



Town of Boylston Conservation Commission conservation@boylston-ma.gov

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REGULAR MEETING MINUTES FEBRUARY 20, 2024

Members Present: Mark Coakley, Ron Aspero, Jeffrey Walsh, Joe McGrath, Lucas Rose

Members Absent: None

Others Present: See Attached Sign-In Sheet

Recorder: Melanie Rich

The meeting was opened at 7:00 p.m.

Mark Coakley made a motion to confirm March 18, 2024 as the next meeting date; Joe McGrath seconded; all voted in favor; motion approved. Joe McGrath made a motion to approve the January 11, 2024 Site Visit Minutes; Jeff Walsh seconded; all voted in favor; motion approved. Jeff Walsh made a motion to approve the January 22, 2024 Regular Meeting Minutes; Joe McGrath seconded; all voted in favor; motion approved.

COMMISSION BUSINESS

George LaRossa to discuss Sewall Pond Issue – George and Cindy LaRossa (126 Nicholas Road) were present. They purchased the property last year. They were aware there was a pond out back and knew it got wet but didn't know to what extent. They were asked if they had to get flood insurance. LaRossa said they don't need it because the house is not close enough to the pond for the house to be in a flood zone; the garage is but they don't need it because the garage is not attached to their house; they agreed they were aware when they purchased the house that they are in a flood zone. LaRossa said there were some damming complaints in 2011 about Sewall Pond flooding due to someone putting in a manmade dam at the outlet that was supposed to be removed. He also thought Rand Whitney and FedEx are causing problems when it rains. He thought the pond was too high by approximately 4' (the height of the dam that was put there by Mr. Buxton); in 2011 it was partially removed. He said the influx of Rand Whitney and FedEx retention wells flows directly into Sewall Brook and said the stream is a raging river when it rains and keeps the water table in his yard extremely high. Ms. LaRossa said people are filling it in, but it's not a fix. He did speak with Mr. Buxton but it didn't go very far. He thought the easiest thing to do is have Mr. Buxton remove it to the original level and lower the pond by 4'. He said that would drop the water table for the influx that is coming from Rand Whitney.

With regard to LaRossa's comment about Rand Whitney, Mr. McGrath said the impact of those large warehouses has actually helped by putting in more water control and stormwater management controls to reduce the amount of water that goes into Sewall Pond. When projects like that go in, they're required to mitigate any damage or any impact they might have on the water flow. This was a problem years before Rand Whitney or FedEx or any of the others were there. Mr. McGrath said we are a victim of climate change. The rain events that we are getting are much greater and much more significant than they were before. That doesn't mitigate LaRossa's problem but he didn't want them blaming the companies that are here because they are not the issue. Mr. Coakley said the standard is that they can't release more water; pre-development vs. post-development; the timing has to be the same. Because

the runoff is so shallow through the channel, it wouldn't take much to slow it down; it's all about the timing.

Mr. Walsh did go to Nicholas Ave and looked at Sewall Brook where it crosses Mill Road. He also went to the Harrington property and looked around, but it wasn't after a storm event. The water level in Sewall Pond was about in order. He said the outlet of Sewall Pond is all on private properties. The Commission doesn't have the right to enter onto any one of those properties without approval from the landowners. The 120 contour crosses Sewall Brook at about Mill Road; the brook has a very shallow slope; anything that occurs along the brook can impact the water level of the pond either in the short-term or long-term. Mr. McGrath said back in 2011 we did have several visits with Mr. Buxton; he did remove part of the dam. There was an issue with neighbors, which was mentioned in the minutes, about someone trespassing on his property and trying to forcibly remove part of the dam. Mr. Buxton decided not to pursue legal action against the person but was within his rights to do so. MaryAnn DiPinto (DEP) took a look at it and the problem was not Mr. Buxton's dam. The problem was that on the private homeowner who lives closer to the pond, there were several beaver dams that were causing the water to rise. We were not in a position at that point because hunting and relocating of beavers was not permitted. We were not allowed to do anything because it was private property. We advised the landowner at that time to try to remove the beaver dams if he could. We recommended options for private individuals that could get permits to remove the beavers. As far as we know there was no follow up on that so we don't know what the status of that is. The situation at the pond has always been that a number of homeowners on the pond have built illegal planking and docks and all of those things are actually in the wetland which is the border of the pond. It is an extensive wetland; it's not a pond with steep slopes down to the water's edge.

LaRossa again said with the building of Rand Whitney that it does impact the pond. Mr. Coakley disagreed because of the extensive analysis that was done on the stormwater structures there. He said years ago Sewall Brook ran continually year-round, now it dries up partially during the summer. LaRossa said in the 2011 minutes Buxton admitted to doing something and removing part of the dam. The Commission is sympathetic to their situation but it's clearly marked a flood zone and it's going to have some flooding issues off and on when we get heavy precipitation. The last 4 months have been the wettest months we've had in the last 40 years. Unfortunately, there is no remedy that the Commission can offer because it's non-jurisdictional. Mr. McGrath said if LaRossa feels his property is being taken by the water flow in the pond and that Mr. Buxton is somehow causing that, he is within his right to start a civil process against him. We've had the state in to look at it and we've looked at it. If there's a reoccurrence of the beaver problem, there might be another way to address it, but that would be the only thing that we could recommend at this point. LaRossa also had a concern about his septic. Mr. Walsh explained that the Commission is here to uphold the regulations of 310 CMR 10.00 which are the Wetland Regulations. If there are other impacts outside of the Commission's jurisdiction, it may be a civil matter. LaRossa wants to resolve it and would be more than happy to speak with Mr. Buxton to make it work. Mr. Coakley explained that there are other obstacles he would face because if there is extensive work to be done, an engineering study done would have to be done, and any kind of dredging would require filing with us. Ms. LaRossa asked if they are allowed to bring in a ton of dirt and fill it in themselves and was told definitely not. Mr. Coakley said if they were to fill it in, because they're in a flood zone, they would have to create compensatory flood storage somewhere else and they don't have the property to do that.

LAND Grant Project – Review paperwork to be submitted for reimbursement – Paul Dell'Aquila (Town Planner) was present to talk about the Land Grant documentation for the property recently purchased by the town between Sewall Street and School Street; most of which has nothing to do with the Commission but it's part of the process to get the \$500K grant reimbursement. Mr. Dell'Aquila did ask

the Commission's input on identifying the best locations to construct a small parking area. He will be working with the Highway Department to create 2-3 parking spaces for access; a sign is also needed before he can submit for reimbursement. The documents may be executed in April/May and wanted to make us aware and get any guidance as needed. Joe McGrath graciously volunteered to work with him. Mr. Walsh commented on the Site Visit Report and said it's important to identify any encroachments, etc., and possibly some remedial action, not hazardous waste. Mr. McGrath said when they were looking to develop this land into a subdivision, there was an ANRAD that was done on the property. Mr. McGrath suggested that EcoTec be hired to review that and see what conditions have changed and do an additional site walk. Mr. Walsh was concerned about any impediments or manmade activity that has a negative bearing on this. It has to not only do with the wetland resources, but the use of the property in general that's not in harmony with the CR. Mr. Dell'Aquila said there are a number of properties adjacent to the site where he could see where some encroachments may have happened. Mr. McGrath said before any funding is committed to, he will come back to the Commission and explain what we need. He is also not experienced enough to file a CR with the state. Mr. Dell'Aquila said we could ask Town Counsel for help. Mr. Coakley said if we do have a CR, it should be included in a public meeting to go over any restrictions or allowances so the public has a chance to weigh in. Mr. McGrath said when we did the initial set of regulations, we did it for land where we knew it was going to be landlocked and there wouldn't be any access. We didn't have to worry about parking areas, etc. We will have to revise the regulations and hold a public hearing for that as well.

Mr. Dell'Aquila also mentioned the Hazard Mitigation Plan which is a federal program related to the MVP Program that's more of a state program. The Hazard Mitigation Plan identifies critical infrastructure in town that is vulnerable to the impacts of climate change. They are working with CMRPC on updating the plan and just released a public survey. He encouraged members of the public to take the survey. There will also be a public hearing in the spring. Once there is an approved Hazard Mitigation Plan, the town can apply for action grants to address some of the concerns.

Mr. Dell'Aquila asked if the Compass Pointe item was going to be addressed tonight and was told yes but we have to decide the scope of the peer review needed. Mr. Dell'Aquila wanted to inform the board that the developer has put in for road acceptance and wants to make sure Conservation matters are satisfied before the Planning Board entertains anything further.

Consider issuing an Extension Permit for DEP#115-429 (178 Main Street). Bill Manter – Mr. Walsh visited the site and stabilization is underway. Mr. Manter said he will be installing a fence for aesthetics and would like a site visit to delineate where the Commission feels there should be fence. Mr. Coakley said to submit the type of fence he wants, stake it, flag it, and members can visit it individually. Mr. McGrath said there is no special condition regarding the fence. The only conditions that apply are the general conditions under Stormwater which is any fencing constructed around stormwater BMP shall include access gates and shall be at least 6" above grade to allow for wildlife passage. Mark Coakley made a motion to extend the Order of Conditions for a period of two years; Jeff Walsh seconded; all voted in favor; motion approved.

Consider issuing Certificate of Compliance for DEP#115-323 (69 Rocky Pond Road). Gary Tuthill – Gary Tuthill was present. Having no issues, Joe McGrath made a motion to issue a Certificate of Compliance for 69 Rocky Pond Road; Jeff Walsh seconded; all voted in favor; motion approved.

Consider issuing Certificates of Compliance for Compass Pointe DEP#115-394 (Lot 9A); 115-395 (Lot 9B); 115-396 (Lot 10C); 115-397 (Lot 11C); 115-398 (Lot 12C); 115-399 (Lot 13C); 115-400 (Lot 13D); 115-401 (Lot 14C); 115-402 (Lot 15C); 115-403 (Lot 16C); 115-404-(Lot 16D); 115-414 (Compass Circle amended OOC) Lots 24B, 45B & 46B – Jeff Walsh recused himself from the matter.

Onni Wirtanen and Bart Laganelli were present. Review fees that were outstanding were received today; the requests will be submitted to EcoTec and Graves Engineering for review. Mr. McGrath said we need to determine the difference between the original permitted project and the as-builts. It's a very important part of the scope work for Graves. We also need EcoTec to verify that any stabilization requirements have been met. Mr. McGrath will email them with specifics. The biggest thing Mr. Coakley wants EcoTec to opine on is that there's still a lot of mulch on the site. We determined that mulch is a temporary stabilization process; he's not satisfied with that. He also wants to make sure the plantings that were supposed to be done were done. Mr. McGrath said there also were issues with clearing of materials from detention basins. Mr. Coakley said with the Graves review, he would like to see the cuts and fill calculations in the slopes and what the delta is between what's on the plan and what's in the field. The slopes that are next to Spruce Pond are being held up by trees that are rotted. Citizen Walsh, 35 Glazier Street, commented that when a request comes in, the Commission has 21 days to act on it and suggested the Commission respond to the request and the time frame required. Joe McGrath made a motion that the Commission has initiated a peer review and will process it as soon as possible but is unable to vote on the specifics and compliance at this time unless we deny them; Mark Coakley seconded; all voted in favor; motion approved. Mr. McGrath will email Matt Marro and let him know that we've opened discussion on the matter and we need a peer review.

Mr. Wirtanen asked if the as-built was specific to the slopes and was told they're supposed to be an accurate surveyed representation of what is built there with regard to the sites that have Orders; two of the Orders impact the streets. As-builts will also be needed from the Board of Health. Mr. Coakley said the as-built plan should include the details on the individual lots. Mr. Wirtanen asked if Paul Dell'Aquila finished the list of open items that were to be completed. Mr. McGrath said a letter was sent to Graves a few months ago which prompted them to send in the requests. There are too many unknowns until the peer review is done. Until all of the different board's issues are resolved, the warrant will not be accepted but the town will continue to plow the roads.

Consider issuing Certificate of Compliance for DEP#115-442 (Lot 11 (#6) Longley Hill Road). No request received for Stormwater Control Permit SCP#2022-2. Farooq Ansari – Jeff Walsh recused himself from the matter. Graves will be asked to review the request for the Certificate of Compliance and as-built plan to see if addresses any of the issues raised in previous reviews. Mr. Ansari will be notified again that he needs to submit a request for the Stormwater Control Permit.

Consider Request from Farooq Ansari to Release the Bond for Longley Hill Subdivision – Mark Coakley made a motion to deny the request to release the bond due to insufficient review; Joe McGrath seconded; all voted in favor; motion approved.

Review Northborough Reservoir Dam Partial Removal Project in Boylston and Shrewsbury letter – Mr. McGrath suggested that we have Graves Engineering review it and tell us if the proposed impact to Boylston from the breach of the dam is something that requires action, input, and/or follow-up. Mr. McGrath said there is a requirement for them to come before us with a Notice of Intent, and when they do, they will have to pay for the peer review. Mark Coakley made a motion to send the Northborough Reservoir Dam Partial Removal Project to Graves Engineering for review for any hazard and/or issues that will impact Boylston and an estimate of impact to the water and flood impact based on the removal of the dam. Joe McGrath seconded; Coakley/McGrath/Rose/Aspero; voted 4-0-1; motion approved. Walsh abstained from voting.

Revise Special Conditions #32 to include applicant recording approved Plans at the Registry of Deeds along with the Order of Conditions – Mr. Walsh said it can't be done; the Registry of Deeds has a set of

regulations they follow. Mr. McGrath received the same answer when he asked Tighe & Bond about it. It will be left as is.

Stormwater Drainage Issue at 126 Central Street Update – Mr. Walsh visited the site and looked at the situation. It is not jurisdictional to the Commission but we are doing it as a favor; it's the Highway Department's jurisdiction. The unanimous recommendation is that 1) the berm should stay, and 2) the hump that is proposed at the end of the driveway should be installed to take the water past the driveway and into the adjacent downhill drainage area. If the homeowner wants the current cuts left in the berm, then they are responsible for clearing the culvert under the driveway or installing a second culvert under the driveway at the low point. It is fully within the town's right to do the work because it's within the town's right-of-way.

Declaration of Covenants and Restrictions for Joslin Lot Property – Mr. McGrath explained that Tower Hill didn't want the restriction and the Commission didn't know there was a restriction involved. He wasn't sure there should be a CR because ultimately it will be developed as part of the Tower Hill complex and will be accessible to the public. He will contact Stephe Madaus and let him know the Commission prefers not to be the designated custodian for Joslin's Lot and we feel that using GWLT or another conservation entity, such as Sudbury Valley Trustees, as the custodian is a much better approach for any Conservation Restrictions on land that is not deeded directly to the town.

Having no further business to discuss, Mark Coakley made a motion to adjourn; Jeff Walsh seconded; all voted in favor; motion approved.

The meeting was adjourned at 8:34 p.m.