



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

## **REGULAR MEETING MINUTES**

### **JULY 20, 2020**

Members via Remote: Joe McGrath, Chip Burkhardt, Dan Duffy, Mark Coakley

Members Absent: Jeffrey Walsh

Others Participating Remotely: Scott Heim (Northeast Ecological Services); James Tetreault (Thompson-Liston); Mark Anttila, (46 Compass Circle); Peter & Mary Garry (3B Cheryl's Way); Onni Wirtanen (5B Cheryl's Way); Elaine Jones (250 Sewall Street); Eileen Cronin (46 Compass Circle); John Boyd (2 Cheryl's Way); Bart Laganelli (8A Cheryl's Way)

Recorder: Melanie Rich

Joe McGrath, Chairman of the Conservation Commission, opened the virtual meeting at 7:00 p.m. and announced it is being held via video conference. He informed everyone that they can email him at ([jmcgrath@boylston-ma.gov](mailto:jmcgrath@boylston-ma.gov)) with any questions which will be answered during the meeting; they can dial in as well.

Commissioners Roll Call: Mark Coakley, Chip Burkhardt, Dan Duffy, 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 to continue the hearing to the next meeting in order to complete the DCR Variance process. Chip Burkhardt made a motion to accept the request for continuance to 7:00 p.m. on August 17<sup>th</sup>; Mark Coakley seconded; roll call vote: all voted in favor; motion approved.

**PUBLIC HEARING (continued) – 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 (SCP#2020-2)

Mr. May requested via email a continuance to the next meeting. Mark Coakley made a motion to accept the request for continuance to 7:15 p.m. on August 17<sup>th</sup>; Mark Coakley seconded; roll call vote: 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-\_\_\_\_)

No DEP file number has been issued yet. James Tetreault (Thompson-Liston) and Scott Heim (Northeast Ecological Services) participated. Additional information was needed on the plan including the cross

section of the proposed swale on both the plateau and the slopes down toward the wetland, erosion control barrier (wattles) at the base of the slope, and the plans were to be stamped. It is a 1:1 slope which is to be stabilized with an erosion control mat. There is approximately a half acre above it that drains to it; a cutoff swale and stone lined swale is proposed to get the flow away from most the slope. They plan to put down at least 2" of loam over the slope, erosion control matting at the base of the slope, and create a swale at the plateau to capture runoff from the restaurant and go over a lined riprap channel to the base of the slope. Mr. Heim emailed Denise Childs from DEP about the file number but has not heard back.

Mr. McGrath asked if they were going to replicate the area of wetland that was filled. Mr. Heim said no. There were some wetlands that were created; the net loss is approximately 160 square feet. There are additional wetlands to the south of the property that have expanded significantly since the 2002 wetland line. Mr. Coakley said DEP originally commented that based on what was submitted to them they were concerned about meeting the performance standards. Mr. Heim has since sent DEP additional information and explained it to Denise Childs but has not heard back. Mr. Heim provided a construction sequence (with no date or signature); the Commission wants to see it on the plan. Mr. Duffy asked what will be done with the ten inches from the slopes that will be removed. Mr. Heim said if he cannot use it, it will be removed from the site (it will be added to the description). Mr. Duffy said if it is not natural it should be removed from the site; Mr. Heim intends to do that. Mr. Duffy asked Mr. Tetreault about the pipe that discharges on the Batista Family Limited parcel and did he know what happens in that area? Mr. Tetreault believes the discharge on the Batista property (270 Shrewsbury Street) goes to the tall slope and doesn't think it is causing erosion at this point; he will confirm it. Mr. Heim did not notice any discharge. Mr. Duffy said the Commission also asked for some understanding from the owners of the Batista property given that work will be on their property. Mr. Tetreault said Matt Doyle wants it resolved and stabilized; he is fine with it staying in place and being stabilized as proposed. The hearing will not be closed until feedback is received from DEP. Mr. Heim asked for a continuance. Chip Burkhardt made a motion to accept the request for continuance to August 17<sup>th</sup> at 7:30 p.m.; Mark Coakley seconded; roll call vote: all voted in favor; motion approved.

