

Town of Franklin



Conservation Commission

**July 7, 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 Patrick Gallagher called the above-captioned meeting to order this date at 7:00 PM as a remote/virtual/in-person meeting. Members in attendance: Patrick Gallagher, Jeffrey Milne, Jeff Livingstone, William Batchelor, Richard Johnson (via Zoom), Michael Rein. Absent: None. Also present: Breeka Li Goodlander, Conservation Agent; Tyler Paslaski, Administrative Staff; Lenore White, Wetland Strategies, Inc. (via Zoom); Gary James, BETA Group (via Zoom).

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

**PUBLIC HEARINGS**

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

Ms. Goodlander provided an update on the project for the construction of a building addition within an existing asphalt paved area, an expansion of the asphalt parking area, and the installation of a stormwater management system; the proposed parking lot, grading and stormwater management system are all located within the 50 ft. to 100 ft. buffer zone to bordering vegetated wetland. She stated that she received a response from Ms. Lenore White of WSI who indicated she agreed with the delineation as it is mapped, is okay with approval, and has one comment regarding bank stabilization for the slope going to the wetland. Ms. Goodlander stated that she recommended conditioning this item for bank stabilization. She stated that she has not heard any follow up from the applicant if they would like continuation or approval. She stated that she is comfortable approving this. She stated that the applicant should review MassDEP comments as they relate to stormwater.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for 175 East Central Street, Franklin Ford CE159-1254. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

There was a motion made by Jeffrey Milne to approve the NOI for 175 East Central Street, Franklin Ford CE159-1254, subject to standard special conditions and additional conditions that the applicant shall review MassDEP feedback and follow up with the conservation agent to the extent any clarification is required and that the applicant shall propose bank stabilization as per WSI's comments. The motion was

seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

*Chair Gallagher called a 10-minute recess.*

**Public Hearing – NOI – 585 King Street – Continued**

Ms. Goodlander provided an update on the project 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. She stated that at the work session last week they talked about the alternatives analysis which Marcus Partners submitted supplemental information. She stated that they talked about wetland replication areas within the easement, culvert design changes, requirements under MassDEP, and upstream and downstream ponding and flooding.

Mr. Gary James of BETA Group added that they have been in contact with Town Engineer Michael Maglio regarding the outfalls coming from King Street in an attempt to get a little treatment in the stormwater discharge; he stated that he received an email from Bohler that they were going to make some changes. He stated that other than that, Ms. Goodlander has hit on all the issues from that meeting.

Mr. Mark Manganello of LEC Environmental (via Zoom) and Mr. Josh Berman of Marcus Partners (via Zoom) addressed the Commission. Mr. Manganello agreed with the summary. He noted the wetland replication area issue and that Marcus Partners has submitted more information on the alternatives analysis this week. He stated that they intend to submit a final set of plans incorporating the items that Mr. James referenced and some other minor details. He explained that they provided a higher level of detail in the alternatives analysis regarding the constraints on developing the Grove Street property.

Chair Gallagher noted that the Commission has not had a chance to review that information; they will review it before the next public hearing. Ms. White stated that she has not seen the revised submittal from Mr. Manganello or the letter from BETA. Mr. Manganello stated that Ms. Goodlander sent it to Ms. White yesterday; he is aware it was only one day prior to the meeting. Ms. White stated that she did not see it.

As requested by Chair Gallagher, Ms. White summarized the project requirements under a limited approval. She stated that essentially the Commission has the discretion to approve limited projects meaning projects that do not comply with the performance standards. She stated that with this type of project, this is roadway project, listed under CMR 10.53 3 paragraph (e) which talks about how a driveway or roadway to access uplands that are not otherwise accessible through an upland area. If the Commission finds that there is no other way to build a driveway into this property through upland areas, then this would be something the Commission could consider as a limited project. She stated that the fact that we looked at offsite alternatives is not really about limited projects, it is about finding an alternative that has less environmental impacts. She stated that they are really two different topics/discussion items. She explained that they have looked at the adjacent properties; however, there are no ways to get into the project. She stated that if you look at this site and the adjacent properties, this could be looked at as a limited project; that is really the discretion of the Commission. She discussed the risk to the environment if this project is allowed as a limited project. She reviewed that the goal is to have no net loss of wetlands. She noted that the applicant has proposed a replication area that is about 2 to 1. She noted that the Commission could include that if the replication areas are not successful, the Commission has the authority to ask for other mitigation.

Chair Gallagher stated that he believes the applicant has worked in good faith to address the replication areas. Mr. Livingstone asked about the other properties owned in Franklin by the applicant regarding the alternatives analysis. Mr. Manganello explained the owner's other properties in town. He stated that the Grove Street parcel was the only other parcel owned that would be suitable/compatible for development of this type; he stated that they addressed/evaluated all the other alternatives. Mr. Livingstone noted that in the past it has been extremely difficult for the Commission to go back and ask for remediation for a project. Chair Gallagher stated that one consideration is just looking at this particular wetland system with Rt. 495 on one side and it is not part of a larger system; he would take that into consideration in the context of the replication analysis. Ms. Goodlander stated that it is a requirement of their COC. She stated that she would take out that document and include it in the next meeting packet.

Ms. Karen Miller, 246 Washington Street, stated that she wanted to remind the Commission that this is not the first time a project like this has come to the same parcel of land and been in front of the Commission, and the Commission has said no because of the eco system that is there and such. She stated that there is a lot of disruption in the area with the traffic and keeping in mind the potential damage to that wetland and can it ever be recovered. She stated that she wants to make sure that this is remembered. Chair Gallagher stated that every project is different and evaluated on its own. For this particular project, it has been thoroughly reviewed by the Town, BETA, WSI, and the Commission. He stated that he thinks the applicant has made many changes to address concerns.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 585 King Street to July 21, 2022, at 7:04 PM. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

### **GENERAL BUSINESS**

#### **Minor Buffer Zone Activities: 84 South Street**

Representative of 84 South Street addressed the Commission for the construction of an above-ground pool with a footprint of approximately 594 sq. ft.; the pool will be constructed partially within the 50 ft. to 100 ft. buffer zone within existing lawn.

Ms. Goodlander stated that she went to the site; the pool will be partially within the 50 ft. to 100 ft. buffer zone. She stated that the adjacent wetland is downslope, well behind a rock embankment. She recommended approving the MBZA.

Mr. Livingstone suggested that if there will be any water discharged from the pool that they not have chlorinated water coming out of the pool going into the wetlands. The representative stated that the pool will be salt water.

There was a motion made by Jeffrey Milne to approve the Minor Buffer Zone Activity for 84 South Street. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

#### **Minor Buffer Zone Activities: Villages at Oak Hill**

Ms. Solomon, member of the Board of Trustees for the condo association, addressed the Commission for the removal of trees within the 0 ft. to 25 ft. buffer zone. She stated that when the area was developed, some of the buildings were rather close to the wetland areas. She stated that there are five (5) trees that are very hazardous to the buildings and the residents inside the buildings. She stated that they are asking to cut the trees. She stated that she believes that four trees are dead, one is half dead, and one is alive; they

are very dangerous. She stated that a tree service went around and reviewed all the trees. Mr. Livingstone pointed out that in looking at the pictures, some of the trees are twice as tall as the buildings; so, if any trees were rotted, the tree would come down and could go through the structure. Commission members and Ms. Goodlander discussed having the trees cut to the stump, but not removing the stump.

There was a motion made by Jeffrey Milne to approve the Minor Buffer Zone Activity for Villages at Oak Hill subject to the condition that the stumps remain. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

**Permit Modifications/Extensions: Pleasant Street - DelCarte - Invasive Treatment Extension CE1259-1137**

Ms. Goodlander stated that the NOI is expiring in July; she is asking for a one-year extension so it can continue to be treated. Commission members discussed and agreed that a three-year extension was preferable.

There was a motion made by Jeffrey Milne to approve a three-year extension for the NOI for the Pleasant Street - DelCarte - Invasive Treatment Extension CE1259-1137. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

**Certificates of Compliance: 850 Summer Street CE159-1245**

Ms. Goodlander stated that she conducted a site visit; everything was executed according to plan. She stated that she noticed that the wattles were not biodegradable. She stated that she reached out to the applicant and told her that it was imperative that they were removed; however, she could not remove them until her COC was granted. Ms. Goodlander recommended granting CoC.

There was a motion made by Jeffrey Milne to approve the Certificate of Compliance for 850 Summer Street CE159-1245. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

**Violations/Enforcement: 305 Union Street - Violation**

Mr. Conrad Bletzer, Jr., attorney representing the property owner; Ms. Margaret Murray, property owner; and Mr. Bruce Hoskins, environmental engineer of FSL Associates, addressed the Commission.

Ms. Goodlander stated that she was in receipt of Mr. Bletzer's letter. She stated that at the recommendation of the town attorney, they are not closing out the enforcement order. She stated that they will extend the enforcement order so they can be compliant with MassDEP reporting processes. She stated that she would like to know when that timeline is so she can extend the enforcement order to that time. She stated that it has been extended three times already.

Mr. Bletzer stated that they are in the process of putting together a plan to deal with the asbestos related materials that are in the cistern. He stated that the cistern is a closed system; there is no evidence that there is any damage to any wetlands. He stated that they have had three professionals go through and they have found no damage and no evidence of any stress to the wetlands that have occurred. He noted that there are no regulations regarding asbestos. He stated that as part of putting together the plan, they are having the water in the cistern tested. He noted that even drinking water with a certain level of asbestos is safe. He stated that they are trying to determine how much asbestos is in the water in the cistern. He reviewed that once they have the water test results back, which he is hoping will be next week, at that

point they can finalize the plan to go to DEP. He stated that they are putting together a plan for the remediation of the asbestos containing materials in the cistern and in a pipe on the property as well. They will submit those plans to DEP. He stated that they will then do whatever DEP requires. Once the plans are approved, they will submit the plans to the Commission as part of a ten-day notice. He stated that they are hopeful they will be able to do that over the next several weeks; the first step is to get back the results of the water test.

Ms. Goodlander stated that the ten-day notice is for the Board of Health. Mr. Bletzer confirmed he knew that. Ms. Goodlander asked when the report from the licensed asbestos abater will be delivered to MassDEP so the enforcement order can be extended to keep Ms. Margaret Murray, the owner, compliant. Ms. Goodlander stated that DPW assumes the cistern is an open system and per MassDEP it cannot be proven until the water and asbestos materials are removed.

Mr. Bletzer stated that based on historical records, it is a closed system. Chair Gallagher stated that an assumption is being made based on the best information they have. He stated that the Town DPW indicated they would go in to assess if the system were open or closed; however, those efforts were declined by your client. He stated that without any information to the contrary, it is the assumption of the DPW that it is an open system; therefore, anything in the system has the potential to spread to the wetland resource areas that are located beyond that system. Discussion commenced as to whether it is an open or closed system. Chair Gallagher stated that there is information requested that has not been received. He noted the enforcement order dates back to May. He stated that it does not take two months to test the water or prepare a restoration plan. He stated that as a Commission, we feel Mr. Bletzer's client has not been cooperating with our requests that we think are reasonable and within jurisdiction. He stated that they are looking for a firm timeline as to when his client can provide the information to MassDEP and the information requested by the Commission under their jurisdiction. Commission members made comments.

Mr. Bletzer stated that he does not think the applicant is trying to do anything surreptitiously. He stated that his client is trying to do all she can to resolved the situation. He stated that she has hired three different consultants; it has taken some time. He reviewed that they are getting the water tested and waiting for the results. He stated that they want to put the best plan together to remediate the situation. Chair Gallagher stated that until those things are done, he stills sees Mr. Bletzer's client as in violation of the enforcement order. He stated that he would expect the materials will be shared with the Commission at the same time they are shared with MassDEP. He agreed that the Commission does not regulate asbestos; however, the Commission does regulate what happens in the buffer zones. He asked when the restoration plan can be expected. Ms. Margaret Murray reviewed the situation and stated that a plan is being submitted. Chair Gallagher requested that Ms. Murray provide the information to the Commission at the same time as the information is provided to DEP.

Ms. Goodlander stated that she wants to make note that the Commission is requiring a restoration plan for wetland resources which includes the 100 ft. buffer zone. She discussed the scope of work requirement. Ms. Goodlander stated that she has been speaking to Christa, and stated that we are both in agreement that it is beneficial to your pocketbook and time to include a wetland component to that non-traditional work plan, that way you are not doubling your work writing out scope of work and asked if that made sense. Mr. Bletzer stated that they will follow the MassDEP requirements. Chair Gallagher stated that what he is hearing is that it can be anticipated that a restoration plan will be provided in the next two to three weeks to DEP. He noted that the Commission would like to see a draft of that. He stated that he thinks things have been said and inferred that are unfortunate. He stated that he did not appreciate the tone of Mr. Bletzer's letter; he thought it was not appropriate. But, in the best interest of Mr. Bletzer's client and the

Town, they want to set that aside and move forward. Mr. Bletzer stated that his client is here to work together with the Franklin Conservation Commission and with DEP to resolve the situation.

There was a motion made by Jeffrey Milne to extend the enforcement order for the violation for 305 Union Street to July 21, 2022. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

**Minutes: June 9, 2022 & June 23, 2022**

There was a motion made by Jeffrey Milne to approve the meeting minutes for June 9, 2022. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

There was a motion made by Jeffrey Milne to approve the meeting minutes for June 23, 2022. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

**Discussion Items: 40B Projects**

Ms. Goodlander discussed that internally the Town has been developing a checklist for Friendly 40B projects, which is affordable housing, to give the Zoning Board of Appeals the benefit of having all information available. She noted that for Friendly 40B projects, the applicant is more or less exempt from local bylaws. Chair Gallagher reviewed the 40B process and the role of the ZBA. He noted that in Franklin, the threshold is currently above 10 percent. However, a developer can still bring forth a 40B application, and it would go before the ZBA. He stated that the checklist would be providing information on Town departments, boards and committees that would be weighting in and providing information/ feedback on those applications. For instance, the Conservation Commission would be weighing in on the Commission's wetlands protection bylaw and providing feedback. Commission members made comments, asked questions, and gave examples of past projects. Chair Gallagher stated that with a Friendly 40B, the Town has the absolute discretion to say no.

**Chair and Commission Comments: None.**

**Executive Session: None.**

There was a motion made by Jeffrey Milne to adjourn the meeting. The motion was seconded by William Batchelor and accepted with a roll call vote of 6-0-0. Roll Call Vote: Milne-Yes; Livingstone-Yes; Johnson-Yes; Rein-Yes; Batchelor-Yes; Gallagher-Yes.

The meeting adjourned at 8:20 PM.

Respectfully submitted,

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Judith Lizardi  
Recording Secretary