

Franklin Conservation Commission
Minutes of Meeting
August 30, 2018

To: Town Clerk
cc: Members
File

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

Members Not Present: None.

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 – RFD – 10 Emily Way - Stoyanov

Mr. Angel Stoyanov addressed the Commission for some filling to level off the yard. He described his **project** and stated he has two areas he would like to alter. He would like to level the ground in front of his house to allow the water to flow better and create a wall behind his house as it was leveled incorrectly and water runs toward the house. He would need to remove about 12 in. of existing ground and the existing wall. He noted some of the work is in the buffer zone. He referenced the photographs that were included in the Commission members' packets. He reviewed the erosion issue in area #1.

Mr. Russell stated an aerial photograph was included in the Commission members' packets. He noted area #2 poses no issue. His site inspection revealed significant erosion problems with fill area #1. The area in question is in a riverfront zone, immediately adjacent to the stream, which poses a competing interest. The erosion needs to be stopped and the fill would do that; however, fill in a resource area requires a Notice of Intent. This is touching the bank; it is in the no-touch zone and in the riverfront resource area zone. He stated the mapping the applicant has is from the town's GIS system. Unfortunately, the field inspection after the application was filed revealed

features that are not shown on the map. There is an active stream; by definition it becomes a riverfront zone. There is much more extensive BVW than the map shows.

Ms. Henrichon asked if the funds from the RDA application could be transferred to the NOI.

Mr. Russell stated No under state law; it would be separate permit fees. He stated that as it is known, wetlands change over time. The GIS system is sometimes behind regarding what is happening in the field.

It is used as a reference; field observations are the final word. In this case, as the applicant noted, the erosion is significant.

Chairman Batchelor summarized an RDA probably will not work in this case; an NOI will be required.

Commission members and Mr. Russell discussed the application fees and if it were possible to not have the applicant pay more application fees for the NOI. Mr. Russell stated that the very fact that the Commission grants a decision means the RDA was acted on. Mr. Harrington asked if we can waive local fees. Mr. Russell pointed out the advertising and field work has been done. It's been reviewed, staff time was put in. Mr. Harrington pointed out that this information would be moved into the NOI. Chairman Batchelor indicated this is a new area for the Commission. Mr. Russell indicted this would also set a precedent because he would have to recommend an NOI every time in the event a field change is found. Ms. Henrichon pointed out that Attleboro does this.

Mr. Livingstone summarized the issue. The Commission is trying to figure out how to impact the applicant the least. He stated that if one and not the other area is acted upon, you basically split these two things up as independent determinations. There is the option to put them together. If that is the case, it will likely be an NOI which will be more money. It could be argued that you are going to have to do that for one of them, so you may as well put the other one in as it will not be any additional charge.

Chairman Batchelor stated the best thing to do would be to put them both together for an NOI. The Commission is trying to figure out how to minimize the financial impact of that. The Commission does not have the authority to take back State fees.

Ms. Gelineau indicated that this was not fair to the applicant. Commissioners discussed which area (#1 or #2) was the issue. Ms. Gelineau confirmed area #1 is the issue and it is on the top of the photograph.

Mr. Livingstone stated that area #1 is the area the applicant must fix as it is causing all the property damage and it has to be under an NOI due to the visual site inspection; therefore, it is suggested the applicant should put area #2 into the NOI as well.

Commission members reviewed the difference between an RDA and NOI and the difference between the GIS map and a current site inspection. Mr. Livingstone pointed out that the GIS

map is historic data taken by satellites; it is not a visual inspection of what the field condition is today; he confirmed the Agent can override the GIS map.

Chairman Batchelor recommended the applicant withdraw the current RDA and file an NOI which handles environmental impact.

Mr. Russell explained that even if the RDA is withdrawn, there will be no refund of fees as the Commission is acting and it has been advertised. He recommended instead of withdrawing the RDA application, the Commission issue a determination for both areas. Then the Commission has legally made the determination that this is an environmentally bigger project than an RDA would involve. To just allow the withdrawal, the Commission is still saying we don't know. He stated he thinks it would be a disadvantage for the homeowner to bundle both areas into the NOI. He suggested a positive determination for the area in the front, and a negative determination for the area in the back which would allow the applicant to start working on that area. He stated if the homeowner obtains the services of a wetland scientist, it will be less work and therefore less expensive to only have the one area in the NOI.

Commission members informally agreed.

Mr. Stoyanov confirmed that he may start working on the area that gets the negative determination.

