



Town of Boylston Board of Health boh@boylston-ma.gov
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MEETING MINUTES

April 22, 2019

Members Present: Sarah Scheinfein, John Wentzell, Robert Thibeault

Members Absent: None

Others Present: Dennis Costello

Recorder: Melanie Rich

The Chair opened the meeting and announced that cell phones are to be muted. Cell phones are used by the board for the purpose of scheduling the next meeting, etc. The meeting is being recorded for transcription purposes and cable television.

GENERAL BUSINESS

Sarah Scheinfein made a motion to approve the Meeting Minutes dated March 25, 2019; Rob Thibeault seconded; all voted in favor; motion approved.

May 20th was confirmed as the next meeting date.

Jim Haynes (Compass Pointe & Lilymere Discussion) – Present were Jim Haynes, Mike Kent, Matthew Watsky (attorney) and John Grenier (engineer). After numerous conversations with Dennis Costello, Stephen Madaus and himself, Attorney Watsky believed that the final resolution was the approval by the board of the aggregation calculations that Mr. Grenier prepared and the proper DEP form to put it in the deed restrictions. Currently, one parcel is held in the Homeowners Association; the other two for the aggregation calculations are currently held with Boylston CP, LLC. Attorney Watsky asked if the board would like to leave the land held by CP Boylston, LLC, or if the board would like the land conveyed into the Homeowners Association where the grantor and grantee are the same entity, with the Homeowners Association imposing the deed restriction on the land while still holding the land and giving the deed restriction for the benefit of the town. The town does not have a preference; the Homeowners Association may be the easiest. Attorney Watsky said it suffices the whole subdivision. He said the total aggregation required is 187,645 square feet. They have identified three parcels which totaled 195,599 square feet; they have sufficient aggregation. When the declaration of deed restrictions on the lots is prepared, it will be recorded with the exhibits (the three lots) showing exactly which part of the land is being deed restricted; all of Parcel K is deed restricted; it will follow the line of title, and it will never be built upon. The Amendment to the Homeowners Association and the deed restriction are part of the Homeowners Association. Dennis said it will be recorded against the development of the lots

for the nitrogen aggregation and it does meet DEP guidelines. John Wentzell made a motion to approve the aggregation plan; Rob Thibeault seconded; all voted in favor; motion approved.

Dennis asked about the bond. Mr. Watsky said he has not seen the document but that Mr. Haynes has agreed to do that. Based on the fact that it is only a provisional approval and no guarantee that it would finally receive general approval, the question was asked how is it conveyed to the general public that they are buying into the system that is only provisionally approved by the DEP? At the June 24, 2017 meeting, Mr. Haynes said personally that he would put up the funds for that and the board agreed. The board agreed to approve the system based on the fact that we would have some guarantees that in the event that portion of the system did not get approved by DEP and had to be changed. It isn't the homeowners who should be taking on that responsibility; it should be the person that proposed it. He realizes that Attorney Watsky said the board cannot put additional requirements upon Title 5, but doesn't believe it wasn't the board, it was Mr. Haynes, therefore the board is asking for the bond. Mr. Haynes said he misunderstood when he put up a cash bond for \$20K. He did not realize the discussion pertained to the provisional approval of the FAST component of the septic system, not the entire septic system.

Dennis asked what can the board do for the Lilymere project if they have the same underlying feeling cannot impose additional requirements upon that system under Title 5. Attorney Watsky explained that the approvals that DEP has issued for new technology are provisional approvals, it is provisional for the system to be marketed into the marketplace for development use as opposed to general approval where it is approved for everyone going forward. It is a provisional approval for purposes of for manufacturers and the marketers of it to put it into use, it is not a provisional approval if you are looking at it from the perspective of the development or the homeowner or subdivision that has is in place. If DEP says it is not provisional approval anymore, no one will ever have to take the FAST system out of the ground. It is a regulatory mechanism to have enough of these systems built so that DEP can get the data and evaluate and make a decision that they want to have it approved for general approval purposes. DEP is not going to pull the system out of the ground as long as it continues to work as spec'd. Attorney Watsky said the board is asking for additional security. Mr. Haynes has agreed to provide funds (\$25K) in an account where it is a loan in effect to the HOA so when the HOA funds continue to accumulate and reaches the designated dollar amount, the funds from his separate account be reimbursed back to him. If DEP decided to rescind the original approval and require people to pull it out of the ground, the funds are there.

Dennis agreed with the certification of the provisional part, but everything he read in Title 5, the approval letter and from David Boyer says if it doesn't meet the standard of a recirculating sand filter consistently over a period of time with the systems in, then it will either have to be removed or re-piloted. He disagreed with the fact that it will never have to be pulled out of the ground. Mr. Kent said they will receive DEP approval in 2020.

Dennis said he is also trying to protect the board and the town for approving something that didn't have general approval. If the Board of Health approved a system that only has general approval for nitrogen sensitive area as a provisional approval and something goes wrong, who

is responsible. Attorney Watsky said above and beyond the Massachusetts Tort Claims Act, the Board of Health, under the Title 5 statute, which empowers DEP to adopt Title 5 regulations, the board only has the authority to act within the scope of the regulations DEP has written unless the board has adopted its own set of rules and regulations; the scope of authority is limited to DEP regulatory structure. DEP's Title 5 regulatory structure does not give Boards of Health the authority to impose additional conditions on permits for provisionally approved septic systems.

Dennis asked if Parcel C was resolved; Attorney Watsky said it is was. It encompasses Spruce Pond and the land around it. The town (Planning Board?) doesn't want to take title to it; they want the deed restriction on it for aggregations purposes, but want it to remain in private ownership. It will be conveyed to the Homeowners Association in perpetuity and maintained by the HOA but have the deed restriction for the benefit of the town. Rob asked when the measurements were taken, what was the estimate based off of and what time of year. He questioned whether it was wetlands or water because the outlining wetlands vary per season? Mr. Grenier said it is not water, the water is within it and there are wetlands are beyond it. Mr. Haynes said the high-water mark was used. The aggregation plan is not recorded yet. Attorney Watsky said it will take some time to draft the documents now that he has direction from the board that they want the lots conveyed to the Homeowners Association. The board will receive the deed to the land transfer at the same time as the permits are released.

The board being satisfied, Sarah Scheinfein made a motion that the board will approve the signed permits holding three lots (six units) in exchange for the transfer of the 6.52 acres, and the paperwork will be completed for the aggregation consistent with the submittal tonight, Figure 1, Exhibits A, B and C; Robert Thibeault seconded; all voted in favor; motion approved.

Lilymere – Mr. Grenier said they are proposing the same type of system that was installed as Compass Pointe; the FAST system. In checking that it is allowable, he looked up the permit and it says that in their approval "that the approved technology may be substituted for a recirculating sand filter as a required component of the system with a design flow of 2,000 gallons/day or more" Regarding the pressure dosing, he looked on the approvals and the design criteria posted with DEP for an enviro septic system (Presby) that says "pressure distribution may not be used with an enviro septic system, including systems that are designed for over 2,000 gallons/day." Dennis said the purpose of the pressure dosing is to get consistent coverage/even distribution throughout the whole system. Enviro septic systems are laid flat; it accomplishes the same thing because it is laid flat. Mr. Grenier said he has designed pressure dosing systems before which are basically underground sprinkler systems; they have maintenance issues. Presby systems are gravity, flow evenly, much cleaner. Dennis reminded the board that they just approved three pressure dosing systems for flow over 2,000 gallons/day. Mr. Grenier was asked to check the approval to be sure the Presby is acceptable for this application. Confirmation is needed on the system as to whether or not it can have pressure dosing.

69 Melrose Street Update – An email was sent to various departments to schedule an inspection. Jack will follow-up.

AGENT'S REPORT

2019 Flu Preparation – All information was submitted. There is no vaccine left from Sanofi. Dennis/Sarah will contact the representative and/or Leslie Chamberlain from Southborough.

Mosquito Control Update – No new updates.

PLAN REVIEW

Lilymere Estates (discussed earlier).

John Wentzell made a motion to adjourn; Rob Thibeault seconded the motion; all voted in favor. The meeting was adjourned at 7:06 p.m.