

**Franklin Conservation Commission
Minutes of Meeting
January 12, 2017**

To: Town Clerk
cc: Members
File

Members Present: B. Batchelor, P. Harrington, T. Henrichon, J. Livingstone, S. McLean, A. Gelineau, N. Shuler, George Russell, Conservation Agent
Members Not Present: None.

Chairman Batchelor announced the meeting would be audio and video recorded.

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

Presentation: DelCarte Herbicide Treatment Presentation by Solitude Lake Management

Mr. Keith Gazaille of Solitude Lake Management addressed the Commission to provide information on the DelCarte Ponds project and what to expect when they start the treatments in the spring. An assessment of the two water bodies was done. First phase of remediation is to target invasive species. Management program for 2017 will consist of chemical application with *Reward* product which will be injected sub-surface to control milfoil plant. The second treatment will be with *Clearcast* product to control water chestnut plant. Monitoring will be conducted prior to management program, during program, and following chemical treatments to document control achieved. Initial treatments likely take place in early June, but depends on maturity of plants. One application of *Reward* and two applications of *Clearcast* are recommended. The areas will be posted prior to application and information will be put on the website. There are no labelled water use restrictions; however, it is their company policy to close the water body to all uses on the day of application. He noted there is an option to continue the program in 2018.

Mr. Russell stated he had requested that if Mr. Gazaille's office receives any calls about this, the calls be forwarded to Mr. Russell. He confirmed that on the day of application the water bodies would be closed; he requested a few days of notice before the date of application.

Commission members asked questions and discussed chemical application and non-target impacts.

Mr. Gazaille stated both chemical products have been reviewed by the EPA for use in aquatics, so there is limited impact with fauna in the lake. The half-life of both products is very short. He expects both applications will be done on the same day, but may need to split them up.

GENERAL BUSINESS

Certificates of Compliance: 11 D'Amico Drive

Mr. Russell stated all is ready for the release.

There was a motion made by Scott McLean to release the certificate of compliance for 11 D'Amico Drive. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

Certificates of Compliance: Lot 5 Joanne Estates (Partial Release)

Mr. Russell stated that the subdivision under which the NOI was applied for has a number of lots, some of which are vacant. The subdivision NOI itself has expired and there is remaining work to be done. However, the lot in question is vacant and outside jurisdiction; therefore, the partial release is in order.

There was a motion made by Scott McLean to partially release the certificate of compliance for Lot 5 Joanne Estates. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

Public Hearing – RFD – 23 Forest Street – Zia

Mr. Russell stated this was received on a complaint; an investigation determined there was an issue. The property owner has followed the standard operating procedures of the Commission; he engaged the services of a wetland scientist and filed the request for determination. The wetland scientist indicated there is no degradation to the resource areas. Now at the stage where a determination is to be granted.

Mr. Mohammed Zia, property owner, addressed the Commission for cutting of vegetation and placement of vegetative debris. He stated he was sorry if he had caused any inconvenience.

There was a motion made by Scott McLean to close the public hearing for the RDA for 23 Forest Street. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

There was a motion made by Scott McLean for a negative determination for the RDA for 23 Forest Street. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

Minutes:

There was a motion made by Scott McLean to accept the minutes for the December 15, 2016 meeting. The motion was seconded by Angela Gelineau and accepted with a vote of 6-0-1. (Nick Shuler abstained.)

Discussion Item: Pipeline Letter

Mr. Russell stated this was before the Commission at the last meeting. Based on input from the Commission, the role of the local Conservation Commission and the pipeline was discussed. He stated it has been determined that the federal statutes governing the pipeline trump all local and state regulations. With that in mind, this issue is back on the agenda and the Commission can make a decision if they want to support MACC's position on this to the governor.

There was a motion made by Paul Harrington to support the MACC letter to Governor Baker. The motion was seconded by Angela Gelineau and accepted with a vote of 6-1-0. (Scott McLean voted No.)

Mr. Russell stated he would generate the email to MACC on Tuesday.

Public Hearing – RFD – 443 East Central Street – F&P Molla

Mr. Russell stated this application was originally submitted as a minor buffer zone activity. However, the statute only exempts residential components for an MBZA; this is a commercial application. It was his recommendation that the applicant file the RDA.

Mr. Paul Molla of F&P Molla, the agent for 1776 Realty LLC, property owner, addressed the Commission for the construction of a 12 ft. x 16 ft. shed. He stated the shed, made of wood with vinyl siding and asphalt shingles, would be at the back of the parking lot. The current shed behind the building is only 8 ft. x 12 ft.; it will be raised and removed. They would like to have the shed at 20 ft. from the 50-ft. buffer zone rather than 25 ft. for snow storage.

Mr. Russell stated that since the applicant was asking for guidance from the Commission on the distance from the buffer, the decision should include specific distance. He recommended a negative determination.

There was a motion made by Scott McLean to close the public hearing for the RDA for 443 East Central Street. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

There was a motion made by Scott McLean for a negative determination for the RDA for 443 East Central Street with the understanding that the shed will be placed 20 ft. off of the 50 ft. buffer. The motion was seconded by Jeff Livingstone and accepted with a vote of 7-0-0.

Public Hearing – Continued - RFD – 723 Lincoln Street - Burton

Mr. Robert Burton and Ms. Maura Burton, applicants, addressed the Commission to minimize adverse impacts due to yard debris deposition. Mr. Burton stated he hired a wetland scientist who prepared a report which was provided to the Commission. He is requesting a decision from the Commission.

Mr. Russell stated the standard operating procedure was followed. He recommended a negative determination; however, he recommended special conditions as outlined in the third and fourth paragraphs of the wetland scientist's report.

Mr. Burton confirmed he agreed with the wetland scientist's report and had no objections.

There was a motion made by Scott McLean to close the public hearing for the RDA for 723 Lincoln Street. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

There was a motion made by Scott McLean for a negative determination for the RDA for 723 Lincoln Street with the added stipulations that the homeowner add a thin layer of partially decomposed leaves to spread it over the small area and the invasive species be eradicated or controlled to the extent possible (paragraphs three and four in the wetland scientist's report), and the applicant notify Mr. Russell's office when everything is completed. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

Public Hearing – Continued - NOI – 656 King Street – Wegman Company

Mr. Russell stated that the peer review engineer is present to discuss any issues.

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., and Mr. Danell Baptiste of Guerriere & Halnon, Inc., representing the Wegman Companies, addressed the Commission to revise detention basin by adding a 4" PVC slow drain to bottom to allow the detention basin to drain in timely manner.

Mr. Wilson stated the plans the Commission members had were not new and had been reviewed by the Agent. He provided an overview and stated the plans had been sent to BETA Group for peer review. They had received BETA's comments and amended the plan to change the last column of numbers in the table on the upper right hand corner of the plan to reflect the post drainage discharge comparison. The work depicted on the plans dated 12/7/17 did not change in any way from the plans submitted with the original NOI dated 9/28/16 and allow the drainage basin to drain down in 72 hours.

Mr. Matthew Crowley of BETA Group summarized the scope of the peer review project and reviewed his findings. He noted the findings were summarized in a letter to the Commission dated December 6, 2016. Findings included that the stormwater system onsite was in good condition and installed in accordance with the approved plans and the watershed limits were delineated properly. He stated findings showed that the applicant's infiltration rates were a little higher than BETA felt comfortable with. BETA did not do new borings; they used data that was documented in the stormwater report. He discussed that one of the intermittent streams abruptly terminates at the 17 Forest Street property and is picked up by a small corrugated metal pipe that was in questionable condition. He stated that the capacity of the pipe was much less than the upstream and downstream drainage channels. He stated they have asked the designer to use the more conservative design infiltration rate and they did use that for basin #1. The calculations still show they are in compliance with the stormwater bylaws. He pointed out there are three other infiltration structures onsite which were not modified to use the more conservative infiltration rate. But, realistically, even if they did modify it, there would be little difference in the overall peak flow rates and they would be in compliance. Regarding downstream flooding, peak flow rates are considered. He stated he did not think this site was actively contributing to downstream flooding in that drainage channel on the 17 Forest Street property. It is most likely due to the capacity of the pipe being significantly undersized for the flow that could potentially be coming from upstream and downstream. He stated 17 Forest Street owns the pipe; he confirmed it is not the jurisdiction of 656 King Street. He noted a few other recommendations and considerations were provided to the applicant.

Mr. Russell stated that in his agent's report he did not recommend any specific stipulations of approval, but he does have a few he would like to recommend should the NOI be granted: Items #20, 27-30 and 44.

There was a motion made by Scott McLean to close the public hearing for the NOI for 656 King Street. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

There was a motion made by Scott McLean to approve the NOI for 656 King Street with stipulations #20, 27-30 and 44. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

Public Hearing – Continued - NOI – 0 Pond Street – Baystone Franklin LLC

Ms. Gelineau recused herself.

Mr. John Kucich of Bohler Engineering and Mr. Roy MacDowell, applicant and developer, addressed the Commission for the construction of residential multi-unit buildings on land formerly used by the Town of Franklin as wastewater treatment facility. Mr. Kucich stated they were before the Commission during the summer of 2016. They have since moved forward with the design of the project and the permitting with the Planning Board. He reviewed the existing conditions of the property. He reviewed the wetlands on the site, BVW and vernal pools. He noted there were two sewer lines on the property. He stated the proposal is for 96 condominiums; there are 31 structures throughout the property. He described the proposed design and stormwater management plan. He stated that when designing, they were careful to work with the topography, wetlands and sewer lines. There will be a 17-acre dedicated green space. He noted there are full erosion controls. They are tying into the sewer. He reviewed the proposed mitigation and the nature trails throughout the property.

Mr. Matthew Crowley, BETA Group, stated they reviewed this project for two aspects: the NOI which was reviewed by their sub-consultant WSI, and BETA reviewed the stormwater aspects of the project. He noted there were a few rounds of comments for both aspects. There are no outstanding issues from the wetlands aspect from WSI; there are a few recommended conditions for the Commission to consider. Regarding the stormwater aspect as part of the Planning Board review, applicant has satisfied BETA's recommendations for compliance with the stormwater bylaw and the Wetlands Protection Act. BETA has a couple of recommendations outstanding that are at the applicant's discretion.

Chairman Batchelor noted that any stockpile material must be placed outside of the resource area and buffer zones.

Mr. Russell stated DEP assigned a number. There are no outstanding issues with DEP or WSI's comments. Procedurally, there are some minor housekeeping issues that need to be cleaned up with the Planning Board. As such, the plans will have some revision dates. He recommended to not close the hearing tonight, but rather wait until those plans are submitted to the Planning Board and concurrently submitted to the Conservation Commission. Then, at the next meeting, the final plan will be provided and both boards will be referencing the same plan. He also noted that it is strongly recommended that the plans for the basins that will be developed get followed because if they develop wetlands characteristics, they become resource areas requiring permits to do anything. Whereas, if they are maintained, it will not become an issue. His recommendation is that the hearing be continued to the next meeting.

Mr. MacDowell, in response to a question about a maintenance plan for the trails, stated it is his intent under the landowner's association and the condo association to maintain the trails for public use. It will be done by a property management company.

There was a motion made by Jeff Livingstone to continue the public hearing for the NOI for 0 Pond Street to January 26, 2017 at 7:40 PM. The motion was seconded by Nick Shuler and accepted with a vote of 6-0-0.

Ms. Gelineau re-entered the meeting.

Public Hearing - NOI – 5 Forge Parkway – N.E. Treatment Access, Inc.

Mr. Bruce Wilson, Principal of Guerriere & Halnon, Inc., addressed the Commission for the construction of an addition to existing building and restriping the parking area. He stated the application has been submitted under the local bylaw only. It was a detention basin which lacked maintenance and has now become a freshwater wetland area. He provided an overview of the project. It is a marijuana medical growing facility. They are proposing to add approximately 34,822 sq. ft. on what is currently all impervious area. He provided renditions of the proposed addition and reviewed the proposed drainage system. To keep the project from getting into the retention basin, compost sock will be put on the edge of the existing parking lot.

Mr. Russell stated that in his agent's report he recommended stipulations, but pointed out a typographical error: instead of stipulations #22-24, the correct stipulations are #22 and #24.

There was a motion made by Jeff Livingstone to close the public hearing for the NOI for 5 Forge Parkway. The motion was seconded by Scott McLean and accepted with a vote of 7-0-0.

There was a motion made by Scott McLean to approve the NOI for 5 Forge Parkway with conditions #20, 22, 24, 27-30, 34, 35, 38, 42 and 44. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

GENERAL BUSINESS (continued)**Permit Modification: Rolling Brook Subdivision**

Mr. Eric Dias, professional engineer of Strong Point Engineering Solutions, representing Rolling Brook subdivision, addressed the Commission. He stated they were before the Commission with an NOI on this project during the past summer. The Commission voted to approve and issued an order of conditions. He provided an overview of the proposal. He stated Lots 7 and 8 are located primarily within buffer zone and riverfront area. He is before the Commission to request determination if the proposal constitutes an amendment to the existing order of conditions or would require the filing of a new order of conditions. He is requesting a simple modification to the approved limit of clearing on those two lots. The impetus for this is based purely on sales. For Lot 7 it would provide a more workable backyard; for Lot 8 it would give the ability to change the size of the house and change the limit of clearing. In total, it would all be about a 5,000 sq. ft. disturbance in this area. He stated the other lots are not located within buffer zones; they are not in jurisdiction. These are the only two lots they would be dealing with. There are no mitigation plans at this time to offset the additional disturbance. They feel they have a non-impact.

Mr. Russell stated they need to modify the approval and this is the first step for the Commission to determine if an NOI is required or just a modification. He stated that he and Mr. Dias have discussed this quite a bit. The bottom line is that they do need to modify the two lots from the original NOI filing. The pro is that they come in with just these two lots and everything goes smoothly. The potential negative is that if they get something else that they have to change, then they have to go through this process again. Mr. Russell opined that based on the totality of the subdivision development and impact, the requested modification does not rise to the level of a new NOI; it would be an amendment. He noted there is no resource area, this is all buffer zone change. They are not in the BVW.

Mr. Dias stated that if this change were not to be brought forward, it is very likely that over time the eventual homeowner would start eating away at that area to give themselves more backyard. In addition, oftentimes, applicants just make changes like this in this field. In this case, the applicant was very forthcoming.

There was a motion made by Scott McLean that the modifications being made at the Rolling Brook Subdivision rise to the level of an amendment and not a new NOI. The motion was seconded by Nick Shuler and accepted with a vote of 7-0-0.

Violation: 7 Briarwood Road

Mr. Russell stated the Commission members received packets providing a brief history of what has transpired. The applicant has requested a hiatus from installing erosion controls to April. The issue is that the work began without the erosion controls being installed. He cautioned the Commission that everything has to be documented as this item is in court.

Mr. Michael Barry, attorney and trustee of the holder of the title of the property, noted that Mr. Ivan Aquino, applicant, will not be present at tonight's meeting. Mr. Barry requested additional time to comply with the requirement of the erosion control barrier. All work has stopped on the property. He stated that Mr. Aquino did install a barrier, but it was not the correct kind as it was not biodegradable. He needs more time to get and install the correct barrier. There is an issue of financing the project. He stated the applicants are working to refinance the mortgage on the property. He explained the management trust. He stated Mr. Bruce Wilson's firm prepared the NOI; but there is an outstanding invoice that must be addressed. He has advised Ms. Christina Russo Aquino and her husband to make those arrangements. They have contacted Guerriere & Halnon, Inc., to make those arrangements so they can finish their work.

