



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

APRIL 27, 2020

Members via Remote: Joe McGrath, Jeffrey Walsh, Dan Duffy, Mark Coakley

Members Absent: Chip Burkhardt

Others Participating Remotely: Dan Wells (Goddard Consulting), Atty. Matthew Watsky, Matt Marro (Matthew Marro Environmental Consulting), Vito Colonna (Connorstone Engineering), Kevin Howley

Recorder: Melanie Rich

Joe McGrath, Chairman of the Conservation Commission, opened the virtual meeting at 7:00 p.m. He informed everyone that they can email him at (jmcgrath@boylston-ma.gov) with any questions that will be answered during the meeting.

Commissioner Roll Call: Jeff Walsh, Dan Duffy, Mark Coakley and Joe McGrath.

PUBLIC HEARING (continued) – 11 French Drive (Tower Hill Botanic Garden) – Notice of Intent Application and Stormwater Control Permit Application to redevelop the Tower Hill Botanic Garden main entrance off French Drive (DEP#115-425)

The applicant requested an extension via email. Mark Coakley made a motion to accept the request for continuance to 7:00 p.m. on May 18th; Jeff Walsh seconded; vote: Walsh yes; Duffy yes; Coakley yes; McGrath yes; motion approved.

PUBLIC HEARING – 11 French Drive (Tower Hill Botanic Garden) – The applicant is requesting a Waiver under the Town of Boylston General Bylaws, Rules and Regulations of the Stormwater Control Bylaw, Section 8.0 (Waivers), Section 7.0 (Performance Standards: Stormwater and LID Criteria), I) 4. e), the requirement to construct a fence around the proposed Detention Basin #1

The applicant was before the Commission at the last public hearing but failed to raise the issue of a waiver request; the Stormwater Permit was issued for the work; they are now asking for a waiver to construct a fence around detention basin #1. The basin is adjacent to the work being done in the parking lot. Patrick Burke (WDA Group) said they believe it is appropriate since there is a proposed guardrail to the east to separate the parking area; to the south is an isolated area from the detention basin; to the north and west there is a tree line and stone wall that provides visual fencing for the proposed site. Mr. McGrath told the members that final plans that reflected the changes identified by Graves Engineering in their April 3rd letter were received; they were made and reflected on the plans. Mark Coakley made a motion to waive the requirement under the Stormwater Control Bylaw, Section 8.0 (Waivers), Section 7.0 (Performance Standards: Stormwater and LID Criteria), I) 4. e), to construct a fence around the proposed Detention Basin #1; Jeff Walsh seconded; voted: Walsh yes; Duffy yes; Coakley yes; McGrath yes; motion approved.

PUBLIC HEARING – Perry Road (Map 13/Parcel 21-K AND Map 18/Parcel 3-2) (Security Monitoring Holdings, LLC) – Stormwater Control Permit Application to construct a single-family house, septic system and associated site work, with a driveway off Perry Road

The hearing was postponed because abutters were not notified in a timely manner. It will be on the May 18th agenda.

Mark Coakley informally had a concern about it being a BVW with the original Barnard Hill (Perry Road) subdivision. He did not see any documentation in the filing overcoming the presumption that it is a BVW. Mr. McGrath said it was their position that they thought it was a federal jurisdictional wetland and not subject to the Wetlands Protection Act. Mr. Coakley believed it was accepted as part of the Barnard Hill subdivision as BVW; they will have to overcome it. Dan Duffy suggested that it may be appropriate for the applicant to submit a Request for Determination of Applicability prior to the next meeting. Melanie will email John Grenier and explain that the Commission would like him to file an RDA because we feel that it could still be considered a BVW considering the previous project.

PUBLIC HEARING – 70 Reservoir Road-Lot 2 (Kevin Howley) – Notice of Intent Application to construct a single-family house. Work within the buffer zone & riverfront area includes the proposed house, utility connections, private well, landscaping and associated site work

DEP has not issued a file number as yet. Vito Colonna (Connorstone Engineering) said the lot is a 4-acre single-family lot. An ANR was approved by the Planning Board to create another lot in the rear. It is 2.9 acres with wetlands to the rear of the lot, a BVW and flood plain associated it. The 200-foot riverfront area expands and ends up in the lot. The lot had to be a horseshoe shape in order to get the width and depth; the house placement has to be in the center portion to meet the depth and width. The driveway is away from the legal frontage side and there will be an easement over the existing lot 1 to get driveway access. The 100-foot wetland buffer zone is larger than the 200-foot riverfront. There is 9,100 square feet of disturbance in the riverfront area; the lawn is 30-feet from the wetland and 106-feet from the riverfront area, the house is 60-feet from the wetlands and 150-feet from the riverfront area.

