



Town of Boylston Conservation Commission conservation@boylston-ma.gov
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REGULAR MEETING MINUTES FEBRUARY 24, 2020

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

Members Absent: None

Others Present: See Attached Sign-In Sheet

Recorder: Melanie Rich

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.

A letter from Samiotes Consulting, Inc. was received asking for a continuance to the March 16th meeting in order to review and provide responses to the peer reviewers comments. Dan Duffy made a motion to accept the request for continuance to March 16th at 7:00 p.m.; Mark Coakley seconded; all voted in favor; motion approved.

PUBLIC HEARING – 11 French Drive (Tower Hill Botanic Garden) – Stormwater Control Permit Application to redevelop The Ramble, Plinny's Allee, Parking Lot and Stoddard Connection at Tower Hill Botanic Garden.

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COMMISSION BUSINESS

Compass Pointe Update – Jeff Walsh recused himself from the matter. Matt Watsky (Compass Pointe Attorney), Rachel Watsky (Associate), Matt Marro (Environmental Consultant), and John Grenier (Engineer) were in attendance. Joe McGrath first addressed the bond information that was received today. The bonds were reduced without notification or approval of the Commission which is a violation of the Order of Conditions. Dan Duffy said the Commission specifically discussed at the last meeting, where Mr. Grenier was present, that the Commission would not consider a reduction of the bonds. How can the bank reduce the bonds without approval from the Commission? Atty. Watsky was unaware of it; he will look into it and speak with Mr. Haynes and the bank and have an answer for the next meeting. Mr. Duffy said we need a report within the next day. His applicant has refused to come to our meetings; if he was at the last meeting, which we requested, he clearly would have heard the conversations, but he chose not to attend. Melanie will forward the bond information to Atty. Watsky. Mr. McGrath said Graves Engineering felt some of the slopes are currently stabilized; the Commission

disagrees with that completely. The Commission does not agree with the rationale of the reduction of the bonds and asking that the bonds be restored to the previous amounts.

Atty. Watsky said peer was done by Paul McManus (EcoTec) and there was concern about the steepness of the slopes and where the slopes are in relation to the houses; surveying was done. Mr. Grenier said the surveyor shot the tops and bottoms of the steeper slopes. He overlaid that to the original topography beyond the limit of the toe of slope. He calculated the slopes; they vary throughout. The northerly side is approximately 2:1; there are other slopes at approximately 1.8:1. Mr. McGrath and Mr. Duffy said there are more areas on the site that are not stable. Mr. Grenier said these are the areas where the slopes are the steepest; other areas have lesser slopes.

Mr. Marro said there were areas where the mulch was decayed to the point where it could be turned over, loamed, and seeded over. The newer areas of construction are not decayed enough; that mulch will have to be taken out. He explained the seed mix to be used which is made for steep slopes 2:1 or steeper. His report includes timeframes and monitoring. Mr. Duffy said Mr. Marro's numbers do not correlate with the plan they are looking at tonight. Mr. Coakley said Mr. Marro was asked specifically to provide a graphic representation for the Commission to understand and follow; three months later we still have nothing. There is a disconnect between Mr. Grenier and Mr. Marro's information. Mr. McGrath appreciated that it was a start. Mr. Grenier will put together a simplified graphic that shows all the lots and numbers and are now referenced. Mr. McGrath asked him to include the lots that are not on the plan tonight.

Mr. Marro said his report shows that most of the older areas are basically established with decay of the bark mulch. Mr. Duffy said after looking at the photo, that there is no vegetated growth and it's been a few years. Mr. Marro said Mr. McManus agreed with him. Mr. Duffy said our consultant is a wetland scientist, and no disrespect to him, but there are other issues we are looking at. The permit specifies that loam and seed need to be placed. If there is a slope that is steeper than 2:1, he would also anticipate that Mr. Marro is going to include some type of temporary erosion control fabric or mesh to be placed on top of it to allow the vegetation to start without the type of erosion that we are seeing happening in the photos. Mr. Marro said raking, loaming and seeding is included in the report, not the covering. Mr. Duffy said everything needs to be put into one document. The Commission will also want an engineer's stamp on it and details of exactly what is going to be done. Mr. Marro will add it to his report. Mr. Duffy said if there are any slopes steeper than 3:1 they should be included. Atty. Watsky said only where the consultants agree the area is not sufficiently vegetated and is susceptible to erosion. Mr. Duffy explained that the consultant gives the Commission advice and we are acting on it; he has a great deal of experience in this area, and what the Commission has seen so far is not acceptable and it needs to be resolved.

Atty. Watsky said the project was permitted with slopes that were steep and there was methodology presented; he was told they didn't follow what the permit says. The permit says loam and seed everything. Atty. Watsky said it says full stabilization. Mr. Burkhardt said the Commission will take information from both qualified wetland scientists and if we are not

happy with it, we tell you. He said there is only a 50% chance the seed mix on a 2:1 slope will work. We need a solid written plan, not piece meal. Atty. Watsky said he looks at the conditions, permits, notes and plans and knows Commissions' decisions are made with certain concerns in mind, but also subject to the evidence that is in the record. He said Paul McManus specified that there are very limited areas of slopes that he is concerned about and made specific recommendations about what should be done on them; Mr. Marro has presented his details of how that would be taken care of. He will be looking at the question of whether what the Commission is looking for goes beyond that to change the entire way the slopes are managed; he has to consider if that is inconsistent with the permits that were issued.

Mr. Duffy clarified that Mr. McManus' role is not to make recommendations for work to be done in each area; that is the client's role. His role is to identify issues in the field; the applicant needs to come back to the Commission proposing what they will do to resolve the issues. The Commission may ask for a review of what they are proposing. Atty. Watsky said Paul McManus identified the areas and the conditions where he expressed some concern. They talked and Mr. Marro put together a report proposing his recommendations; his initial feedback from Mr. McManus was favorable that this is the way to stabilize the slopes.

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. That letter is meaningless, other than his client appears to have taken that to his financial institution and somehow had them reduce the Letter of Credit. Mr. McGrath said if they want to make application to reduce the bonds, he thinks it is appropriate to do that, but not until the bonds have been restored. Mr. Duffy said Graves looked at it very specifically to the way that we were evaluating it as the project proceeded. Once there was temporary restoration, which was wood chips in place of grass in the front yards, the Commission would allow the bond representing that lot be transferred to the next lot. We are reaching the end of the project; that doesn't work anymore. We need issues like this and other items related to the NOI for the lots by Spruce Pond to be resolved. The estimate did not include what's it going to cost to do the final stabilization of the site and what amount of bond could be reduced based on those final costs. The Commission needs to understand what costs are associated with this work in addition to stabilizing the sites that have no stabilization (or only temporary stabilization) as well as other items the Order requires such as planting trees, etc. that haven't been completed or included in the cost estimate. Again, the Commission has requested his client to attend meetings for several months; if he was here, he would have understood that.

Action Item (2): Provide additional documentation that will tie into Mr. Marro's report, which will be adjusted to include any erosion control matting that is going to be required. We will then have a full diagram to match up that plan specifically to the site.

We are moving in the right direction, but everything needs to be put into one engineering plan that the Commission can follow and complete.

Onni Wirtanen (5B Cheryl's Way) said it is not an accurate document. He asked how many shots were taken to determine the slope of the lot. Mr. McGrath said the Commission would like a copy of the surveyor's report and asked Mr. Grenier to have his surveyor provide a copy. He said loam and mulch that was put down on Lots 4A & 4B have washed to the bottom of the bale; there is significant tilling and loss of site material.

Mark Belmonte (7B Cheryl's Way) asked what will happen to the 2/3 acre of woodchips on the lot next to his. He was told that's a question for the developer; there is nothing in front of the Commission for additional work; according to the permit it will be loamed and seeded.

Mr. Duffy wants to see everything that is not stable; we do not need topography for the entire site, but we need a delineation of the areas of the site. Mr. Grenier said there are areas that are not completed yet as well as the northern part of the site. As part of Mr. Marro's report he will incorporate how those individual lots will be stabilized; he will have a plan that corresponds to Mr. Marro's report. The Commission would like the information before the next meeting.

85 Sewall Street Apartments (Brookside Apartments) Bond Update – Because the due date of February 7th passed without a bond in place, an Enforcement Order was issued but returned due to "no mail receptacle". The Zoning Officer attempted twice to deliver it with no success. It was given to the Town Administrator today to deliver it. The Commission ratified the Enforcement Order sent.

Worcester Sand & Gravel Update – An email was received from Marie Phillips (5 Heywood Street) asking if the grading of the slope has been completed in accordance with the agreement set by the Commission. Mr. Trotto was not present at the time of discussion. Worcester Sand and Gravel has been sold; there are two lots that are being advertised for sale. Haniyah Kafel (6 Heywood Street) didn't know if the lots for sale were buildable or if they extended the street would it cut into her land. Joe McGrath told her jurisdiction for the street would fall to the Planning Board and Highway Department. He explained that the Commission has jurisdiction over wetlands on the site that are being impacted; the owner would have to come before the Commission. The Commission was not aware of any plans for any development at this time. The slope stabilization is not finished; we are waiting for the final work to be completed before a Certificate of Compliance is issued. If the work is not completed and the land is sold, the new owner of the land would be responsible. Mr. Trotto arrived later and said work was done on the slopes; wattles are across the entire bottom (entrance to entrance); stone berm between the access road and the pond; he showed photos of the area. There is a stone swale at the bottom. The slopes going to the Phillips property are completely finished; he will loam and seed in the spring. Joe McGrath will respond to Marie Phillips' email.

Dragon 88 Update – The last communication was an email in December from Albert Chow saying that Scott Heim was unable to flag the wetlands because of the snow cover. Mr. Chow also forwarded a grading plan prepared by Thompson-Liston; it did not show an area of work. Mark Coakley made a motion to issue an Enforcement Order for filling a resource area; Jeff Walsh seconded; all voted in favor; motion approved. A Notice of Intent form will be included with it.