They are asking for more time. He stated that the property must be in Christina's name as the bank will not lend money to the trust. The property will be deeded to her. The bank has told her that the refinance will take about 60 days.

Mr. Russell stated that providing there is not heavy rain, the issue at the property should be ok. A lot of the vegetative debris has been cleared; it has left exposed soil. Given that it is now the winter season, the soil should freeze and not move. Assuming that happens, it should be ok. If it is warmer and the soil moves, then some type of barrier must be put there. The other issue which could become a legal issue is that one of the adjoining property owner fears that the soil is going to come down on their property. If that happens, there is more than one legal issue involved. The erosion control barrier is available. Whatever the financial hardships of the property owner are, the Commission should not deal with them. Suspension of the fines from here to April 4, 2017 is acceptable with the condition that if the barriers are not up and certified by Guerriere & Halnon Inc., by April 4, 2017, the fines be reinstituted at \$300 per day.

Mr. Wilson stated that maybe he and Mr. Russell should meet at the site to see the conditions and determine if there is something that can be done to mitigate until April.

Commission members discussed the situation, the potential for rain or warmer weather, and that the trust has no funds.

Mr. Russell stated his office has already issued \$475 of fines. He noted that even if the Commission agrees to suspend the fines until April 4, 2017, should an event occur that causes the unstable soil to move, the Commission will have to take some immediate remedial action. Assuming nothing unusual happens, giving the applicant some wiggle room is probably in everyone's best interest. He recommended not going beyond April as then there will be spring thawing.

Mr. Barry stated he is confident that Ms. Russo Aquino will take his recommendations as he has been overseeing the trust for nine years.

Commission members discussed what would happen if an emergency situation arises.

Mr. Russell stated he would check with the town attorney and town treasurer regarding if an emergency arises if the town can authorize the installation of the necessary materials. Another issue is that the work was started before the orders were recorded. His recommendation is that the Commission suspend the issuance of fines until April 4, 2017 on the condition that any emergency situation should arise, necessary action will be taken to prevent degradation of the BVW which may include the imposition of fines. He stated this will be put on the April 6, 2017 agenda for Commission's discussion. Should the issue remain the same, as of April 5, 2017, fines will be issued at \$300 per day.

Commission members discussed meeting again before taking punitive action, the Commission stopping the fines, the amount of time between now and April in which something could happen, that it is not the Commission's decision whether someone has the money to pay fines, there are a lot of assumptions being made, and that wiggle room should be given.

There was a motion made by Scott McLean that on the matter of 7 Briarwood Road, Mr. Russell will be suspending the fines until April 4, 2017, at which time the applicant is to have the erosion controls up, and if not Mr. Russell is authorized by this board to reinstate fines at \$300 per day, and the applicant is to appear before this board on April 6, 2017, and if anything happens it will be the power of the town to enact emergency procedures. The motion was seconded by Paul Harrington and accepted with a vote of 7-0-0.

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

Determination of Applicability (Negative) 443 East Central Street – 1776 Realty

Determination of Applicability (Negative) 723 Lincoln Street – Burton

Determination of Applicability (Negative) 23 Forest Street – Zia

Orders of Conditions – 5 Forge Parkway – N.E. Treatment Access

Orders of Conditions – 656 King Street – Wegman Companies – CE159-1144

Certificate of Compliance – 11 D’Amico Drive – Slason – SE159-546

Certificate of Compliance – Lot 5 Louise Drive – Longobardi - SE159-619

There was a motion made by Scott McLean to adjourn the meeting. The motion was seconded by Angela Gelineau and accepted with a vote of 7-0-0.

The meeting adjourned at 9:09 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary