

Town of Franklin



Conservation Commission

**June 23, 2022
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 Training Room, third floor of the Municipal Building, for citizens wishing to attend in person.

Commencement

Chair William 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, Andrew Mazzuchelli, Patrick Gallagher, Richard Johnson (via Zoom), Michael Rein. Absent: None. Also present: Breeka L  Goodlander, Conservation Agent; Tyler Paslaski, Administrative Staff; Lenore White, Wetland Strategies, Inc. (via Zoom).

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

PUBLIC HEARINGS

Public Hearing – RDA – Town of Franklin Vegetation Maintenance Plan

Ms. Stephanie Hanson, consultant for the applicant, addressed the Commission for a vegetation Maintenance Plan (VMP) proposed to control vegetation along 200 lane miles of municipal rights-of-way (ROW) to provide the public with safe and unobstructed ROWs while minimizing reliance upon herbicides. She reviewed the general process that they follow. She stated that every five years a VMP is submitted through an RDA to the Conservation Commission. This is being reviewed by the Department of Agricultural Resources so that they are able to use herbicides within ROWs throughout the Town. This plan would cover 2022 through 2026. She stated that the applicant is looking for a negative determination. She discussed the types of vegetation along the ROWs. She explained that this is in public comment at this time and will then go before the Right of Way Commission. She stated that they submitted the yearly operational plan for informational purposes.

Ms. Goodlander stated that most of this work is exempt. She stated that she met with Mr. Carlos Rebelo of the DPW; she reviewed their conversation. She noted that she suggested using flat mats if crossing wetland areas and conducting work within vernal pool resource areas outside of the breeding season.

There was a motion made by Michael Rein to close the public hearing for the RDA for Town of Franklin Vegetation Maintenance Plan. The motion was seconded by Patrick Gallagher and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

There was a motion made by Jeffrey Milne to approve the RDA for Town of Franklin Vegetation Maintenance Plan with a negative determination. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Public Hearing – NOI – 175 East Central Street, Franklin Ford CE159-1254 – Continued

Ms. Goodlander stated that BETA did not have any wetland concerns. She stated that she went to the site on May 27, 2022, and verified the delineation; she stated that it looks fine to her. She stated that there are no open issues. She stated that the representative may have something to add as the representative had requested a continuance of the public hearing.

The owner of the property that Franklin Ford is purchasing stated that the Planning Board meeting is on Monday, and he was wondering if this continuance would delay the Planning Board. Chair Batchelor stated that the Conservation Commission has nothing to do with the Planning Board; the Commission only votes on wetland issues. Mr. Livingstone stated that the Commission does not know why the applicant requested a continuance of the public hearing.

Mr. Kevin Keefe, 33 Chestnut Street, stated that the sewer pipe runs through his yard and over an area with fully mature trees which prevent light pollution from Franklin Ford from hitting his property; it also houses a lot of wildlife such as rabbits. He would like to keep the trees. He asked if there has been any conversation about just putting a different pipe underneath the parking lot of Franklin Ford which would be a better solution than digging up his yard to improve Franklin Ford.

Ms. Goodlander explained the location of the swamp. She stated that she cannot mandate that the applicant do that. Mr. Keefe stated that this is a conservation issue. Chair Batchelor stated that this public hearing will be continued to July 7, 2022. He stated that he would not comment on this issue at this time. He suggested Mr. Keefe reach out to Ms. Goodlander and she can connect Mr. Keefe with the appropriate people.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 175 East Central Street, Franklin Ford CE159-1254, to July 7, 2022, at 7:01 PM. The motion was seconded by Michael Rein and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Public Hearing – NOI – 585 King Street – Continued

Mr. Mark Manganello of LEC Environmental addressed the Commission for the construction of a 255,400+ sq. ft. warehouse distribution facility that will include a paved driveway from King Street, stormwater management and septic systems, and associated grading and clearing; the driveway will go directly across a wetland from King Street to the planned site of the facility. He stated this is their fourth time before the Commission. He stated that at the last meeting two weeks ago, they presented some new information in response to the peer reviewer's second memo of peer review comments. They have since submitted a third package of supplemental information in response to the third memo from the peer reviewer. He stated that the Bohler Engineering project engineer also submitted some plans and a response letter to BETA's peer review letter. He stated that they have been through multiple hearings. He thinks it would be best for them to get together with Ms. Goodlander, Ms. Lenore White of WSI, and Mr. Gary James of BETA to review the new information and try to make significant headway to narrow down the issues with this project.

Ms. White commented that at the last meeting they talked a lot about Grove Street and whether or not it was a viable alternative. She stated that she wanted to point out that in the alternatives analysis there is an

evaluation that is done for each of the possible alternatives. In this case there are two: one on King Street and one possibly on Grove Street. She reviewed the four factors from the regulations when evaluating the alternatives: cost, existing technology, use, and logistics. She stated these factors must be evaluated for the alternatives. She stated that she was not sure the applicant's third package of information contained the information regarding the four factors for their alternatives analysis. Mr. Manganello stated that he believes it will be helpful for all to discuss this together at a meeting.

Chair Batchelor confirmed that Ms. Goodlander will attend the mentioned meeting. He stated that he thinks getting everyone together at a meeting to review this will work. Commission members agreed. Ms. Goodlander confirmed a DEP number has been received.

Mr. Blake Peters, 16 Taft Drive, asked about the meeting with the engineers that has been discussed and if meeting minutes will be available to the public for review so the public understands what was discussed. Mr. Gallagher stated that it is not a public meeting; however, the results of the meeting will be discussed at the Commission's next meeting. Ms. Goodlander confirmed that she would be at the meeting; she stated that she would parrot back the information at the next Commission meeting.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 585 King Street to July 7, 2022, at 7:02 PM. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

GENERAL BUSINESS

Minor Buffer Zone Activities: 8 Hemlock Lane

Mr. Bruce Webb of Ecosystem Solutions, representing the applicant, addressed the Commission for an MBZA for the construction of a small shed, 18 ft. x 23 ft., for a total of 414 sq. ft. The shed is proposed within the 50 ft. to 100 ft. buffer zone. He stated it is proposed to be just outside existing disturbed area/lawn. He stated that on the property is a single BWV. He stated that the entire project is outside the 25 ft. no-touch zone and outside of the 50 ft. no-build area.

Ms. Goodlander stated that she agreed with the delineation. She stated that there are a few trees that need to be removed for the shed; otherwise, the homeowner wants to keep it as woodsy as possible. She stated that she recommended approving.

There was a motion made by Jeffrey Milne to approve the Minor Buffer Zone Activity for 8 Hemlock Lane. The motion was seconded by Andrew Mazzuchelli and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Permit Modifications/Extensions: None.

Certificates of Compliance: Spring Street Solar CE159-1199

Mr. Jeffrey Murphy of Beals & Thomas, on behalf of the applicant, addressed the Commission. He provided an update on the project. He stated that it is a 6-megawatt ground-mounted solar array project located off King Street. Construction of the project was started in 2020 and is now completed; the site is fully vegetatively stabilized. He stated that their request for a Certificate of Compliance was submitted along with an as-built plan. They provided a report on the wetland replication area for the project.

Ms. Goodlander stated that she conducted a site visit in May to confirm the project was complete per the Special Order of Conditions. She stated that the replication area has greater than 70 percent coverage, 50 percent of which is wetland vegetation. She stated that she has no concerns.

There was a motion made by Jeffrey Milne to approve the Certificate of Compliance for Spring Street Solar CE159-1199. The motion was seconded by Michael Rein and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Violations/Enforcement: Fairmount Farms - Violation

Mr. Bruce Webb of Ecosystem Solutions addressed the Commission on behalf of the applicant. He stated that at the last Commission meeting there were some deficiencies in the application that were brought to the applicant's attention. He stated that he, the property owner, and Ms. Goodlander had a conversation, discussed the issues, and have worked the items discussed into the restoration plan.

Ms. Goodlander stated that the deficiencies discussed at the last meeting have been met. She stated that she is happy with the restoration plan. Chair Batchelor stated that his opinion is that the applicant has finally met with the recommendations put forward by the Town for the remediation of that area.

Mr. Gallagher asked about the monitoring plan. Mr. Webb stated that it will be two years of monitoring with spring and fall reports to the conservation agent; they are meeting the requirements of 310 CMR.

There was a motion made by Chair Batchelor to approve the restoration plan for Fairmount Farms and waive the violation. No Second Made. It was accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Violations/Enforcement: 305 Union Street - Violation

Ms. Goodlander reviewed that in early May the Commission signed an enforcement order regarding the Mill Store as there was speculation that there was dumping of potentially hazardous building material within the 0 ft. to 25 ft. and 25 ft. to 50 ft. buffer zones to an intermittent stream and associated BVW. She stated that since then a significantly deficient restoration plan has been submitted. She stated that unfortunately, after talking to DEP, everything submitted is deficient as the applicant is not a licensed asbestos abater. Per DEP, the applicant needs to hire a DLS licensed asbestos designer to draft a not-traditional asbestos abatement work plan and submit to MassDEP for review and approval. She stated that it is believed that this is an open system. DEP is assuming that the water is contaminated. She stated that since she has received push back from the owner regarding testing the water, she is going to assume the water is contaminated. She stated that they need to know where the inlet and outlets go to determine the scope of cleanup. She stated that she has spoken with Christa from MassDEP and they agreed that the property owner has one week, to June 30, 2022, at 12 noon, to hire a licensed asbestos designer, determine if the system is an open or closed system, and submit a plan. She stated that if there is more push back from the property owner, DEP, per statute, will hire a state contractor for three times the cost at the property owner's expense.

Mr. Bruce Hoskins, environmental engineer of FSL Associates, stated that the property owner was not made aware of the conversations Ms. Goodlander just discussed. He stated that he and others in his company have exchanged emails with Ms. Goodlander and they thought they were working toward a resolution. He stated that they understand the situation. He stated that the materials were not dumped there, it was an accidental building failure. There is debris in the cistern and they agree with DEP that there is some asbestos material in the cistern. They acknowledge that the remediation has to be done under DEP. He stated they have been in contact with DEP and have received information that contradicts

some of what Ms. Goodlander is saying because they have spoken with Steve Johnson, Director of the Northeast Regional Office, who says he does not believe the water is the issue, it is more of the solid material in the cistern that has to be removed as it contains asbestos containing material. Mr. Hoskins stated that they put together a cistern restoration plan which the Commission has. They submitted a new version of the plan yesterday which he is aware was not soon enough for this meeting. Ms. Goodlander stated that she received and reviewed it.

Chair Batchelor stated that Mr. Hoskins has until June 30, 2022, to solve this problem or it will be referred to the state. He stated that he has no patience for violations that go beyond the final day. He stated that Ms. Goodlander has briefed him on all this since the last meeting.

Mr. Livingstone asked about the push back received from the property owner to test the water. Ms. Goodlander reviewed the requirements of the enforcement order. She stated that she has spoken to Margaret, Frederick, and Bruce imploring them to do this. Mr. Gallagher confirmed that Ms. Goodlander believes that the property owner is not complying with the enforcement order. He asked about legal remedies. Ms. Goodlander stated that she has reached out to the Town Attorney and DEP. She stated that all Town departments and DEP suggest extending the enforcement order for one week, but it is not for the benefit of the property owner, it is for DPW to confirm inlets and outlets for MassDEP to receive the plan. Chair Batchelor noted that the enforcement order has expired.

Mr. Gallagher confirmed that the enforcement order is dated May 5, 2022, and asked additional questions. In response to those questions, Ms. Goodlander stated it would have taken 24 to 48 hours for results of a water test. Mr. Hoskins discussed what his visual testing entailed. He stated that asbestos does not dissolve in water. It can transport in water as particulates; they do not dissolve. He discussed that the primary risk to humans from asbestos is inhalation. He stated that there is no ecological risk from asbestos. He discussed regulations. He stated that there are no cleanup standards for asbestos related to wetland ecological concerns. He stated that they have a solid waste issue for asbestos abatement for material that is in the system and they are working with MassDEP to resolve that. He stated that they have substantial technical differences with the information provided by Ms. Goodlander which he explained. He stated they are trying to do correct and appropriate actions, but they will not do things that are not necessary. He stated that there are no regulatory standards for a concentration of asbestos in water.

Ms. Goodlander stated that Mr. Hoskins is not a licensed asbestos designer so they cannot speak to this; their restoration plan is null and void.

Chair Batchelor stated that he recommended that the applicant has until June 30, 2022, at 12 noon, to meet the requirements set forward by the agent, Ms. Goodlander, and the Town of Franklin. If they cannot be met at that date, this will be turned over to the state. Mr. Livingstone stated that he is listening as a scientist and he does understand the arguments that Mr. Hoskins is making. He does understand the conservation agent's position on this as well; it is a tough place to be. He stated that he is not averse to the applicant and their arguments as he is looking at this as a scientist. All Commission members stated agreement with Chair Batchelor's recommendation.

Minutes: May 26, 2022

There was a motion made by Jeff Livingstone to approve the meeting minutes for May 26, 2022. The motion was seconded by Michael Rein and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Discussion Items: Del Carte Trail Sponsorship – Boy Scout Troop 126

Mr. Fraser Baird, Senior Patrol Leader of Troop 29 Franklin, addressed the Commission to discuss the sponsorship of DelCarte Trail. He distributed a handout of the project description. He stated that the program will be put together by Mr. Baird and Mr. Ryan Jette of the Recreation Department. It will include Troops 29, 99, and 126, all of Franklin. He reviewed that the program is a trail sponsorship. A few times a year, they would clean it up, not change it. He stated that they would just preserve it and make sure people could walk on it. He stated that it gives back to community and the troops by providing them with service hours. Commission members noted this is great idea. Mr. Milne suggested combining one of the troop cleanup days with the next Earth Day.

There was a motion made by Jeff Livingstone to approve the Del Carte Trail Sponsorship, Boy Scout Troop 126. The motion was seconded by Patrick Gallagher and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Discussion Items: Voting on Commissioners - Chair and Vice Chair

Chair Batchelor stated that he has had the privilege to be the chair for five years. He stated that it is time for him to step away as chair; therefore, he will not run as chair. He stated that he would like to mentor Patrick Gallagher based on his background and the work he has done with this Commission.

There was a motion made by William Batchelor to recommend Patrick Gallagher as chair of the Conservation Commission for the following year. The motion was seconded by Jeffrey Milne and accepted with a roll call vote of 6-0-1. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Abstain; Johnson-Yes; Rein-Yes; Batchelor-Yes.

There was a motion made by Patrick Gallagher to recommend Jeffrey Milne to continue to serve as vice chair of the Conservation Commission for the following year. The motion was seconded by Michael Rein and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

Chair Batchelor announced that Mr. Mazzuchelli will not be seeking reappointment to the Commission; this is his last meeting. He thanked Mr. Mazzuchelli for his great contribution to the Commission.

Chair and Commission Comments.

Executive Session: None.

There was a motion made by Jeff Livingstone to adjourn the meeting. The motion was seconded by Michael Rein and accepted with a roll call vote of 7-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Mazzuchelli-Yes; Gallagher-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes.

The meeting adjourned at 8:25 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary