklin are heard. He thanked the citizens for coming forward. Mr. Harrington agreed with Mr. Livingstone. Mr. Gallagher agreed with Chair Batchelor's statements.

#### **GENERAL BUSINESS (continued)**

**Minor Buffer Zone Activity: Franklin Heights Condominiums 42-56 Leanne Way**  
*Chair Batchelor recused himself.*

Ms. Delmore noted that the applicant is not in attendance. She reviewed that this project is for the removal of the overgrown shrub layer behind 42-56 Leanne Way. The applicant is proposing removal of the shrub layer 3' to 4' back behind the lawn and cutting nothing greater than 2" in diameter. This activity is roughly 50' from the wetland edge based on the original wetland line information from when the development was built. She stated that she performed a site visit on August 10, 2021, and observed the shrubs have already been removed prior to approval. Some of the vegetation removed was up to 4" to 5" in diameter. Although the activity was performed without a permit, she is recommending approval.

Mr. Livingstone asked if there is some way, such as a letter, to let the applicant know that this was not the correct way to go about this; a formal plan is needed and applicants must wait to do the work until approval is obtained. Ms. Delmore stated that she can provide a letter to the applicant. Mr. Mazzuchelli stated that some sort of admonishment would be acceptable. Mr. Gallagher agreed. Mr. Harrington asked what would happen if it were denied. Ms. Delmore reviewed the process.

There was a motion made by Andrew Mazzuchelli to approve the Minor Buffer Zone Activity for Franklin Heights Condominiums 42-56 Leanne Way. The motion was seconded by Jeff Livingstone and accepted with a roll call vote of 4-1-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Harrington-No; Gallagher-Yes; Mazzuchelli-Yes.

***Chair Batchelor re-entered the meeting.***

**Permit Modifications/Extensions:** None.

**Certificates of Compliance: Villages at Oak Hill, Washington Street, SE159-739, SE159-921, and SE159-1164**

Mr. Mitch Maslanka of Goddard Consulting, representing the applicant, addressed the Commission for a project of multiple new roads and buildings off Washington Street which started in 2004 and has continued under three different DEP file numbers due to the previous ones expiring and work not being finished. The last DEP file number issued covered mainly the wetland replication area, grading, paving, landscaping, and finishing touches. He stated that Goddard Consulting conducted a site visit to review the areas of concern. They are putting together an enhancement plan to propose some plantings that were not installed in some areas and invasive species removal. They are requesting a site walk with the agent. Ms. Delmore stated that she would attend a site visit; she noted that she has already been out to the site twice.

There was a motion made by Jeff Livingstone to continue the Certificate of Compliance for Villages at Oak Hill, Washington Street, SE159-739, SE159-921, and SE159-1164, to September 9, 2021. 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.

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

Ms. Delmore stated that she received a request for continuance.

There was a motion made by Jeffrey Milne to continue the Certificate of Compliance for 1256 West Central Street, CE159-1206, to August 26, 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:** None.

**Minutes:** None.

**Discussion Items: Earth Day**

Chair Batchelor stated that he spoke with Mr. Gallagher about some ideas for Earth Day at DelCarte. Mr. Gallagher reviewed his ideas. He stated that he would like to get younger families involved in Earth Day and the cleanup of DelCarte. Chair Batchelor recommended electing Mr. Gallagher as chair of the Earth Day event and Mr. Mazzuchelli as vice chair of the event.

There was a motion made by Jeff Livingstone to elect Mr. Gallagher as chair and Mr. Mazzuchelli as vice chair of the Earth Day event. 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. Richard Ciccone, 185 Chestnut Street, asked about the cleanup event. Chair Batchelor stated that Earth Day is in April. He explained that due to COVID-19, this year the event will be in October. He noted that the high school is usually involved as students who participate are given community service credits. Mr. Ciccone discussed that the students who try to pick up the trash need to be kept on point; more supervision is better. He suggested using hand carts to pull the trash bags.

Ms. Delmore discussed dates for the event; the only weekend that is not available for the Town is October 2<sup>nd</sup> due to the Harvest Festival. Chair Batchelor recommended October 16, 2021; Mr. Gallagher agreed. Mr. Livingstone discussed that Big Y, a contributor in the past, may have some shopping carts that could be helpful. Ms. Delmore stated that the T-shirts have a turnaround time of 10-14 days, currently. She noted that she will put an updated spreadsheet on the Google Drive. Chair Batchelor requested a plan in two weeks for the DelCarte event.

**Chair and Commission Comments:** None.

**Executive Session:** None.

There was a motion made by Jeff Livingstone to adjourn the meeting. The motion was seconded by Jeffrey Milne. No roll call vote was taken.

The meeting adjourned at 9:18 PM.

Respectfully submitted,

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Judith Lizardi  
Recording Secretary