

**Franklin Conservation Commission
Minutes of Meeting
October 18, 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, Kathleen Celorier, Secretary.

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.

Public Hearing – ANRAD – 725 Summer Street - TRC

Mr. Russell stated that for the original abutter notifications sent out for the instant meeting, it was discovered during the review process that there were defects in the abutter notifications. Based on the opinion of the Town Counsel, it was requested the applicant re-send the abutter notifications with a new hearing date, which has been done. The new hearing date is November 1, 2018. He stated that based on that, the applicant is here, but this hearing, in essence, will have to be continued. He stated he is going to request the Commission vote for peer review; he will discuss that later if the Commission needs him to. And, it would probably be in the best interest of time if no testimony were taken at this time.

Chairman Batchelor further explained the situation. He stated there was information that was not factual and incorrect, and by law, we cannot accept that; therefore, the meeting must be extended until November 1, 2018. The Commission would be in breach of Mass State Law, otherwise. He stated that in addition, for the project as laid out, we would not want to have testimony tonight as there is always a possibility that when you extend the hearing that certain Commissioners that would be here tonight to hear testimony will not be at the November 1, 2018, meeting. For instance, there are two Commissioners not present tonight; as well, there will be two Commissioners not able to attend the November 1, 2018, meeting. That affects the quorum. If there is not a quorum, the Commission cannot vote. Based on the Agent's recommendation, and that this has been discussed with TRC and the client, he asked that questions and testimony be held until November 1, 2018. He stated that, however, the Commission does have to take a vote on peer review; he cannot demand it because State law says the applicant is free to ask questions. He stated that the difficulty in having them ask questions tonight is that the Commission has nothing in front of them tonight that they can answer; he cannot ask TRC to give a presentation on factual information that

is not before the Commission. He stated, therefore, it is his wisdom and recommendation that the Commission vote on peer review. He stated that as he did not hear any voices in the audience, he will take a motion for peer review.

Mr. Russell stated the actual wetlands lines that are being asked for peer review are not extensive; there are two resource areas that impact this site. However, given what we have learned and anticipate from the potential development of this entire site, and one can read into it what they want from the title on the ANRAD, having these lines accurately delineated by a representative from the applicant and a third party, he believes is critical in terms of will the Commission's jurisdictional areas be involved in the development or not.

There was a motion made by Staci Dooney for a peer review for the ANRAD for 725 Summer Street. The motion was seconded by Jeffrey Milne and accepted with a vote of 5-0-0.

Ms. Henrichon entered the meeting.

There was a motion made by Jeffrey Milne to continue the public hearing for the ANRAD for 725 Summer Street to November 1, 2018, at 7:05 PM. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-0.

Public Hearing – NOI – New England Power Co. – Line Refurb Project

Ms. Kaitlyn Rimol, environmental consultant of BSC Group, on behalf of National Grid, the signed applicant on the project, addressed the Commission. She stated this project involves exploratory soil borings along the 303 Transmission Line. Soil borings are proposed at two existing structures as shown in the map packet provided on page 8 for Structure 392, and page 9 for Structure 354. She pointed out the specific locations and described each. She noted that the structure on page 8 borders a BVW. The structure on page 9 is accessible from Union Street. She stated the borings are rather minor at 4 in. to 6 in. diameter. Everything will be completed in about one day; upon completion of the work, everything will be restored to pre-existing conditions. Overall, these are minor activities that are necessary for the planning and development of future improvements to the line. No permanent impacts to the wetlands are proposed.

Mr. Russell stated he recommended approval with the conditions outlined in his Agent's Report.

Chairman Batchelor stated that we have seen this many times before; he thinks they take a cautious approach which we like. He stated he does not see anything here that is going to endanger unnecessarily given the scope of what they have to do.

Mr. Livingstone asked if the borings were being done to get a read of what the soils are like in that area in case there has to be a reconstruction or expansion of the current structures.

Ms. Rimol stated yes and explained that there were going to be structure replacements in these areas that would be done under a separate NOI. She stated she thought the additional work would probably be done next construction season.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for New England Power Co. The motion was seconded by Paul Harrington and accepted with a vote of 6-0-0.

There was a motion made by Jeff Livingstone to accept the NOI for New England Power Co. with special conditions #20, 23, 24, 27-30, 34, 35, 41 and 44. The motion was seconded by Tara Henrichon and accepted with a vote of 6-0-0.

Commission Member Comments

Mr. Livingstone stated that if the Commission were keeping a library of well-written proposals, that one would be in it.

Chairman Batchelor agreed and suggested it be kept by the secretary as a template in case anyone needed to look at it.

Public Hearing – NOI – 370 Prospect Street – Karon Skinner Catrone

Mr. Tony Capoccia, Ms. Esther Capoccia, and Karon Catrone, consultant, addressed the Commission for replacing a single-family home; the current house will be demolished and a new one built. Ms. Catrone stated the wetlands were delineated on September 1, 2017. She explained the parcel location. The proposed house is approximately 2,100 sq. ft. with a new driveway and septic system. They are proposing to dam in the existing cesspool. Compost sock will be used around the project. There are no trees proposed to be removed. She stated it was all pre-disturbed.