Mike May (Off Cross Street) Update – At the October 21st meeting, Mr. May was told he needs to file a Request for Determination of Applicability so the Commission can look at what his wetland scientist says and why they feel it is specifically not jurisdictional. The Commission will want to see the documentation that resulted in it being classified as a federal jurisdictional wetland. He also needs to file for a Stormwater Control Permit. No filing or communication has been received. He will be asked to provide an update by the next meeting.

Emily Scerbo (Tighe & Bond) to discuss Stormwater Regulations – Joe McGrath and Chip Burkhardt have been meeting with Emily Scerbo and Cassandra LaRoche (Tighe & Bond), Steve Mero and Dennis Costello to work on the 2020 plan year for the NPDES II permit. Ms. Scerbo recommended reviewing the regulations. Bond and O&M plan reporting was discussed. There are some requirements from the EPA that are not yet addressed by the DEP; it was suggested being proactive and including them in the regulations. She thinks we can take some things out of the regulations and refer to the Mass Handbook; streamline it. There are new requirements that are not in the handbook because DEP has not finished updating it. EPA is requiring more stringent post-construction standards and new criteria that is not included in the handbook. The permit has been under appeal; there is new draft language and edits. The updated regulations are supposed to happen before June 30th but may be extended another year. Mr. Burkhardt talked about the letter we now send out regarding the Certificate of Occupancy and what the new person is responsible for. Mr. McGrath said possibly add language to reinforce the transfer of responsibility. Mr. Coakley commented that we make sure a SWPPP is put together, but not sure if they following it. Ms. Scerbo said under EPA's program, the SWPPP is supposed to be onsite. Mr. Coakley asked if we could use the regulations as a document so we can follow it. There was discussion about improving monitoring and reporting both during construction and post-construction. He asked if we could use the SWPPP for enforcement. Mr. Walsh does not want to use the federal program; he thinks our regulations should have enough reporting enforcement requirements that we can use.

Mr. McGrath asked how much of a change it would be to add items to the regulations. Ms. Scerbo said they could be added to the Design Criteria section. Not knowing if the EPA will grant an extension, the Commission will be prepared to hold a public hearing in June. Ms. Scerbo said that stormwater regulations were added as an eligible project as part of the Municipal Vulnerability and Preparedness project grants; the Commission could apply for the 2021 grant and starting July 1st could overhaul the regulations at that point. Mr. McGrath said we should draft the additions to the documents to address the EPA requirements, wait until May to take a final vote, and hold a public hearing in June; hopefully we will have an update on the handbook and the postponement; we will do the rebuild with or without the grant.

Mr. Duffy asked about other requirements. Mr. McGrath said street sweeping will need to be increased, a SWPPP for all the town highway garages is needed, and we will want to be more proactive in the ability to identify and remediate IDEs. The town owns some stormwater remediation measures like the new detention basins at Cross Street extension; they all need a much more proactive O&M. Ms. Scerbo said there is planning and then the implementation of the plans for the Highway Department.

Mr. Walsh said he is willing to listen to what the federal government thinks we should be imposing for regulations, but he is not going to freely bend on it; he has a good understanding of what works and what doesn't. He sees a lot of things being put into place and has doubts about LIDS tight glacial tills; he is willing to allow it, not impose it. Ms. Scerbo said the town is in great shape and trying to be proactive and protective. The regulations are good but need to be streamlined to make them more consistent with the state standard so it is easier for the applicant to understand and meet the new requirements. She will update the current proposal and Mr. McGrath will bring it back to the Commission for review and vote. Mr. McGrath asked the Commission how they felt about having Tighe & Bond work with the Commission to modify the regulations. The consensus of the Commission is to continue working with Tighe & Bond. It will be done in two steps; Step 1 is to look at what we need to do to be proactive between the state and EPA with Mr. Walsh's concerns; and Step 2, work with Ms. LaRochelle and Ms. Scerbo to apply for the grant and then do full overhaul of the regulations.

A complaint was received regarding Sewall Brook/Camp Harrington (Pine Street lots). Paul McManus (EcoTec) will be asked to do an inspection.

Vouchers were approved.

Correspondence was reviewed.

Budget Meeting Update – Joe McGrath attended the budget meeting. The expense amount will remain the same; \$20K will be included for stormwater; and he is working with the Town Administrator and Finance Committee to make the pay grade the same for both Conservation (Step 8) and Board of Health (which is currently at Step 7), along with an increase.

Dan Duffy made a motion to approve the Meeting Minutes dated January 27, 2020; Jeff Walsh seconded; all voted in favor; motion approved.

March 16, 2020 was confirmed as the next meeting date.

Mark Coakley made a motion to adjourn; Dan Duffy seconded; all voted in favor; motion approved. The meeting adjourned at 9:00 p.m.