Commission members and Mr. Stoyanov discussed the retention pond and wetland areas, as well as the GIS map.

Chairman Batchelor recommended the applicant take the vote on the determination on the RDA for one area and file for the NOI for the other area.

Mr. Stoyanov expressed great concern that he was given information based on the GIS map, but everything changed after the site inspection and he must now do something different. Chairman Batchelor indicated the Commission can act only the governing laws which give a roadmap on how the Commission should vote and the difficulty is that the inspection gives a better determination of what the Commission can and cannot do.

There was a motion made by Jeffrey Milne to close the public hearing for the RFD for 10 Emily Way. The motion was seconded by Staci Dooney and accepted with a vote of 7-0-0.

There was a motion made by Paul Harrington for a negative number 2 determination on area #2 and a positive numbers 3 & 4 determination on area #1 for the RDA for 10 Emily Way. The motion was seconded by Staci Dooney and accepted with a vote of 6-0-1. (Ms. Gelineau abstained.)

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

Mr. Russell stated that at the request of the applicant, this agenda item should be continued to the next meeting.

There was a motion made by Paul Harrington to continue the public hearing for the NOI for 725 Union Street to September 20, 2018, at 7:15 PM. The motion was seconded by Tara Henrichon and accepted with a vote of 7-0-0.

Public Hearing – Continued - NOI – Chestnut Senior Village – G&H

Mr. Russell reminded Commission members that final plans were in their packets; testimony was given on those plans at the last meeting to the four sitting members.

Chairman Batchelor stated that the Commission members who were not at the last meeting and did not hear the testimony cannot vote unless they have familiarized themselves with the record by viewing the tape recording and the meeting minutes, and signing a form confirming such in front of the Town Clerk; this is the Mullin Rule.

Ms. Amanda Cavaliere of Guerriere & Halnon, Inc. stated they have spoken with the fire chief and had discussions as far as the fire accessway that the fire chief requested; the fire access has been revised to minimize the slope and it does not exceed 8 percent. She stated they have not yet received the letter from the fire chief.

Mr. Russell stated he confirmed with the fire chief that a letter will be forthcoming. He stated that as written in his Agent's Report, the second special stipulation is about the retaining wall.

Ms. Cavaliere stated she was okay with the special stipulation regarding the retaining wall.

There was a motion made by Jeffrey Milne to close the public hearing for the NOI for Chestnut Senior Village. The motion was seconded and accepted with a vote of 7-0-0.

There was a motion made by Angela Gelineau to approve the NOI for Chestnut Senior Village with special conditions #20, 22-24, 27-30, 32-35, 37, 38, 40, 44 and 51 as well as the following:

No pedestrian path along or in the sewer easement, or passive recreation area(s) not shown on the plans is (are) approved under these orders and there shall be no such path in said easement or recreation area(s) without approval from the Commission;

If there is any change in the location, impact or quantities involved in the retaining wall, said changes shall be submitted to the Commission via an amendment to the Order of Conditions.

The motion was seconded by Jeffrey Milne and accepted with a vote of 4-0-3. (Tara Henrichon, Paul Harrington, and Staci Dooney abstained as they were not present at the previous public hearing.)

Public Hearing – RFD – 81-83 Uncas Avenue – Walsh Brothers

Ms. Lauren Gluck of Pare Corporation representing the Walsh Brothers Building Company addressed the Commission. She stated this parcel is part of a recently completed subdivision that was approved under an Order of Conditions a couple of years back; the roadway and stormwater system have been constructed and the builder is getting ready to develop the residences. In 2003,

there was a small isolated wetland that was delineated on one of the parcels; it was done as part of a former project that had been approved and then went off the table. The subdivision was then proposed and they kept the wetland on the plan because it had been flagged before. But, more recently the builder had been out there and observed the area looked very dry. He wanted a wetland scientist's opinion to see if conditions had changed. She stated she went out to the site about a month ago and took a detailed look at the wetland that had previously been flagged. She stated it is a small area about 300 sq. ft. There is a small low spot in the landscape, but under current conditions it is dominated by upland vegetation and there were no glaring wetland soil indicators. It is her professional opinion that the area is not a wetland under the bylaw and she is requesting on behalf of the applicant that the Commission make a negative determination that the area is not wetland and there are no wetlands on the parcel and no NOI filing would be required for any work on the parcel.

Chairman Batchelor noted in the report it states there is filter fabric on the property. He stated back then filter fabric was approved, now it is not.

Ms. Gluck confirmed there was filter fabric on the property. The owners are aware of it and if it has not already been removed, it will be addressed.

Mr. Russell stated it was his recommendation to the applicant that the RDA be filed because there was an NOI number issued by the DEP; they were viewing it as wetlands as well as the local bylaw. He recommended the RDA be approved with a negative #1 stating it is not jurisdictional. He noted the filter fabric was still there yesterday.

Ms. Gluck said she would make sure the owner knows and has it removed.

Commission members asked questions regarding the RDA.

Ms. Gluck discussed the soil samples that she took.

Mr. Russell noted that if a negative #1 determination is granted, that indicates the Commission has no jurisdiction; therefore, it cannot be stipulated that the filter fabric on the site be removed.

There was a motion made by Jeffrey Milne to close the public hearing for the RFD for 81-83 Uncas Avenue. The motion was seconded by Staci Dooney and accepted with a vote of 7-0-0.

There was a motion made by Jeffrey Milne to grant a negative #1 determination for the RFD for 81-83 Uncas Avenue. The motion was seconded by Staci Dooney and accepted with a vote of 7-0-0.

GENERAL BUSINESS

Certificate of Compliance: 3 Maple Brook Lane

Mr. Russell stated the property owner/applicant is present. He noted this is not technically a COC in that it has not been filed. The NOI has expired. The As-Built plans show differences between what was approved and what was actually done. The Commission had requested the original plans and the As-Built which were sent to the members in case they decided to take a site walk. He stated his recommendation is that an RDA under the new policy be required for the additional work that was done. Once that public hearing was held and the RDA approved, the site would be brought up to what it actually is, legally by permitting. Then, the Orders of Conditions could be released.

Chairman Batchelor confirmed there was not a site visit by Commission members.

Ms. Amanda Cavaliere of Guerriere & Halnon, Inc. stated she brought a copy of the original plan and what is currently existing.

Commission members requested Ms. Cavaliere provide a review of the plans.

Ms. Cavaliere stated the applicant is looking for guidance because the Order has expired. In review of the existing conditions plan, she noted there were significant differences from the original plan as far as the plantings. However, they would like to approach the Commission for a determination of applicability and a negative determination to accept the property as it has developed over time because to do the additional plantings that were required would do more disturbance to a now fully filled-in area. She stated she thought the original plantings were not done because it was left up to the pool company.

Mr. Zakaria Addi, owner/applicant, affirmed it was given to the pool company. The project had been delayed a couple of years. He had thought it was all done as required. This year he spent additional money and planted some additional plants.

Ms. Cavaliere stated the additional plantings were done based on the Best Management Practices handbook. She affirmed there are fewer trees than proposed to minimize impact on the buffer zones within the 50 ft. area as it is all filled in with tree growth. They were hoping the Commission would have been able to go out to see the tree growth that had returned over time. They would like the Commission to accept the existing conditions.

Mr. Addi provided photographs to Ms. Cavaliere of the area and the growth that has returned.

Ms. Cavaliere explained the type of growth in the area. She stated it looked like healthy vegetation and not scrub or thorns. She confirmed that it is her professional opinion that she is looking at regular vegetation and nothing that was invasive. She referenced a few other deviations such as the hot tub.

Commission members asked questions.

There was a motion made by Jeff Livingstone to require the property owner to file an RDA for the as-is work that is different from what was approved for 3 Maple Brook Lane. The motion was seconded by Jeffrey Milne and accepted with a vote of 7-0-0.

Certificate of Compliance: Franklin Country Club

Mr. Russell stated all is ready for the release to be granted.

There was a motion made by Jeffrey Milne to accept the Certificate of Compliance for Franklin Country Club. The motion was seconded by Staci Dooney and accepted with a vote of 7-0-0.

Minutes: August 9, 2018

There was a motion made by Jeff Livingstone to approve the meeting minutes for August 9, 2018. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-1. (Mr. Harrington abstained.)

Discussion: 4 Sierra Drive

Mr. Russell stated the property has an expired Order of Conditions and has transferred ownership; the former and current property owners are desirous of getting the Conditions released. Under the new policy adopted by the Commission, the process would be to have the current property owner retain the services of a wetland scientist to try to obtain a statement, required under the statute, that everything was done according to plan.

Ms. Henrichon asked how it could have transferred ownership without it being complete.

Mr. Russell stated that would be between the property owners.

Mr. Scott Swanson and Ms. Katherine Swanson, current property owners, and Mr. Mark O'Brien, former property owner, addressed the Commission. Ms. Swanson stated it came up in their title inspection.

Mr. O'Brien stated he had the house built in 2000 and closed on it with no problem; this just came up when he sold the home to the Swansons. Apparently, the developer did not provide the town with what was necessary. They are just finding out about it 18 years later.

Mr. Russell reiterated what is needed; he stated the problem will be in getting the statement because it will be difficult to get a wetland scientist or PE to certify that something is wonderful if they did not do it. However, the policy of the Commission is that the property owner tried to receive that. Should they not be able to, the applicant comes back to the Commission with a statement from the consultant indicating they cannot do it and a request for release of the conditions; under the policy the release can be granted. The onus, legally, falls with the current property owner. They will have to go out and get the statement; if they cannot, they will file a COC. He noted he has done an inspection on the property and does not see any issues; the property is almost 100 percent jurisdictional.

Commission members discussed the financial aspect regarding the former and current homeowners and confirmed it does not matter who gets the statement from the professional wetland scientist.

Chairman Batchelor noted they should get back on the agenda for the next meeting.

Mr. Russell noted only the current property owner who has the legal responsibilities needs to attend the follow-up meeting on September 20, 2018.

Discussion: Administrative Approvals

None.

Chair and Commission Member Comments

Ms. Henrichon stated Town Council wants to meet with all various boards and committees as a friendly meeting to learn about each committee.

Chairman Batchelor stated Mr. Jamie Hellen has a packet for approval of all the policies the Commission has changed so the Town Council can approve them. He stated he and Ms. Henrichon at the minimum would be at the Town Council meeting; he requested all Commission members attend the Town Council meeting on September 26, 2018, at 7:00 PM. He stated this has not been done before; he is hoping it is a general thing. He asked Mr. Hellen to confirm this is only to be a polite discussion. There is not an agenda for this as of yet.

Ms. Henrichon stated she received an email from Mr. Hellen on June 6, 2018, indicating the Commission would be invited to attend a Town Council meeting. The context indicated the Town Council would like various boards and committees to come to a meeting to discuss the work they have been doing, answer questions, and have public dialogue.

Discussion: 25 Grove Street

Mr. Russell stated in some respects this situation is similar to 4 Sierra Drive. But in this case, we already have an As-Built plan from the applicant's engineer and a statement that things were done according to plan. There is a letter in the Commission members' packets from United Consultants Inc. outlining why the reports were not filed. It is his recommendation under the new policy of expired permits that the Commission vote that the information submitted by UCI is acceptable and they would grant the Certificate of Compliance when it is submitted under item 5 of the policy.

Mr. Rick Goodreau of United Consultants Inc., on behalf of the property owner, stated they were the engineering firm that did the work in 2003/2004. The property has been sold. The current owner has engaged UCI to clean up this matter. Funds are being held in escrow. Unfortunately, the property owner is out of town and could not attend this meeting.

There was a motion made by Jeffrey Milne to accept the findings in the letter by United Consultants Inc. allowing the applicant to submit a Certificate of Compliance request under item 5 of the policy for 25 Grove Street. The motion was seconded by Tara Henrichon and accepted with a vote of 7-0-0.

Chair and Commission Member Comments (continued)

Ms. Henrichon requested a discussion regarding situations such as 10 Emily Way and how not to have that situation happen again be put on the next agenda.

Mr. Russell stated he would put a discussion on the application process on the next agenda.

Mr. Livingstone asked Mr. Russell to comment on a specific article he referenced and asked if the Commission is following procedure on the public meeting law.

Mr. Russell stated yes we are. He stated the critical point is during a public hearing or pre-public hearing, do not put opinions in writing. He noted that if four or more members of the Commission meet, it is a meeting.

Commission members discussed the public meeting rules.

Signed Orders of Conditions, Determinations of Applicability & Certificate of Compliance

Certificate of Compliance – 672 East Central Street – Franklin Country Club – CE159-1170

Orders of Conditions – Chestnut Senior Village – Whitman Homes – CE159-1180

Determination of Applicability (Negative/Positive) 10 Emily Way – Stoyanov

Determination of Applicability (Negative) 81-83 Uncas Avenue – Walsh Brothers

There was a motion made by Staci Dooney to adjourn the meeting. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

The meeting adjourned at 8:20 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary