



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

SEPTEMBER 20, 2021

Members Present: Chip Burkhardt, Joe McGrath, Jeffrey Walsh, Mark Coakley

Members Absent: None

Others Present: See Attached Sign-In Sheet

Recorder: Melanie Rich

The Chair opened the meeting at 7:00 p.m.

Chip Burkhardt made a motion to accept the August 16, 2021 Meeting Minutes; Joe McGrath seconded; Burkhardt-aye; McGrath-aye; Walsh-aye; Coakley abstained; motion approved. Jeff Walsh made a motion to set October 18th as the next meeting date; Joe McGrath seconded; all voted in favor; motion approved.

Joe McGrath made a motion to accept the proposal from Tighe & Bond for the FY22 NPDES MS4 Small General Assistance Proposal; Jeff Walsh seconded; all voted in favor; motion approved. Joe McGrath made a motion to forward the contract to the Town Administrator for signature; Mark Coakley seconded; all voted in favor; motion approved.

PUBLIC HEARING (continued) – 260 Shrewsbury Street (Dragon 88) – Notice of Intent Application to divert stormwater runoff from the fill slopes as well as stabilizing non-vegetated or sparsely vegetated slopes due to the former placement of unauthorized fill which impacted and created Bordering Vegetated Wetlands. (DEP#115-427)

Scott Heim (Northeast Ecological Services) requested a continuance via email. Chip Burkhardt made a motion to accept the request for continuance to October 18, 2021 at 7:05 p.m.; Mark Coakley seconded; all voted in favor; motion approved.

PUBLIC HEARING (continued) – 11 French Drive (Worcester County Horticultural Society) – Notice of Intent Application to install a perimeter fence to enclose the majority of the contiguous property. (DEP#115-431)

Mark Richardson was in attendance. Jeff Walsh had no concerns or questions. Mr. Richardson had a sketch but said the wetlands were not delineated. Mark Coakley asked what flag 8 referred to. Mr. Richardson explained that a colleague flagged the wetlands in preparation for the fence. He has not recorded a number of them; A8 will not correspond with them at all. He also explained where the crossing was. Crossing B was not looked at during the site visit.

At the Commission's request, Paul McManus (EcoTec) conducted a review of the wildlife habitat provisions of the Mass Wetland Protection Regulations and provided his report dated August 26, 2021. There are three questions that, if the Commission answers "yes" to all three, the project does not comply with the wildlife habitat of the Wetland Regulations. If "no" to one or more, then the project would be in compliance with the wetland wildlife habitat provisions. Question #1-would there be an

alteration? Question #2-if so, does the wetland to be altered contain important wetland wildlife habitat? Question #3-if so, does the alteration(s) exceed any specified habitat threshold? Mr. Coakley felt there was an alteration; the others did not. There were no issues with #2 or #3. Jeff Walsh made a motion to close the public hearing; Joe McGrath seconded. The Chair asked for public comment; there was none. All voted in favor; motion approved. Jeff Walsh made a motion to issue a standard Order of Conditions for DEP#115-431 with Special Condition #35-this Order does not confirm the identification or delineation of any wetland resource areas jurisdictional under 310 CMR 10.00; Mark Coakley seconded; all voted in favor; motion approved.

PUBLIC HEARING (continued) – 8 Gulf Street (Boylston CP, LLC) – Notice of Intent Application and Stormwater Control Permit Application to construct 20 senior housing units, access driveway, stormwater management facilities and associated site work. (DEP#115-435) Stormwater Control Permit SCP#2021-1

Chip Burkhardt recused himself from the matter. John Grenier and Attorney Matt Watsky were in attendance. Mark Coakley was not at the last meeting but did watch the video. Attorney Watsky said having Mr. Coakley make the statement that he watched the last meeting was sufficient. Per the Mullin Rule, Mr. Coakley will be provided an Affidavit to fill out for the file.

Mr. Grenier said they were waiting for confirmation from Graves Engineering that he had no issues with the design as it pertains to drainage, stormwater, and compliance with DEP regulations. A response letter dated September 9, 2021 was received noting that all previous issues had been adequately addressed. Mr. Coakley commented on item #14 that said the proposed building architectural plans were not included in the submittal received by GEI. Mr. Grenier said they have been provided. Another item brought up by the Commission was that originally they had less of a setback in the rear area. They pulled the limit of work back and reduced the size of the yards behind Units 5, 6, 7, & 8; the setback is approximately 30'-35' from the intermittent stream channel. They did look at shifting everything more in an easterly direction but could not do it because of the zoning setback. There is a "finger" that projects into the resource area.

Mr. Walsh asked about the grading and wetland flags 44 & 45 (a low area that rises about 10-feet). The basement is at 444.5; the garage is at 453. Mr. Walsh said there was an area that was not flowing water. He said there needs to be a way to make sure that over time after the project is developed that there isn't an encroachment beyond that. Mr. Grenier said he has used boulders on other projects. He also said they are over 55 townhouses and condos; they won't be expanding their yard; debris will be removed by a contractor. Attorney Watsky said a condition of the HOA could include a requirement that landscapers that are under contract are to remove the yard waste rather than dump it out. Mr. Coakley commented that there was the presumption of a perennial stream that hasn't been overcome. Mr. Grenier has submitted a copy for the file.

Joe McGrath asked for public comment; there was none. Jeff Walsh made a motion to close the public hearing for DEP#115-435 and Stormwater Control Permit SCP#2021-1; Joe McGrath seconded; Walsh-aye; Coakley-aye; McGrath-aye; motion approved (Burkhardt was recused). Language will be included in the Order that surety will be required for sediment and erosion control purposes. Mr. McGrath suggested we request from Graves Engineering a dollar estimate for any restoration work under the Commission's jurisdiction on the project. Mr. Walsh will abstain from any vote regarding an engineering company being engaged. Joe McGrath made a motion to issue a standard Order of Conditions for DEP#115-435; Mark Coakley seconded. Mr. Walsh asked Attorney Watsky if it would jeopardize the vote by the Commission by only having two positive votes of the three members. Attorney Watsky said with the Commission being a four-member board with one recused, there is a quorum of three; a 2-0 vote is a legal vote. Coakley-aye; McGrath-aye; voted 2-0-1 (Walsh abstained); motion approved.

Joe McGrath made motion to issue Stormwater Control Permit SCP#2021-1 with Special Condition #21- the applicant will provide a performance bond or similar surety, in an amount to be determined by the town's designated engineer, prior to the start of work governed by this permit. Mark Coakley seconded; Coakley-aye; McGrath-aye; voted 2-0-1 (Walsh abstained); motion approved.

PUBLIC HEARING (continued) – 160 Shrewsbury Street (Nicholas Smith, Route 140 RW LLC) – Notice of Intent Application for development of two industrial buildings totaling 680,400 square feet. (DEP#115-xxx)

Art Allen (EcoTec), Lauren Gluck (Pare Corp), Brittany Gesner & Ken Gorman (VHB) were in attendance. Mr. Allen provided a report dated September 20, 2021 on his review of the NOI. Ms. Gluck said they provided responses as follows: Area #1, the feature is non-jurisdictional but will be kept on the plan for reference. Areas #2 & #3, they moved some of the flags down; plans have been revised. Area #4, the proposed work does not appear to exceed the footprint of the existing slope within the 25-foot buffer zone. Area #5, historic conditions of the site were looked at with regard to the vernal pool and beaver activity. A beaver and associated water level control plan was submitted and reviewed. Mr. Allen was in agreement with the plan including restoration of vernal pool water level and associated BVW to the historic elevations. Mr. Coakley asked what the risk was if the beavers come back. Mr. Allen suggested a perpetual condition referencing the plan. Mr. McGrath said we would want a status twice/year. Areas #6 & #7, there is some work proposed within the 25-foot buffer due to design challenges (a total of 630 square feet); Ms. Gluck explained how they propose to offset the impacts. Area #8 had no further comments. Area #9, Mr. Allen's comments were that it has been determined that the "bypass channel" is actually the mainstream of Sewall Brook. Acceptable documentation has been submitted to overcome the perennial presumption for 3 days in a non-drought period. It does not meet the strict requirement of 4 days, but it appears to indicate that Sewall Brook is intermittent and would be comfortable recommending a finding of intermittent flow.

Ms. Gluck said the DEP file number letter had a comment that they should put the full number of riverfront alterations on Form 3 and said it has been provided in the updated documentation. Mr. McGrath asked if that addressed the performance standard on their letter. He noted the question in the DEP file number letter comment that "the total area of Riverfront Area alteration (36,105 square feet) should be quantified in Section B of the NOI. Stormwater structures are only subtracted from the total area of Riverfront Area alteration for the purposes on demonstrating that the project meets the performance standards contained in 310 CMR 10.58(4)(d)(1). The applicant should demonstrate that there is no practicable alternative to siting these structures within the riverfront area or reconfigure the project to meet the performance standards (<10% Riverfront Area alteration). Previously permitted and constructed Riverfront Area alteration on this lot should also be included when demonstrating compliance with the criteria in 310 CMR 10.58(4)(d)(1)." Mr. McGrath said DEP has not accepted their filing for this. Mr. Coakley suggested they send DEP a narrative to eliminate that objection. He did not think we should close the public hearing with an outstanding issue. It will need to be addressed before work begins.

Mr. McGrath also brought up the EcoTec letter from Paul McManus dated August 16, 2021 that some EcoTec staff have done work with the Kraft Group on other projects not related to this. Mr. McManus wanted to bring it to the Commission's attention in case they thought there was a conflict of interest. Mr. McGrath said after reviewing the letter and the Conflict-of-Interest Laws, he did not feel there was one; the members agreed there was no conflict. A perpetual condition for beaver mitigation will be on the Certificate of Compliance.

The Chair asked for public comment; there was none. Mark Coakley made a motion to close the public hearing; Joe McGrath seconded; all voted in favor; motion approved. Joe McGrath made a motion to issue a standard Order of Conditions with Special Condition #35-applicant will provide the Commission an Annual Report on Beaver Mitigation and buffer zone restoration activity for three (3) years from date of issuance of Certificate of Compliance; and #36-applicant will provide the Commission with proof that the riverfront issue raised in the DEP Notification of WPA File Number dated September 3, 2021 has been addressed, prior to any work covered by this permit. Mark Coakley seconded; all voted in favor; motion approved.

PUBLIC HEARING (continued) – 11 French Drive (Tower Hill) – Notice of Intent Application for proposed entrance driveway improvements. (DEP#115-436)

Rob Lussier (CMG) and David White (Tower Hill) were present. A DEP file number has been issued; a stormwater report was submitted. Previous Commission comments related to surface treatment and stormwater basin plantings (rain gardens); more detail was added to the plan. A note was also added to the grading and utility plan regarding the fine grading of the driveway to make sure stormwater is run to the correct areas. Permeable pavers were requested by DCR but Mr. Lussier said it would not be a good application with salt and deicing methods. Mr. Lussier addressed further DEP & DCR comments in his September 16, 2021 letter. A Stormwater Management Long-Term Operation & Maintenance Plan was submitted.

The Chair asked for public comment; there was none. Mark Coakley made a motion to close the public hearing; Jeff Walsh seconded; all voted in favor; motion approved. Joe McGrath made a motion to issue a standard Order of Conditions with Special Condition #35-the applicant to send the Commission a copy of the DCR permit when received; Jeff Walsh seconded; all voted in favor; motion approved.

PUBLIC MEETING – 11 French Drive (Tower Hill) – Request for Determination of Applicability Application for proposed limited soil test pits located in the area of the failing footings of the gazebo located near Tower Hill Botanic Garden's Wildlife Refuge Pond.

The hearing notice was read into record. Rob Lussier (CMG) and David White (Tower Hill) were present. Mr. Lussier showed the location; there is an existing path they will use to stay out of the wetlands. They will not know the limit of work until the soil testing is done. They are within the buffer zone. The Chair asked for public comment; there was none. Joe McGrath made a motion to close the public meeting; Mark Coakley seconded; all voted in favor; motion approved. Joe McGrath made a motion to issue a Negative Determination by Reason #3; Mark Coakley seconded; all voted in favor; motion approved.

PUBLIC HEARING – 205 School Street (Sandeep Shah) – Notice of Intent Application and Stormwater Control Application for proposed construction of a single-family home and accessory building. (DEP#115-437) Stormwater Control Permit SCP#2021-6

Joe McGrath recused himself from the matter. The hearing notice was read into record. Patrick Healy (Thompson-Liston) and Ron Aspero (Shrewsbury Homes) were present. A DEP file number was issued with a comment that "the application narrative states that the applicant has "asked" Mr. Heim (Northeast Ecological Services) to review the wetland boundary for any changes that might have occurred over time. MassDEP recommends the applicant clarify to the Commission if any differences in wetland boundaries were identified during the reevaluation of the site and whether any such changes are displayed on project plans. The project proposes the replacement of two piped culvert stream crossings. The applicant should therefore demonstrate compliance with the Massachusetts Stream Crossing Standards to the maximum extent practicable or provide an analysis of why the standards

cannot be met per regulations 310 CMR 10.53(8). MassDEP recommends that proposed erosion controls to be implement in the location of the proposed barn be extended towards the northern property boundary in the vicinity for wetland flag C-1 in order to fully separate the project area from down gradient wetland resource areas.”

Mr. Healy said the project was previously approved in 2007 and 2015. Mr. Heim has not yet been to the site. Previously proposed was the upgrading of culverts for the two existing cart path crossings. They will be proposing two 24” concrete pipes that will be buried; the grade will be raised to cover the pipe; hydraulic calculations have been provided. Because the project plans have been approved twice before, the members had no concerns, but preferred to wait for a report from Scott Heim before closing the hearing. Mr. Healy asked for a continuance. Mark Coakley made a motion to accept the request for continuance to October 18, 2021 at 7:10 p.m.; Jeff Walsh seconded; Burkhardt-aye; Walsh-aye; Coakley-aye; motion approved (McGrath was recused).

PUBLIC HEARING – 160 Shrewsbury Street (Route 140 RW, LLC) – Amend Stormwater Control Permit SCP#-2021-5 issued August 16, 2021.

Brittany Gesner & Annie Korman (VHB), and Kyle Merkosky (The Kraft Group) were present. The hearing notice was read into record. The permit issued last month was to enable site work outside of jurisdictional or potential jurisdictional buffer zones. Now that they have been determined, they are asking for an amendment to include the entirety of the project as shown on the plans.

The Chair asked for public comment; there was none. Jeff Walsh made a motion to close the public hearing; Mark Coakley seconded; all voted in favor; motion approved. Jeff Walsh made a motion to amend Stormwater Permit SCP-2021-5 to allow work within the limits for work as shown on plans submitted tonight with a revision date of September 16, 2021; and include the following special conditions: previous #21 will be deleted. #22-all limits of disturbance will be delineated prior to any construction. #23-applicant will regularly monitor all work to assure compliance. Previous #24 will be deleted. #25-The applicant shall provide a performance bond or other acceptable surety, for an amount to be determined by the town’s approved engineer, prior to beginning any work under this permit. Mark Coakley seconded; all voted in favor; motion approved.

Mark Coakley made a motion to add a bonding template to the standard conditions of the Stormwater Control Permit; Joe McGrath seconded; all voted in favor; motion approved.

COMMISSION BUSINESS

Compass Pointe Update – Jeff Walsh recused himself from the matter. Mr. Burkhardt said the Commission met last week with the Planning Board, the Town Planner and the Water District; Town Counsel was also present. The boards will work together to compile one list of action items should the developer come before the town to request acceptance of the road. There are outstanding issues with different boards. The Town Planner will compile the list; Joe McGrath will meet with the Board of Health. Mr. Burkhardt noted that there was a letter from Matt Marro (Environmental Consultant) dated September 20, 2021 talking about unprecedented rain events causing some erosion events (which the Commission had foreseen and talked to them about many times). The Commission has asked for, on multiple site walks, a plan for the slope areas that are much steeper; no plan has been received. The letter says they are going to armor the slope. Mr. Burkhardt said the Commission has no plan that talks about what they are going to do, the size of the rock, how they are going to armor the slope, nor has the Commission approved that work. Mr. McGrath said the Commission did receive notice from several abutters regarding serious erosion issues on the slopes based on the past rainstorms.

There was discussion about issuing a deadline to the applicant to complete the commitments he made to the Commission at the beginning of the year (the creation of the plans and the activities that were recorded earlier); an Enforcement Order could be issued if he fails to meet that timeline. Mr. Burkhardt said the project has dragged on for a number of years; some progress has been made, but not sufficiently for the steeper slopes. We have asked numerous times to have a survey done so we could understand if the slope was constructed per the approved plan. The growing season is almost over. The process was started at the special meeting to say that we are not going to accept the right-of-way or any other relief of the builder on any of those sites until all the conditions are met. The Commission never set a timeline; the applicant continues to say they will do it month after month. For the next meeting the Commission will request all plans that were previously committed to and requested be provided. If they are not provided within one month, they will be in violation and an Enforcement Order will be issued under the Stormwater Control Bylaw. There are also Orders of Conditions, but most of those have passed onto the homeowners; the Commission can only act on the right-of-way and the stormwater control systems. Joe McGrath made a motion that we send a certified letter to the builder for the Compass Pointe project with a copy to Matt Marro that all previous plans commitments made by Mr. Marro on his behalf be fully met from a planning and documentation perspective by our next meeting; Mark Coakley seconded; Coakley-aye; McGrath-aye; Burkhardt-aye; (Walsh was recused); motion approved. The various boards and Town Counsel will be copied as well.

Jeff Walsh commented that there has been a lot of action on this project and strongly urged the Commission not to belabor the project tonight and move on to other business as soon as possible. Mark Anttila (46B Compass Circle) sent a spreadsheet to the board with expiration dates. Mr. Burkhardt explained the process of deadlines and extensions. Mr. McGrath recommended homeowners that have an Order that they are responsible for, request an extension even if it is expired.

Informal Discussion – 726 Main Street (Greg Cincotta) to discuss replacing a garage – Greg Cincotta said it is inside the buffer zone; it was built in 1997; the garage has foundation issues; he plans to make it 3-feet wider, not closer to the wetlands. A Request for Determination of Applicability will need to be filed. Mr. Cincotta was told to include the paving in the RDA.

Consider issuing Certificates of Compliance for Pine Street Boylston Realty: DEP#115-406 (Lot 2 Pine Street) and DEP#115-407 (Lot 3 Pine Street) – Joe McGrath made a motion to issue a Certificate of Compliance for DEP#115-406 (Lot 2 Pine Street); Jeff Walsh seconded; all voted in favor; motion approved. Joe McGrath made a motion to issue a Certificate of Compliance for DEP#115-407 (Lot 3 Pine Street); Jeff Walsh seconded; all voted in favor; motion approved.

LDC Letter requesting an extension to file NOI for Stiles Road (Farooq Ansari) – Wayne Belec is requesting another extension to file the NOI. Mark Coakley made a motion to grant the extension for one month from today; Jeff Walsh seconded; all voted in favor; motion approved.

Longley Hill Subdivision (Farooq Ansari) – Mr. Ansari submitted a Request for a Certificate of Compliance along with a two-page as-built plan for the subdivision and a letter dated September 17, 2021 from HS&T Group, Inc. (Daniel Tivnan) certifying that the Longley Hill Subdivision has been built in substantial compliance with the approved subdivision plans. Mr. McGrath suggested Paul McManus do a site visit to make sure it was done in compliance with the approved plans. Mr. Burkhardt said the last time it was discussed there were still some punch list items that needed to be addressed. Mr. Burkhardt also said there was an issue from a recent rain event from Longley Hill onto the paved section of Stiles Road. Mr. Ansari said he looked at it the next day and will look at it again. Mr. Burkhardt said it is a matter of making it stable so when he is done with the project that the town does not have the responsibility to go back and fix the erosion issues. The particular area of concern is at the end of the roadway where it

meets Stiles Road. There was supposed to be a temporary basin for construction only; it is still there. Mr. Ansari said if he knows the punch list items, he will take care of them. He was told it is not the Commission's job to give that to him. We have had many meetings for this project throughout the years. He is the applicant; it is his job to go through the requirements and tell the Commission the status. Mr. Walsh said it is time to prepare a complete package for the Commission to review. If he is submitting plans to the Planning Board, we will want to know if they have any issues.

Mr. Ansari said he is now starting to build a house on the last lot (Lot 11). He said there is no Order on it and it is not jurisdictional. He wants the Commission to sign off on the building permit. Mr. Burkhardt said that's the lot the Commission voiced concerns about at almost every meeting; they have concerns with the stability of the hill/slope and suitability for it to be structurally sound in the future. Mr. Ansari said they have been watching it and now that he will start building, it will have to be addressed and completed if there is anything that needs to be done. He said he had a structural engineer provide the wall structure to it and nothing dramatic has happened to it; it does need some attention. Once he gets the septic system installed at the top, they will come down and fix it along with the house. He was told that it is jurisdictional under the Stormwater Control Bylaw. If he had a structural engineer work that slope, the Commission hasn't seen anything on it. He was told he will need to file for a Stormwater Control Permit for that lot. Mr. McGrath said if all the requirements for stabilizing that hill are included in the as-built, because we have asked for it before, does that meet the requirement. Mr. Coakley said it is not stable; there is visual erosion going on after every rain. The consensus of the Commission was not to sign off on a building permit. Mr. Walsh said there have been Enforcement Orders on the project which allows the Commission to go beyond the buffer zone to the source of the sediment; this lot was one of those lots. Mr. McGrath said it would be good to see the site development plan for that lot with the drainage, etc. Mr. Ansari said he would provide it.

Tim McGuire (consider holding a Conservation Restriction on the development of a single-family lot within a mapped NHESP Priority Habitat area at Cyprian Keyes Golf Club for Bob/David Frem) – Mr. McGuire was before the Commission earlier to convey a portion of the property to them, but the Commission preferred that they hold it themselves, do a Conservation Restriction (CR), or give it to a separate entity. They now propose to subdivide a piece of the property for the house lot and have the rest kept in ownership by the golf course. They are looking for the Commission to be the holder of the CR. All work proposed is 165-feet away from the BVW; the lot will be outside the buffer zone. They did not think they would need an RDA but would do one if the Commission recommended it.

Joe McGrath said the CR is issued by the EOEEA. The Commission would have to provide certification that we feel the area in question is sufficiently important as a conservation resource and that we support the application for the CR. It would be recorded and the Commission would be the sponsor. He didn't believe it had to go to Town Counsel or Town Meeting, but thought as a courtesy, let the Board of Selectmen know we are accepting it. Mr. McGrath's recommendation would be to accept it and become the sponsor for the CR. Mark Coakley asked what evidence do we have to deem it worthy of preserving. Mr. McGuire said it is habitat for a state endangered species which has declined in population across the state. There is a large vernal pool for a breeding ground and horseshoe surrounded by uplands in the non-breeding season for habitat over wintering habitat. The reason they are proposing the CR is the impact within priority habitat. Mr. Coakley suggested he send a letter formally requesting the Commission to act on the easement. Mr. McGrath explained the process Mr. McGuire has to follow. When it is submitted to the Commission for consideration, we have to perform a field report to verify his findings and complete the certification. When it comes back to the Commission, a vote will be taken as to whether we recommend it or not based on the information provided and let the BOS know we are about to accept it. Mr. Coakley said when it is communicated to the BOS, that information be conveyed at the same time. Mr. McGrath said a public meeting should be held.

Consider adopting a 25-foot No Disturb Policy – The Commission does not have a formal 25-foot No Disturb policy. Joe McGrath will forward the draft policy to Town Counsel for his opinion as to whether or not it would be enforceable if adopted.

Commissioner Dan Duffy Resignation – A letter dated September 9, 2021 was received addressed to the Chair and the Town Administrator announcing that Mr. Duffy has resigned as Commissioner effective immediately. He has enjoyed service to the town off and on in this role since 2003.

Correspondence was reviewed. A letter from Matt Marro regarding Compass Pointe was received this afternoon, read by the Chairman, and discussed during the Compass Pointe topic.

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

The meeting was adjourned at 10:10 p.m.