### **COMMISSION BUSINESS**

Compass Pointe Update and Bond Status – Joe McGrath said Mike Andrade (Graves Engineering) is attempting to work with John Grenier (the applicant's engineer). They have not come to an agreement on the plan yet for the restoration and the revised price of the bond. The attorney for Mr. Haynes has worked with him and restored the bond back to the full amount of \$151,000; as a result of that, the Certificates of Occupancy for Lot 11 Unit 15 and Lot 46D Unit 40 were issued. Mr. Duffy asked if we had the bond; we do not. A letter was received from the Burr Insurance Agency dated July 9, 2020 confirming payment for a two-year bond. It also said the bond is now being prepared and we should have it shortly. Mr. McGrath said he received confirmation from Attorney Watsky that the bond was in effect. Mr. Duffy asked if Town Counsel had reviewed the language and is agreement with it. He didn't think we should have issued any Certificates of Occupancy until the process was complete with what the Commission previously decided. Mr. McGrath said once the bond was restored to the original amount, we didn't want to penalize the homeowners by holding up the Occupancy Permits. He said he took it upon himself to approve the Certificates of Occupancy, but only after we had received written approval that the bond was issued. Mr. Duffy respectfully disagreed with that approach because the Commission has gotten burned by this developer in the past. Mr. McGrath said he fully understood his comment and thinks the position we should take at this point is to no longer issue any Certificates of Occupancy until we have proof that the full bond is there, that it has been reviewed by Town Counsel for completeness, or we completed the resizing of the bond amount based on the Graves estimate which we have not

received yet. Mr. Duffy didn't think there were any more Certificates of Occupancy to be issued. What concerns him is that the developer clearly agreed with the process related to reviewing the remaining work and developing a new cost estimate that he has reneged on; he has authorized his engineer to not cooperate with our engineer to provide the information he needs. Mr. Burkhardt said Attorney Watsky advised his client not to move forward with the process. Mike Andrade sent an email on July 14, 2020 stating "Just an update, I continue to chase the information I need to prepare the requested estimate. Grenier won't release the plan on the direction of Jim Haynes and his attorney. When I asked Jim Haynes, he indicated he is discussing with his attorney. So, I remain in this holding pattern I have been in since we met many weeks ago."

In summary, there is money in the bond, we are working under the assumption that the bond terms are the original terms. Mr. Duffy said it went from a letter of credit to a bond, we haven't seen it, Town Counsel hasn't seen it, all we know is he paid a premium for a certain value. Mr. Burkhardt said without the preparation of the as-built plan, we don't know if it covers the amount of work to be done and don't know if it's adequate. Mr. Duffy said we will have to wait and see if the developer will hopefully provide what we asked because we have no leverage or control over what he does. Mr. McGrath said he can see the issue and he should have slowed down the process of the Occupancy Permits and apologized, but his thought was not to penalize potential homeowners. Mr. McGrath suggested he contact Attorney Watsky and advise him that we will not consider any occupancy requests or any approvals until we see the bond, and also to see what is happening between Graves and John Grenier and see if the applicant plans to reduce the bond before the project is complete. Mr. Duffy said if not, should we authorize Graves to complete the estimate on our behalf. He did not like that he told his engineer not to cooperate with our engineer after it was discussed on site and all agreed with that approach. Mr. McGrath will draft a letter to Attorney Watsky and Graves Engineering, John Grenier. He will also ask Graves what it would cost to do the work. It is disturbing and disappointing.

