

**Franklin Conservation Commission  
Minutes of Meeting  
July 12, 2018**

To: Town Clerk  
cc: Members  
File

Members Present: Bill Batchelor, Tara Henrichon, Paul Harrington, Jeff Livingstone, Jeffrey Milne, Staci Dooney, George Russell, Conservation Agent .

Members Not Present: Angela Gelineau.

Chairman Batchelor announced the meeting would be audio and video recorded. He reviewed how the Commission operates. He stated that Mr. Russell, Conservation Agent, makes recommendations to the Commission based on law; the Commission interprets the law and the needs of the individual. Therefore, it is the Commission's responsibility to come to a decision, not Mr. Russell's decision; he is here in an advisory technical capacity.

Mr. George Russell's Agent's Report has been appended to the minutes.

**Election of Officers for 2018**

There was a motion made by Staci Dooney to maintain Bill Batchelor for position of Chairman and Tara Henrichon for position of Vice Chair. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

**Public Hearing – Continued - NOI – Well #3 off Grove Street - DPW**

Mr. Doug Martin, CDM Smith Inc., representing the DPW, addressed the Commission for the first phase of the Well #3A project to construct a replacement well which includes to drill the well, construct a small access way into the well, run the pump test, do a water quality sample, clean up any disturbance and site restoration. The next phase will be for an amended NOI for the connection of the well into the system. The current well will remain; this replacement well will provide supplemental water yield. The work within the buffer zone includes the 10 ft. access road into the site; there will be no work within the 25 ft. buffer zone. About 15 trees will be cut down; there will be minimal grading as needed. He stated he thought the well would be about 54 ft. deep.

Mr. Russell confirmed Mr. Martin and Ms. Magdalena Lofstedt will be the contacts for the project. He reminded the applicant that the amended NOI will require a public hearing and certified mailings to the abutters.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for Well #3 off Grove Street. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

There was a motion made by Jeffrey Milne to approve the NOI for Well #3 off Grove Street with special conditions #20, 24, 27-30, 32, 37, 38 and 44. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

**Public Hearing – Continued - NOI – 725 Union Street – Hotel**

Mr. Russell stated the applicant has not had the complete peer review; they have requested a continuation.

There was a motion made by Staci Dooney to continue the public hearing for the NOI for 725 Union Street to July 26, 2018, at 7:35 PM. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

**Public Hearing – Continued - NOI – Chestnut Street Senior Village**

Ms. Amanda Cavaliere, Guerriere & Halnon, Inc., Mr. Donald Nielsen, Guerriere & Halnon, Inc., and Mr. Richard Whittington, president of Whitman Homes and applicant, addressed the Commission. Ms. Cavaliere stated they talked to the Planning Board and per their recommendation the applicant has plans showing a reduction in the size of the building to minimize the disturbance in the existing buffer zones. The work proposed within existing buffer zones is a 12 ft. fire access way recommended by the fire chief for public safety. When original plans were completed and approved, there was no 25 ft. no-touch zone; now it is part of the regulations. To comply with the current regulations, they will need a variance from the Commission to install the proposed fire access way. She noted they will be requesting a variance in their next submittal.

Mr. Nielsen confirmed this is a new NOI. He stated they have an existing Site Plan approved by the Planning Board still in effect until June 2019, and they have an existing Order of Conditions valid until August 31, 2018. Based on the new format they had to provide, they are filing a new NOI for the change. It is a new building, a new applicant. He stated once they have approval of the new NOI, they will request the prior Order of Conditions be completed as they have not done any work on the site. The new plan started with 33 units; it now has 27 units.

Mr. Russell confirmed the existing Order of Conditions expires in August and cannot be extended. The new set of plans does not look like the old set of plans. The application in front of the Commission is the new NOI and it has a new set of plans; as soon as this new NOI is approved, the old NOI will be issued an invalid Certificate of Completion from the Commission. He stated the current plans will most likely change again; so, the applicant will have to come before the Commission again with the changed plans for this new NOI.

Mr. Nielsen indicated this plan has been going on since 2006. One of the primary reasons the applicant is here tonight is to make the Commission aware of its complexity. He noted the current regulations the Commission operates under were not in effect in 2006.

Chairman Batchelor stated he is very uncomfortable taking testimony on something he cannot see in front of him.

Mr. Russell stated the plans were in the Commission members' packets from a few weeks ago.

Mr. Livingstone asked if the past history of the project matters as they are looking at a new NOI.

Mr. Nielsen stated they took into consideration the 25 ft. no-build zone in the plan, but based on the fire chief's recommendation, they have gone contrary to that plan to provide the access road around the back of the building. They will need a waiver for that.

Chairman Batchelor stated the history does not matter to him. He wants to know if the current plan meets regulations.

Ms. Cavaliere explained that a new NOI was filed with the Commission on March 30, 2018. Per comments from the Town, the plans were revised and resubmitted to the Commission on June 15, 2018. Those are the plans to be discussed at this meeting. She noted that in order for the Planning Board to move forward with this, the Conservation Commission's approval is required. She stated one waiver is required. She noted that comments on the plans were received from most everyone; they are waiting for BETA's formal letter which will include the drainage review.

Mr. Whittington stated recommendations included to increase a few parking spaces and eliminate the bocce court.

Ms. Cavaliere stated the changes made from the submitted plans of June 15, 2018, include items outside of the resource areas/buffer zones.

Mr. Nielsen stated the Commission has the letter from WSI regarding the wetlands. The applicant will be submitting the same plans to both Planning Board and Conservation Commission for their respective next meetings.

Chairman Batchelor discussed his concern regarding testimony taken tonight may not have the same Commission quorum for testimony taken at the next Commission meeting.

Mr. Nielsen stated they have already begun providing testimony for the last 25 minutes.

Chairman Batchelor stated it is the applicant's right to give testimony; it is his right to tell the applicant the consequences of giving testimony on a project that the Commission views as unfinished.

Mr. Russell confirmed the report has been received from WSI. However, the Commission also relies on the drainage review from BETA which has not been received.

Mr. Whittington stated a full drainage calculation cannot be done without having an agreement between Planning Board and Conservation Commission relative to the parking as the impervious surface must be used in the calculation.

Mr. Russell stated he strongly disagreed with Mr. Whittington's statement. He stated the applicant must decide what they are going to do and then BETA will review it. If they are going to add six more parking spaces, then they should amend the plans to do so.

Mr. Nielsen stated they are not here for approval this evening.

Chairman Batchelor noted that he and another Commission member will not be at the next Commission meeting; he cannot guarantee a quorum at the next meeting. He again reviewed his concerns regarding the applicant giving testimony at this meeting.

Mr. Whittington stated the Planning Board does not want to go forward without comments from Conservation Commission.

Chairman Batchelor stated the Commission needs to have the peer review; he does not want to take testimony until it is received. He strongly suggested this public hearing be continued so the Commissioners at the next meeting will have a clean review without any commentary.

Commission members informally agreed.

Ms. Cavaliere stated they would like to continue the public hearing to the next meeting.

There was a motion made by Tara Henrichon to continue the public hearing for the NOI for Chestnut Senior Village to July 26, 2018, at 7:40 PM. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

### **GENERAL BUSINESS**

#### **Minor Buffer Zone Activity: Lot 1 Marine Way**

Mr. Mounir Tayara, applicant/developer, addressed the Commission for a fence along a retaining wall for safety and privacy. He confirmed there is already a buyer who has children.

Mr. Russell stated he has no problems with this.

There was a motion made by Jeff Livingstone to approve the MBZA for Lot 1 Marine Way. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

#### **Minor Buffer Zone Activity: 129 Eric Drive**

Mr. Joe LeBlanc, homeowner, addressed the Commission for a fence.

Mr. Russell explained the Commission's policy that someone must be present at the meeting in case there are questions which is why this item was continued from the last meeting. He recommended this MBZA be approved.

There was a motion made by Jeffrey Milne to approve the MBZA for 129 Eric Drive. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

Mr. Russell stated that should the Commission's proposed regulation change be adopted, this is the type of item that could be handled administratively without applicants attendance at a meeting.

#### **Certificate of Compliance: Franklin Paint**

Mr. Russell stated he has been working with the applicant's representative for quite some time trying to come up with a way to resolve the issue that the NOI has expired. The owners of the property wanted a Certificate of Completion; there were seven to eight years of missing reports. As outlined in his Agent's Report, the applicant has provided documentation on how the building was built, the as-built plans have been submitted, and the Conservation Commission has signed off on the Certificate of Occupancy. It is the staff's responsibility not to sign off if there is a problem; we missed it. He does not think it is fair to hold up the applicant in this case, especially given the documentation the applicant has submitted.

Ms. Amanda Cavaliere, Guerriere & Halnon, Inc., Mr. Lawrence Boise, Franklin Paint Company, Inc., and Mr. Andrew Poliquin, Franklin Paint Company, Inc., addressed the Commission. Ms. Cavaliere stated Mr. Russell just summed it up.

Chairman Batchelor stated this is just one of those things that went through the cracks. As it is not a public hearing, testimony is not required.

Mr. Russell explained reports are critical as they allow the Commission to make sure the project is on track. Based on what has been submitted and what has transpired, he recommended the COC be granted.

Commission members and Mr. Russell discussed how to get applicants to submit required reports.

There was a motion made by Jeff Livingstone to approve the Certificate of Compliance for Franklin Paint. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

**Certificate of Compliance: 338 Maple Street**

Mr. Russell stated the applicant decided not to build the addition that was approved and they are selling the house; they request an invalid certificate.

There was a motion made by Jeffrey Milne to invalidate the Certificate of Compliance for 338 Maple Street. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

**Certificate of Compliance: 43 Blueberry Lane – SE159-887**

Mr. Russell stated this item and the next agenda item are for the same place. This item is for an invalid COC because the applicant never built under this NOI. The next item is for a valid COC as the project is complete.

There was a motion made by Staci Dooney to invalidate the Certificate of Compliance for 43 Blueberry Lane – SE159-887. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

**Certificate of Compliance: 43 Blueberry Lane – CE159-1097**

There was a motion made by Staci Dooney to approve the Certificate of Compliance for 43 Blueberry Lane – CE159-1097. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

**Minutes: June 28, 2018**

There was a motion made by Jeff Livingstone to approve the meeting minutes for June 28, 2018. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

**Discussion: 8 Pauline Drive**

Ms. Nicole Shugrue, homeowner, addressed the Commission for expired Orders and work done that was not in the original permit.

Mr. Russell stated a report from the engineer outlining the discrepancies from what was approved to what was done is in the Commission members' packets. The big issues that were done but not approved are fill placed in both rear and east sides of the proposed garage extending into the 25 ft. no-touch zone and the proposed mitigation area was not completed. He called attention to the next agenda item regarding a new Policy on Expired Permits. He stated he thinks the Commission cannot grant a COC. The project was not done as approved and there was a lot more work done. He thinks the Commission should evaluate if the extra work done would rise to the level of an NOI or is in a resource area, then a new NOI must be submitted. If the answer to both questions is no, a solution may be to have the applicant file an RDA. The Commission then approves the RDA. Once the RDA is in place, in essence, the COC can be granted. The Commission has to address that mitigation was required and not done, and there has been a significant amount of fill. If the Commission feels that would normally rise to the level of an NOI, then a new NOI should be required. He stated he could work with the applicant to fill out the form. He stated this will not

be a big problem because the approved plans and the engineer's letter that outlines the discrepancies can be put together to file the NOI. The biggest financial issue is the permitting fees which he noted would be roughly \$47.50 for the State and a few hundred dollars plus the advertising fee and the abutter notifications for the Town.

Mr. Livingstone stated he is sympathetic about the financial burden, but that is not part of the Commission's charter. Their charter is to look at whether this is a significant change and it is clearly a significant change. This is the process; these are the rules regardless of the financial impact. He noted the Commission has asked for NOI's in the past for far less than this. He noted it is important for an applicant to bring up the changes before they are done.

Chairman Batchelor stated the applicant would need an NOI.

Ms. Shugrue asked if with a new NOI does she need the engineers to come back.

Mr. Russell stated No. He stated he and the applicant will set up a meeting to review the existing plans and the report; he thinks they will be able to work out the application without the fee involved in consulting the engineer again.

There was a motion made by Jeff Livingstone that a new NOI is required for the discrepancies as per the report from Robert Constantine on June 14, 2018, for 8 Pauline Drive. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

**Discussion: Expired Permit Policy**

Mr. Russell stated the Commission members have in their packets information regarding a draft policy on expired permits. It is germane to both the last agenda item discussed and the Franklin Paint item as well. This policy will be in place to outline the procedures without just stating a new NOI is needed.

Chairman Batchelor stated he has no difficulty with this.

Mr. Livingstone stated he agreed with this. He suggested if this is going to be posted, could it be posted in a somewhat more graphically friendly manner.

Mr. Russell stated it would be added to the SOP packet and put on the web page.

There was a motion made by Jeff Livingstone to accept the policy on Expired Permits as put forth by the Agent. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

**Chair & Commission Comments**

Chairman Batchelor stated he would not be attending the next Commission meeting.

**Signed Certificates of Compliances & Minor Buffer Zone Activities**

Certificate of Compliance – Lot 19 Blueberry Lane – Ronca Realty Trust – SE159-887

Certificate of Compliance – 43 Blueberry Lane – Maple Sands – CE159-1097

Minor Buffer Zone Activity – 129 Eric Drive – LeBlanc

Minor Buffer Zone Activity – Lot 1 Marine Way – Franklin Hills

Certificate of Compliance – Franklin Paint Company – 259 Cottage Street – SE159-681

Certificate of Compliance – 338 Maple Street – Short – CE159-1171

There was a motion made by Jeff Livingstone to adjourn the meeting. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

The meeting adjourned at 8:21 PM.

Respectfully submitted,

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Judith Lizardi  
Recording Secretary