Mr. Russell stated he has been to the site; whatever they do is going to be an improvement. He recommended approval with the stipulations outlined in his Agent's Report.

Chairman Batchelor confirmed the tires on the property will be removed; they are toxic.

Ms. Catrone stated all of it will be removed.

Mr. Tony Capoccia stated he will be the builder.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for 370 Prospect Street. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-0.

There was a motion made by Staci Dooney to accept the NOI for 370 Prospect Street with special conditions #20, 23, 24, 27-30, 34, 35, 41, 44 and 51. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

Public Hearing – Continued - NOI – 725 Union Street – Holmgren Engineering

Mr. Russell stated this public hearing will be continued.

There was a motion made by Jeffrey Milne to continue the public hearing for the NOI for 725 Union Street to November 1, 2018, at 7:10 PM. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-0.

GENERAL BUSINESS

Certificate of Compliance: 5 Natalie Circle

There was a motion made by Jeff Livingstone to accept the Certificate of Compliance for 5 Natalie Circle. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

Certificate of Compliance: 67 Prospect Street

There was a motion made by Jeff Livingstone to accept the Certificate of Compliance for 67 Prospect Street. The motion was seconded by Tara Henrichon and accepted with a vote of 5-0-0. (Chairman Batchelor stated that Ms. Dooney did not vote or comment on this item.)

Minutes: August 30, 2018 and October 4, 2018

There was a motion made by Jeff Livingstone to accept the meeting minutes for October 4, 2018. The motion was seconded by Jeffrey Milne and accepted with a vote of 6-0-0.

Chairman Batchelor stated the revised State Law requires meeting minutes to be approved and posted within 20 days; the August 30, 2018, meeting minutes are outside of this timeline.

Mr. Livingstone reviewed the information that Ms. Gelineau requested to be added to the August 30, 2018, meeting minutes for the 10 Emily Drive public hearing.

Commission members informally agreed the information would be revised as requested by Ms. Gelineau and the August 30, 2018, meeting minutes would be voted on to be accepted at the November 1, 2018, Commission meeting.

Discussion: Application Process

Ms. Henrichon stated that pursuant to the Commission's conversation on Emily Way at the end of August, one of the things that came up is perhaps it is not clear to applicants when they come in and they get guidance from Mr. Russell that it is still their responsibility to make the correct decisions for themselves on whether they need an RDA, NOI or whatever it is that they chose to file. She thinks the Commission needs to have something that protects Mr. Russell and the Commission a little bit that says we can offer guidance based on the best available information that we have at that moment, but that it is still the applicant's decision to file the correct application. She stated that could be something they sign in advance or have posted at Mr. Russell's desk, but it should be posted somewhere.

Mr. Livingstone stated Mr. Russell should be indemnified.

Chairman Batchelor asked if the Commission can vote on the indemnification.

Mr. Russell stated that what Ms. Henrichon is asking for is something that can basically, in essence, be given to any potential applicant, that says basically advice on applications, procedures, etc., is given on the best available information at the time by the Agent, but it is the responsibility of the potential applicant to file the application they feel is in their best interest, with the caveat that after the application is filed, field investigations may show additional information that may affect the application that was submitted. He said they basically do that now, but he knows where Ms. Henrichon is coming from. We have something in writing that we hand out for when someone comes in and asks what should I do.

Mr. Livingstone suggested it is something that someone signs.

Mr. Russell stated what he would like to do is actually develop it, have the paperwork run by the Commission, and then actually attach it to the RDA and NOI applications.

Ms. Henrichon said that is perfect.

Mr. Livingstone stated there should be a signature line and he suggested running it by the Town's legal department, as well.

Chairman Batchelor stated that is a great idea. He reiterated that there should be a signature line indicating the applicant was briefed. He stated it is important to make sure that we do not get into a hearsay rule; hearsay can burn you.

Mr. Russell stated he would get that developed, hopefully, for the next agenda, and would also run it by Town Counsel.

Ms. Henrichon stated it would be awesome to have Mr. Mark Cerel look at it, but also make sure it is written very clearly.

Mr. Livingstone confirmed that Mr. Russell has a list of people that work in a particular area, but that we do not necessarily recommend these people. He asked if there is a list of attorneys that specialize in this kind of law.

Mr. Russell stated no, and the reason we do not is that he has been here five years next month and he has seen an attorney in front of this Commission twice.

Mr. Livingstone continued to discuss a list of attorneys. He suggested there be a list of at least one or two attorneys as a reference point for further questions for applicants.

Mr. Russell stated they are called land-use attorneys. He stated a former member of the Commission was a land-use attorney. He stated that when issues come up, he does recommend applicants check with their attorney. Most people respond by commenting on how much that would cost.

Discussion: Administrative Approvals

Mr. Russell stated there have not been any since the last Commission meeting.

Chair and Commission Member Comments

Signed Certificates of Compliances & Orders of Conditions

Certificate of Compliance – 67 Prospect Street – Dooney – CE159-1116

Orders of Conditions – 370 Prospect Street – Capoccia – CE159-1187

Certificate of Compliance – 5 Natalie Circle – Carman – CE159-1120

Orders of Conditions – New England Power Co. – 303/327/3520 Transmission Line ROW – CE159-1189

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

The meeting adjourned at 7:37 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary