



Town of Boylston Conservation Commission conservation@boylston-ma.gov
221 Main Street, Boylston MA 01505 ** Telephone (508) 869-6127 ** Fax (508) 869-6210

REGULAR MEETING MINUTES

AUGUST 27, 2018

Members Present: Dan Duffy, Mark Coakley, Chip Burkhardt, Michael Ruggieri

Members Absent: Jeffrey Walsh, Joe McGrath

Others Present: See Attached Sign-In Sheet

Recorder: Melanie Rich

PUBLIC HEARING (continued) – 299 Sewall Street LLC (Map 7; Parcels 37, 38 & 39) – Notice of Intent Application and Stormwater Control Permit Application for the construction of 30 senior housing units, access driveways, stormwater management facilities and associated site work.

The Commission at the last meeting required more detail in the form of a narrative for the sequencing of the demolition of the existing house and barn. Mr. Grenier submitted revised plans. On the erosion and control plan they broke it out more specific for the existing house which included the installation of erosion controls, insured that all hazardous materials have permits with both town and state boards to make sure it is all removed, demolish the house, put it in containers, and remove it from the site before any earthwork can take place. Mr. Grenier spoke with Jeff Walsh who was going to look at the erosion control plan and notes (it was reviewed by Michael Andrade at Graves Engineering); he was in agreement with Mr. Andrade's assessment. Mr. Grenier said they will be before the Earth Removal Board and provided the Commission with a letter (dated 8/27/2018) stating the quantity to be removed (approximately 77,600 cubic yards) that will be part of the ERB Permit. At the end of the project they will be submitting a topographic as-built plan. It will have an overlay showing the current existing conditions to verify the total volume of material that was removed from the site.

Dan Duffy asked how the snow storage would be identified on the property for the abutters. Mr. Grenier said it is a private driveway with common ownership. The maintenance contract can list it in the condominium documents. Mr. Duffy asked about the overall construction sequence (how much of the area they are going to work, how long will the project will take). Mr. Grenier said it all has to be brought to pad grade; it will be phased as one phase. The basin will be constructed first (acting as a sediment basin during construction). Temporary erosion controls will include silt fence, hay bales, stone aprons, temporary basins, designated stockpile areas. It is all sand and gravel and they do not anticipate any washouts; it is pretty much self-contained. Regarding dust control, Mr. Grenier said they will mulch the slope, street sweep and water. Mr. Duffy is concerned it will be a dust bowl if it is all left open. The Commission will condition they bark mulch after it is stripped. The project should be completed in 1 ½-2 years, but it is market driven.

The Commission asked EcoTec to confirm the wetlands. The July 20, 2018 EcoTec letter noted it is a mapped perennial stream with a presumptive riverfront. Matt Marro said the Commission declared that portion of the stream intermittent. He further said that Paul McManus told him on site that the stream was dry. Mr. Coakley said going back to the Camp Harrington YMCA property, we did the delineation there and there was a finding that Sewall Brook was intermittent on the YMCA property side of Sewall Street. Mr. Grenier asked if it was perennial upstream and told yes. He said he has documentation that

it was dry upstream of the YMCA property. Mr. Coakley said the Commission has to see the documentation to overcome it. They will submit it at the next meeting.

Special conditions were discussed to include wood chips to be used for interim dust control until the site is stabilized (include it on the plan with notes and sequencing). It was also noted that the landscape plan had trees shown in the snow storage area – this needs to be revised. Placement of wetland markers was discussed. Graves Engineering will be asked to prepare an estimate for a stormwater management bond to cover the town's interest. The applicant requested a continuance. Chip Burkhardt made a motion to accept the request for continuance; Mark Coakley seconded; all voted in favor; motion approved. It was continued to September 17th at 7:00 PM.

PUBLIC HEARING – 85 Sewall LLC (85 Sewall Street, DEP#115-420 & SCP#2018-3) – Notice of Intent Application and Stormwater Control Permit Application for the construction of three apartment buildings with associated septic area, parking lot and grading.

James Tetreault and Scott Goddard were present. The property is approximately 11 acres with frontage on Shrewsbury Street, Sewall Street and backs up to the property line south of the existing house at 85 Sewall Street. He explained that there was also property that was considered in the drainage report and in the traffic report. The two areas together comprise 57 acres. There is no proposal in front of the Planning Board or Conservation Commission for future development; it is considered a concept plan when considering the traffic issues. They are proposing to construct an apartment complex with access off of both Shrewsbury Street and Sewall Street and propose one wetland crossing without wetland alteration; they are proposing a large open-box culvert; no wetland alteration is needed. The impervious surface runoff, parking area, and access driveway will be captured and run through a CDS stormwater treatment unit and then infiltrated. They are in Zone 2 (wellhead protection) on part of the property. Previous discussions included the proximity of the proposed work to the intermittent stream and wetland. They have tried as much as reasonable to push the work at least 25-feet away (they have a choke point past the back left corner of the Fountain Services property where they are proposing a wall to limit how close the road will be to the wetland. Except for the crossing itself, they are maintaining the 25-foot setback desired by the Commission. They also looked at the "C" Series wetland flags behind the smallest building. The Commission asked if they would be cutting off the drainage area to that wetland such that it would be damaged. Calculations showed that only approximately 5% of the flow would be taken away.

Mr. Duffy asked about the force main going to the leaching area on the top of the site. Mr. Tetreault explained that they have to have a force main because in a Zone 2 area, if a circulating sand filter type of septic system is installed you get extra credit for how much flow you can direct within the same area. The pipe's nearest point from the wetland is 45-50-feet away. The pipe material will be a 3" PVC pipe and just over 3-feet down with minor trenching (not sure of the exact location of the trenches). Mr. Duffy said the Commission had talked about getting the limits of the watershed protection area and Zone 2 on the plan. He said we also talked about the stormwater infrastructure designed for the Critical Area. Mr. Tetreault said the Commission was ok with that as long as it was not serviced by oil. There is a gas main across the street (and that is their choice), but cannot say for sure. If it is not, there will be a special condition that they will need to come back before the Commission to address it. He also gave the Commission a copy of the proposed Invasive Species Management Plan (dated 8/27/2018) as mitigation for the proposed development prepared by Goddard Consulting. The Commission asked EcoTec to review the stream and the vegetation and what should be done. Mr. Allen said it seemed to be coming back very well and suggested addressing the invasives. On September 20th Mr. Andrade sent an email

stating that he received revised documents that satisfy his outstanding comments on the project; specifically, comment #17 (revised photometric plan) and #31 (drainage area plan).

Special conditions were discussed. The proposed Invasive Species Management Plan (dated 8/27/2018) can be included as a special condition to continue two years from the issuance of a Certificate of Compliance). There was discussion on whether there should be a bond on the stormwater management because it is in the wellhead protection district. Mr. Duffy wants to see erosion controls adjacent to the force main and a limit of clearing shown on the plan for the force main trying to keep most of the clearing on the upland side of where the work is going to be done.

Mr. Coakley asked if the parcel being cut out is an existing parcel. Mr. Tetreault explained that at the town meeting, the vote was to change the zoning on an existing parcel. Mr. Goddard said the application covers all the lots. Mr. Coakley said the Commission is not allowed to segment projects to get over various limits and impacts. Mr. Tetreault said they did a concept plan for the development of the remaining land and do not propose any wetland alteration as part of it. They would expect that some portions would get into the 100-foot buffer zone, but are confident that there will not be any alterations to the wetlands. Mr. Tetreault said based on what they have now, he can say there are no wetland alterations; there will be no wetland alterations on the remaining parcel. Mr. Duffy said the impact is only associated with the buffer zone because they are crossing at the location where there is an existing culvert but not doing any other resource area impact; there will be a special condition for this.

Mark Coakley made a motion to close the Public Hearing for the Stormwater Control Permit application; Chip Burkhardt seconded; all voted in favor; motion approved. Chip Burkhardt made a motion to issue Stormwater Control Permit SCP#2018 adding Special Condition #21 that prior to the start of construction, the applicant is to provide a bond for the stormwater management system suitable to the Town, as determined by the Town's Engineer and Town Counsel; Mark Coakley seconded; all voted in favor; motion approved.

Mark Coakley made a motion to close the Public Hearing for the Notice of Intent application; Chip Burkhardt seconded; all voted in favor; motion approved. Chip Burkhardt made a motion to issue an Order of Conditions with Special Conditions #34-if the buildings are not heated by natural gas, the applicant shall appear before the Commission to revise the mechanical outlet control for the stormwater management system. #35-for invasive species management, mitigation to commence during construction and will continue two (2) years after a Certificate of Compliance is obtained. #36-cumulative impacts must be addressed when remainder of property is developed. #37-plan shall be revised to show erosion control and limit of work clearing for the force main to the north if leaching area is constructed. Mark Coakley seconded; all voted in favor; motion approved.

PUBLIC MEETING – 355 Green Street – Request for Determination of Applicability Application to construct an attached garage.

Allan and Heidi MacDonald were present. They propose to construct an attached garage and breezeway within 100' of the intermittent stream (65-feet away from the stream). The garage would be 55-feet away from the house. Erosion controls (hay bales and filter sock) will be placed 30' off the bank during excavation. Mark Coakley made a motion to issue a Negative Determination #3 with the following conditions: (1) the applicant shall install an erosion control barrier no closer than 30' from the intermittent stream bank, and (2) the Commission shall require a site visit prior to excavation. Mike Ruggieri seconded; all voted in favor; motion approved.

PUBLIC HEARING – Compass Circle (Lots 24B, 45B & 46B Duplexes) – Amend Order of Conditions DEP #115-414. The buildings are 20' closer around the perimeter than what was approved, and tree clearing went beyond what was approved. Enforcement Order issued July 16, 2018.

Matt Marro (Matthew Marro Environmental Consulting), John Grenier (JM Grenier Associates) and Jim Haynes were present. Mr. Marro said his client had an approval for a certain section of the buffer zone. During the course of construction, the locations of the buildings shifted. He said the impact to the buffer zone is approximately 3,700 square feet; there was a 500 square foot reduction in pavement. His client is proposing to leave the buildings in their current location. He said they were done within the existing tree line and, even though they are slightly closer to wetlands, they did not go into the 25-foot no disturb zone. The plans also include a specific set of plantings consistent with that is already there. Mr. Grenier showed the proposed planting area on the plan. Mr. Duffy said they cleared the area to put the foundations in. Mr. Grenier said the trees were dead and had storm damage and were near end of life. Mr. Marro said the proposed plantings will be excellent for drainage when they are established. Mr. Duffy said the plans shows the dwellings as compared to where we approved them and the clearing line was that was approved. It is disturbing that something was built not to our approval. Mr. Marro said it was a mistake and his client is here to correct it. Mr. Duffy further said that the plan was different than what was submitted to the Board of Health. They are all experienced developers and know about environmental permits. They receive approvals from the Commission and that's what they build to or come back. The Commission is very reasonable with amending Orders if they show there is a need to do something different; we have considered that most of the time they have asked us. They went well beyond what was approved for clearing and built buildings well beyond the limits of what they asked the Commission to approve. Mr. Grenier said some locations of the units for the Board of health were changed because of the process and scenario of client's requests. When his client applied for his building permits his mindset was that he was staying within the limits of work, maintaining 25-feet from the pond. Mr. Coakley asked him if he approved them to clear beyond the approved clearing. Mr. Grenier was not aware of it. Who made the call to cut all the additional trees? Mr. Grenier said it was made when the site contractor was prepping for the foundations. Mr. Duffy said they had to cut those trees to get the foundations in, irrespective of whether the trees were healthy or not. If he knew he had to cut them down, he needed to come back to the Commission. He had a permit showing the limit of work; he went closer to the wetlands resource area and the limit of work. Mr. Duffy is concerned that not only are the impacts within a certain resource area, people are now closer to the wetlands. There are different impacts with the use of the layout as to what was proposed and approved. Mr. Coakley had an issue that the shade characteristics of the bank have also changed with the removal of the trees. They were good habitat even if they looked bad. A significant amount of plantings have been proposed. Mr. Marro said it will be a shrubbed area. Mr. Coakley said the threshold the Commission has to meet to amend the Order of Conditions is to find that the impact is less than or equal to what was proposed. He is not comfortable saying that it is. Mr. Marro said it is a permissible project under the Wetlands Protection Act. Mr. Burkhardt respected that there was no disturbance to the 25-foot area. The Commission's intent in all of our discussions was to keep things as far away from the wetlands as we could. Mr. Duffy read the DEP guidance which states that "the issuing authority first makes a determination whether the requested change is great enough to warrant the filing of a new Notice of Intent or whether it is of a relatively minor nature and can be considered as an amendment to the original Final Order of Conditions. In making this determination, the issuing authority should consider such factors as whether the purpose of the project has changed, whether the scope of the project has increased, whether the project meets relevant performance standards, and whether the potential for adverse impacts to the protected statutory interests will be increased. Relatively minor changes which result in the same or decreased impact on the interests protected by the Act are appropriate for amendments. If the determination is made that the project purpose or scope has changed substantially

or that the interests specified in the Wetlands Protection Act are not protected, then the issuing authority should not issue the amendment, but should require the filing of a new Notice of Intent.” Mr. Marro did not think the change in the square footage was significant to file a new NOI and felt it falls under an amendment. Mr. Duffy said it is as much the distance of where human activity will take place and the setback from that to the wetland resource area compared to the vegetation that was removed. The area where excess vegetation was removed beyond what was permitted was originally going to be a turnaround area and now people will it is a backyard of a dwelling with people around the buildings, landscapers cutting and maintaining that wasn’t part of it before. Mr. Coakley would like a peer review on the plantings and the sizes. The impact has to be less or equal to what was approved. Mr. Duffy said his concern is the human impact on the areas that were not part of the approval. In order to get back to less or equal to, we need to do whatever we can to reduce human impacts so it is not seen as a backyard, not actively used on a regular basis because that is not what was going to happen previously and that is what’s going to have the most impact to the proximity of the resource area. Mr. Burkhardt said if the threshold is that it is the same or less impact, he is struggling with that because we had a limit of clearing, we had markers where the decks are going. With the deck and patio, it is adding to the disturbance.

Peter and Ellen Williamson (37A Compass Circle) commented that it is a beautiful community and likes the idea of the plantings. Kevin Morrissey (43A Compass Circle) asked if the egress could be on the other side and was told a retaining wall would need to be constructed. Cathy O’Neill (41A Compass Circle) asked about the shrubs plantings. Mr. Duffy explained that the issue relative to the plantings is that they are proposed in areas that were never permitted to be disturbed by the Commission. The plantings are just replacing what should not have been removed. In addition, the foundations and the houses and the human use of the property are much closer than what was originally proposed. Mr. Burkhardt would feel more comfortable having a peer review. Mr. Coakley said he is also concerned about setting precedence. Mr. Ruggieri also agreed with having a peer review.

Mr. Marro respectfully said his client would not agree to a peer review or to continue the hearing. Having no other option at this point, Mark Coakley made a motion to deny the Amended Order of Conditions; Chip Burkhardt seconded; all voted in favor; motion approved. The reason for denial is that the impacts they are showing are not lesser than or equal to what was originally proposed and approved by the Commission. The Enforcement Order is for three lots. Mr. Duffy said if he was willing to work with us, there could have been the possibility of lifting the Enforcement Order, but he was not willing to work with us and the Commission voted.

Mr. Haynes said did not feel the Commission was willing to work with him to lift the Cease & Desist; he didn’t hear that at any time during the meeting. He was reminded that he was not willing to continue the hearing and that is what the Commission voted on. Mr. Haynes said he thought it was very unfair and not right. He said he stayed out of the 25-foot buffer, he made a mistake, he wrote a letter to the Commission acknowledging his mistake and tried to make amends. At no time did he hear at the meeting that Commission was willing to work with him. He has people with waiting to move in. Mr. Duffy said it is not that we don’t care about that, but the actions that were taken on the site and the submittal that was made to us, based on our understanding of the Wetlands Protection Act, does not represent the same or lesser impact than was originally proposed, so we cannot approve it. Mr. Coakley suggested we have a peer view and come up with a plan that may work. Mr. Haynes said he attended other meetings and have seen developers work within the wetlands and don’t get Cease and Desists. He said the wetlands are not disturbed in any way; there are no breaches. Mr. Burkhardt said there were Enforcement Orders with the previous owner. He said it is a tough decision and respects what he has been doing. He said all the Commission had to say was that it doesn’t work or say they would work with

him on the Enforcement Order to make it right. Mr. Burkhardt said perhaps if he proposed that instead of his consultant saying you needed a decision tonight. Mr. Haynes said at no time during the meeting did he feel the Commission would work with him. Mr. Burkhardt said at no time during the meeting did his consultant or himself suggest it to us. If it was suggested, we would have considered it. You put us in a position saying you needed a decision and we had to vote based on the information we had in front of us.

Mike May said Mr. Haynes contacted him. He walked the site and felt it was an error in judgment. He hoped the Commission could issue a partial release so Mr. Haynes could move forward. Since the hearing was not closed, the vote can be reconsidered. There was more discussion and consideration as to which of the three lots, if any, could be removed from the Enforcement Order. All three lots were included in the Enforcement Order because that is what the application included. Lot 46C does not have a foundation yet and is further away from the wetland; Lot 45D is further away from the wetland; Lot 24D could require a new NOI filing. Mr. Grenier said it was coming down to the plantings. Mr. Coakley said it is coming down to the impact on the lots in front of us are greater than what was originally proposed. The remediation is to remove the foundations and put them back to where they are supposed to be. Mr. Duffy said part of his concern is that they are proposing plantings to replace vegetation that they removed that was not part of their permitting, but he has not heard any mitigation to address the fact that the buildings and the use is going to be a lot closer to the wetlands. Mr. Marro suggested a deed restriction. Mr. Coakley the Commission is not going to issue an amended Order as it was submitted. He suggested filing a new NOI for Lot 24D. He wants peer review of the plantings on Lots 45D and 46C. Mr. Grenier asked what would be different filing a NOI for Lot 24D. Mr. Duffy said under DEP regulations, the Commission can't consider an Amended Order unless it is less than or equal impacts than the original NOI. If anew NOI was submitted, technically they are not under the less than or equal to issue.

Mr. Duffy said if there is something that is proposed that will demonstrate to the Commission that the impacts are less than or equal to what was approved, and the Commission is not an expert on wetland habitats to decide that, and they are confident that it will meet the standards, the Commission can continue the hearing. If they are concerned it may not, it would be in their best interest to file a new NOI using different standards and not have to overcome the standards for an Amended Order.

Chip Burkhardt made a motion to rescind the previous vote to deny the issuance of an Amended Order of Conditions; Mike Ruggieri seconded; all voted in favor; motion approved. Mr. Haynes made a request to continue the hearing. Chip Burkhardt made a motion to accept the request for continuance to September 17th at 7:30PM; Mark Coakley seconded; all voted in favor; motion approved. Mark Coakley made a motion to lift the Enforcement Order (DEP #115-414) on Lot 45D and 46C. The Enforcement Order will remain in effect for Lot 24D; Chip Burkhardt seconded; all voted in favor; motion approved.

PUBLIC HEARING – Boylston Recreation & Golf, LLC (The Haven Country Club), 321 Cross Street – Stormwater Control Permit Application for renovations and improvements to the existing driving range.

Kelly Durfee Cardoza and Regan Remillard were present. Ms. Cardoza explained that there were operational changes and, as a result, the Orders lapsed. In 2014 there was an Order for renovation of the golf course under the Stormwater Bylaw and also under the Wetlands Protection Act. Only a portion of the work has been done. She is in the process of working with the surveyor to get the as-built plans. Eighteen trees were to be planted; only half have been planted.

The application in front of the Commission is for a different parcel (not part of the original application). They propose to renovate the golf course (driving range) primarily in the same footprint, remove 8,000 square feet of pavement from the remnants of the tennis courts and dispose of it offsite, and expand the tee area. She placed the limit of the wetlands on the plan. They were mapped by EcoTec as part of the mapping of the entire site in 2013 & 2014. She included the 100-foot buffer, it is an intermittent stream, and the watershed protection zones. No work is proposed to be done in any of those areas. They will be changing the tree line (moving it back about 40-feet). There will be grading in the turf berm area. They propose to construct small greens so the areas can be seen. Ms. Cardoza explained where they propose to extend the netting, replace the poles, increase the height by 10-feet, and replace the netting. The engineer will have to put in additional erosion controls because they are not proposing to touch the turf fence. They will grind the stumps of the trees that come out and take care of them according to the Asian longhorn beetle requirements, tie the grades in and loam and seed. There is no proposal to change the storage area. Mark Coakley suggested it could be improved by putting in a buffer zone protection at the edge of it. Ms. Cardoza will talk to the surveyor when he is onsite. Mark Coakley made a motion to close the Public Hearing; Chip Burkhardt seconded; all voted in favor; motion approved. Mark Coakley made a motion to issue Stormwater Control Permit SCP-2018-4; Chip Burkhardt seconded; all voted in favor; motion approved.

COMMISSION BUSINESS

Consider Request for Certificates of Compliance for Scannell Properties (Fed-Ex) for DEP#115-393, SCP#2016-4 (220 & 290 Shrewsbury Street and 100 Pine Hill Drive), and DEP#115-410 (160 Shrewsbury Street): **DEP#115-393 and SCP#2016-4** was tabled to the September 17th meeting due to concerns of Art Allen (EcoTec) being addressed regarding site stabilization in several areas. Mr. Allen was in agreement that the roadway stub **DEP#115-410 (160 Shrewsbury Street)** had been completed and stabilized. Chip Burkhardt made a motion to issue a Certificate of Compliance for DEP#115-410; Mark Coakley seconded; all voted in favor; motion approved.

Barnard Hill (Perry Road) – Revised plan to be submitted – James Tetreault (Thompson-Liston) submitted the revised Grading Plan (Sheet G4). Mark Coakley made a motion to issue an Amended NOI for DEP#115-373; Chip Burkhardt seconded; all voted in favor; motion approved. Chip Burkhardt made a motion to issue Amended Stormwater Control Permit SPC-2014-1; Mark Coakley seconded; all voted in favor; motion approved.

Longley Hill Status (Geotechnical Solution for Stabilization of Lots 9 and 11) – James Tetreault submitted a revised grading plan. Yankee Engineering & Testing's letter said the slope should not be steeper than a 1.5:1 riprap slope. He explained the area where another party designed a septic system to make that possible. Dan Duffy asked what the barrier on the plan was. Mr. Tetreault said it was part of another party's septic system. The plan was drawn up showing the primary and reserve area and a barrier (he was not sure if it was a wall or what it was made of). He added that information to the plan. The intent was to grade the slope and see if it was possible to have the space necessary. The Commission wants the slope stabilized, needs to see the contours and how it is going to tie in, engineering calculations and a topo map. The Commission does not want a statement; specifications are required. There have been very haphazard construction techniques at the site. The Commission needs construction sequencing showing how they are going to do the work, i.e., excavator, grading, place rock, etc., and where the existing wall is.

Review Conservation Restriction for 190 & 194 Stiles Road – The CR will be forwarded to Town Counsel for review.

August 27, 2018 Conservation Meeting Minutes

Vouchers were approved.

Correspondence and emails were reviewed.

Mark Coakley made a motion to approve the Meeting Minutes dated July 16, 2018; Dan Duffy seconded; Coakley/Ruggieri/Duffy voted in favor; Burkhardt abstained; motion approved.

September 17th was confirmed as the next meeting date.

Mark Coakley made a motion to adjourn; Chip Burkhardt seconded; all voted in favor; motion approved. The meeting adjourned at 11:16 p.m.