Dan Duffy thought there should be a limit of work line specifically shown, and they will also want to put up wetland boundary markers so the 4 angular points on the proposed barrier would be the location. Jeff Walsh agreed. Mark Coakley asked about the alternatives analysis. Mr. Colonna said it was at the end of the narrative describing why the lot was configured the way it was. Mr. Coakley asked why were they not requesting a variance on the frontage to move the house further towards Reservoir Street. Mr. Colonna said he does not think they would get a variance because they have to prove hardship. The house will be at grade (445) and the water will flow towards the wetlands. Given the close proximity to the resource area and the house being in a resource area, Ecotec will be asked to do a peer review of the wetland delineation. The applicant will be asked to post the money for a 53G account. Mr. Coakley asked for more of a narrative of how they will handle the roof runoff and driveway runoff. Mr. Colonna said there are no drywells proposed for the roof runoff. Mr. Walsh asked if the riverfront area of the 100 square feet is on lot 1 or lot 2; Mr. Colonna said 2. Mr. Walsh thought for any lot created after 1996 they would have to look at the entire parcel as it existed and how much disturbance is within the riverfront area. Mr. Colonna said it is a gray area and you don't get the 5,000 square-foot guarantee. Mr. Walsh will research it before the next meeting. He would also request for the proposed well to use a small drill cutting spit or straw haybales to create a pit for drilling mud.

Open Items: Identification of permanent wetland boundary markers on the plans, address Mr. Walsh's comments for the area for the well mud, include in the narrative how they are handling stormwater for

the driveway and roof runoff, and have the wetland boundaries confirmed by our wetland specialist. Mr. Duffy said to also include proposed erosion controls on the plan. The applicant requested a continuance. Jeff Walsh made a motion to accept the request for a continuance to May 18th at 7:20 p.m.; Joe McGrath seconded; voted: Walsh yes; Duffy yes; Coakley yes; McGrath yes; motion approved.

COMMISSION BUSINESS

Compass Pointe Update and Bond Status – Jeff Walsh recused himself from the matter. Mr. Marro went to the site and the individual lots and said it appears that over the winter and through some of the recent rains, everything held up well; there are no breaches to the erosion barriers, the wetlands are intact; no siltation. The areas in questions looked fairly stable with the woodchips. There are some small areas that had gullies that were attended to by hand. Areas from last year that were exposed were mostly sodded. The bark mulch has degraded in the areas of question, but can be turned over. Mr. Marro said in the area where Mr. Haynes is currently residing, the structures are completed, half the plantings are completed, trees are on order, the area has been loamed and will be sodded; looks like it held up very well (#28, #30 & #32 – the area the Amended Order refers to). Atty. Watsky asked Mr. Marro what his take was for requesting a Certificate of Compliance. Mr. Marro said the areas can readily be overturned and seeded. Atty. Watsky asked if there was anything in Paul McManus' report that is problematic; Mr. Marro said for the most part the items are under control.

Mr. McGrath asked Mr. Marro if he was preparing an updated status report as indicated in an earlier email. The Commission is waiting for a written report of what is left along with the work that needs to be done. Atty. Watsky said he received the draft today and will get it to the Commission with plenty of opportunity to review it for a future meeting. Mr. McGrath said we would like to see the report and schedule a socially distant site visit. Mark Coakley said the Commission specifically asked for visuals to keep track of it to make sure it is done properly, and have since January, and they haven't had time to do that; he was disappointed. Atty. Watsky said Mr. Marro went out this past week and observed the conditions and has a report lot by lot, but said the Commission does not like things dropped off on meeting night. Dan Duffy said at the last meeting that Mr. Marro was going to get together with John Grenier and get the lot numbers straightened out; the document would describe the work that was being proposed to stabilize the areas that were presented to us, not necessarily an update of what the conditions are now, but a finalization of that plan that was presented two months ago. We were hoping it would be presented at the last meeting but they didn't show up. He is hopeful that the report clarifies the specific concerns with understanding which lot numbers were being described and that there was consistency between the drawing that accompanied it and the text (which there was not the last time); more than what the site looks like today. What is the status of that document which we thought in February was just a matter of going back and putting those lot numbers together and hopefully revising it based on what we requested? When can we expect to see that? Atty. Watsky said before the end of this week he expects to get it submitted. Mr. Duffy would like to have a site walk with all those involved; he feels it is very important. Atty. Watsky said that the last meeting was the beginning of the COVID-19 and people at risk were advised not to do things in public and informed us they would not appear in public. Mr. Duffy said we had a zoom meeting last month. Two members were at the office; the rest of the members and applicants participated as we are doing tonight. Atty. Watsky said he was not aware of that. Mr. Coakley said the meeting minutes from 2/24 have a point by point definition of what we are asking for. It was before the COVID-19 and both Atty. Watsky and Mr. Marro were present at the meeting. Mr. McGrath said we will expect to receive the report this week including the lot number clarification. He will coordinate a site visit and notify Mr. Marro and Atty. Watsky.

With regard to the bond, Mr. Watsky was sent the background documentation and as he understands it is the way it is structured, when the work is completed and a request is made to release the security, the engineering does a site visit and makes his evaluation. Upon that inspection, the funds shall be released consistent with his recommendation and it specifies that the Commission and Treasurer shall release it; he thinks it is consistent with the Performance Agreement. Mr. Duffy said he doesn't know what was requested of the engineer; an estimate was done based on a procedure that we had worked out earlier in the project whereby the applicant had posted a bond to disturb a number of lots on the project; we went lot by lot. As he wanted some of them released, we would look at ones that were stabilized (we looked at the estimate at that light). The estimate was not specific to each individual project; there were some general assumptions to the area that was disturbed and work that was required to spread out some top soil on site and seed; it is clearly not reflective of the work that is being done now. The only request of the Commission was to have the engineer do a cost estimate; nothing more came back to us; we were never requested to reduce the bond; it was reduced without our knowledge or approval. Mr. McGrath said that is our primary concern. If there was a change to the scope of the project and the bond could be reduced, the process for getting it reduced was to make that request to the Commission, have our engineer verify the request, the Commission would review it and make any changes to the funds as necessary. Mr. McGrath said there were two concerns: (1) that the process was not followed, and (2) that the bank released the bond without talking to us. Mr. Duffy says the Letter of Credit says that upon a report from the Conservation Commission's engineer that the work has been satisfactorily completed, the town through its Conservation Commission shall issue a Certificate of Completion. That is what they need to do to get the Certificate of Completion.

Mr. Coakley referred back to the 2/24/2020 meeting minutes "Action Item (1): Status of the Bonds. The Commission wants the rationale as to why the request to reduce the bonds was not given to the Commission. Mr. McGrath said the Commission disagrees with one of the findings in the Graves Engineering letter. Mr. Duffy felt it was completely irrelevant because Graves Engineering is our consultant; they have no authority to speak for us or tell a financial institution whether something is acceptable or not." It was rehashed two months ago.

Atty. Watsky said at looking at the terms of the Performance Agreement it uses the word "shall" and reads in part.... upon receipt of the notice, the Conservation Commission's engineer "shall" inspect the work to determine.... Mr. Watsky said the Commission's engineer said the work was completed satisfactorily for that portion of the bond. Mr. Duffy said there is nothing that talks about partial release of any portion of the bond; it talks about completion of the work and a Certificate of Completion. The Conservation Commission never issued a Certificate of Completion, but the funds were released. What was done was not proper. The Commission needs the Letter of Credit restored to the original amount or for the applicant's engineer to present the cost to complete the work, our engineer to review it, and the Commission vote to see if a reduction is appropriate. Mr. Watsky said they already have communications between their consultants and engineer. He said our engineer is the one who calculated the amount that remains and made the determination. Mr. Duffy said our engineer cannot release anything. We did not issue a Certificate of Completion. Atty. Watsky would argue that the Conservation Commission does not have the discretion to second guess an engineer. He said that is the way the Letter of Credit is set up so it is not subject to politics; he said it is the engineer that is making the determination. He was told there is no politics. Mr. Duffy said we are looking at it from a technical aspect; the project is not complete; there is nothing that talks about a partial release, and we did not issue a Certificate of Completion. As a Commission member he looked at it and there is a very specific Certificate of Completion that we issue associated with the Wetland Protection Act and we have not done that. Atty. Watsky said there is no authority under the WPA to impose a bond; this is more a contract. Mr. Duffy said we need to defer to our town counsel to assist us because clearly it was not the

Commission's intent and it was done without our knowledge to reduce the bond. Rockland Trust should be notified that we never issued any authorization to reduce the Letter of Credit and it needs to be restored to the full amount. He told Atty. Watsky that we have been very reasonable and flexible with his client throughout the whole project with regards to the bond. We could have required the bond to be implemented thought the entire project, but was willing to work with him as the project proceeded. It was also concerning that Rockland Trust did not live up to their end of the bargain by not requiring a Certificate of Completion from the Commission.

Atty. Watsky suggested we refocus on how much it should really cost to complete. Mr. Duffy said we are still waiting for the report from February to completely understand what work is necessary and then have our engineer prepare an estimate. Mr. McGrath said if they had come to us with a request to reduce the amount of the bond, we would have worked with them to address it, but it was done in violation of the agreement and Mr. Watsky does not feel it is in violation, so we will consult our town counsel. Mr. Duffy will follow up.

Janice Such (2B Cheryl's Way) asked when they will know the results of the report? Mr. McGrath said we will plan to have the report available unless Mr. Marro would like to send it to the abutters ahead of time. Mr. Marro said he will talk to his client about that but will send it to the Commission in a timely fashion. Mark Anttila (46B Compass Circle) asked that if it is going to be at the next meeting he would like to see it beforehand.

85 Sewall Street Apartments Bond Update (sign bond) – The signature page will be sent to the members for signing.

Consider issuing a Partial Certificate of Compliance for DEP#115-378 (SAC Realty-LEI) and Stormwater Permit SCP#2015-3 (200 Shrewsbury Street) – Mr. McGrath said there were some permanent reporting requirements which is why they are asking for a Partial Certificate of Compliance. Mr. Duffy remembered the applicant coming in with a detailed landscape plan for a section of Route 140 and didn't know if it had been implemented, but it should be acknowledged by the applicant that they did not do what was proposed in regards to some of the plantings on the left side of the driveway and a little to the right side. He also thought they were going to limit the use of the parking lot adjacent to the basin and not include vehicles with petroleum products, only trailers; there are larger and medium size trucks in that area. Mr. McGrath remembered them coming in with a change request. Mark Coakley commented that the landscape area is not the way they presented it, but does not think it is jurisdictional as long as it is stable. Mr. McGrath said part of the Stormwater Permit was to restore the area. Mr. Coakley was acceptable to issuing a Partial Certificate of Compliance, but to report back on the status on the landscaping. Mr. Coakley made a motion to issue a Partial Certificate Compliance for DEP#115-378 and Stormwater Control Permit #SCP-2015-3; Mr. McGrath seconded; voted: Walsh yes; Duffy yes; Coakley yes; McGrath yes; motion approved.

Dan Wells (Goddard Consulting) joined later. Mr. McGrath told him that some of the restoration was not done; Mr. Wells look into it. Mr. Duffy told him about a discussion the Commission had that the area adjacent to the stormwater basin between the parking area and the Verizon building that no trucks were to be stored on it, only trailers and such. It is being used for vehicle storage.

Kim Ames (to discuss possible donation of land) – Mr. McGrath will follow up.

Dragon 88 Update – Melanie will email Mr. Chow letting him know the Commission would like him to be on the next agenda.

April 27, 2020 Conservation Meeting Minutes

Joe McGrath will approve vouchers and any correspondence received.

Jeff Walsh made a motion to approve the Meeting Minutes dated March 16, 2020; Dan Duffy seconded; voted: Walsh yes; Duffy yes; Coakley yes; McGrath yes; motion approved.

May 18th was confirmed as the next meeting date.

Mr. McGrath noted that there were no online questions during the meeting.

Mark Coakley made a motion to adjourn; Joe McGrath seconded; voted: Walsh yes; Duffy yes; Coakley yes; McGrath yes; motion approved. The meeting adjourned at 8:28 p.m.