Mark Anttila (46 Compass Circle) asked the difference between a letter of credit and a bond and was told a letter of credit the bank will issue; a bond is an insurance policy that guarantees the work of the person who posted it; they are both acceptable forms of surety. Mr. Anttila said only about 20% of the hydroseed took. He said it is disappointing and hopes the Commission can get it resolved. Mr. McGrath said the purpose of the new estimate calculation was to reduce the bond; Mr. Haynes had reduced the bond based on a letter that was circulated by Graves without contacting the Commission and requesting permission to do that; we requested he restore the bond which we believe he has done, but don't have the bond yet. Mr. Coakley said the assumption was that the earthwork was to be done to the original plan; it was evident that it was not being done. Mr. Anttila said his lot was not done to the original plan; does the developer have to put it back to the original or does he have to get a revised approval. Mr. Coakley said the developer will need an as-built plan with a letter from an engineer stating that the project was built to specifications; they would have to note any exceptions and the Commission would confirm it with an outside consultant based on the history of the project. It all has to be completed before the town accepts the subdivision.

Onni Wirtanen (5B Cheryl's Way) said he has a lot of milkweeds and poison ivy which is hiding the deterioration of the slope. He is hoping they can see and do an effective evaluation. Mr. Duffy said it will be part of the as-built drawings.

Peter Garry (3B Cheryl's Way) hopes that the developer will do something with the slopes. Mr. McGrath said the current status is that we believe there is a bond in place, but we don't have the actual bond; and that money should be sufficient to complete the restoration of the slopes based on what was done before. We are waiting for the second review to get assurance that it is the proper amount to cover it.

We need to follow up with our engineer (Graves Engineering) and our wetlands specialist (Paul McManus, EcoTec) to see what they are waiting for and why are they waiting; we will contact Attorney Watsky and get the bond document and have our Town Counsel review and accept it, and we come to conclusion which is completing the review of work as it is right now and what needs to be done to stabilize the slopes with the best practices. Mr. Garry asked what kind of timeframe are we looking at because the Commission seems to have lost some leverage. Mr. McGrath said there is only some much we can do from an enforcement perspective based on the status of the project and status of the permits. If we don't get satisfactory answers, we can talk to Town Counsel about proceeding to call in the bonds and complete the work ourselves, but that is never the best recourse in a situation like this. It is the best we can do at this point. Mr. Duffy said our leverage is the financial assurance. The other part of leverage is the extension of the permits; they will expire next year; if it is not done, we can look at calling the bond if it is an appropriate action. Mr. McGrath said permits are encumbrances on titles to the subdivision and the developer cannot walk away from that.

Eileen Cronin (46 Compass Circle) was disappointed with tonight's meeting. She said herself and her neighbors made a genuine commitment to attend the meetings and felt they had a good team going. Hearing tonight that unfortunately the Occupancy Permits slipped through the cracks allowing one or two families to move in was the leverage and now that has slipped. She said the Commission is doing a great job but asked as an action item that they get creative because the builder has moved on to other projects. She would like the members to look at the hills that were over-seeded on June 1<sup>st</sup>; it looks poor. Mr. McGrath, as Chairman of the Commission, took responsibility for issuing the Occupancy Permits based on the information received his attorney and the insurance company. There were people who sold their homes and needed to move in. He strongly suggested the residents put together a Homeowners Association to see what they can do from a legal perspective to make sure they are protected in this; it is not just the town's Commission looking fix your yards, it is looking for you to take responsibility for these areas as well; he appreciated their participation and said we are doing the best we can, but as a Homeowners Association or as a collective group, you can put as much pressure on Mr. Haynes if not more than the Commission can. He said they bought the properties with these slopes, but we would like if you would take parallel action too because their pressure would help get a good resolution (this was Mr. McGrath's personal opinion and not that of the Commission).

Compass Pointe Request for Certificates of Occupancy (Lot 11 Unit 15; Lot 46D Unit 40) – Discussed earlier.

Patrick Burke (WDA Design Group) to discuss the May 12, 2020 Graves Engineering Letter (Peer Review #4) regarding Tower Hill – Joe McGrath apologized for inadvertently passing this item over at the last meeting. After the permit was issued for the parking area and the work that was being done at the top of tower hill, there another peer review letter from Graves Engineering. With the members having no issues, Mr. McGrath will contact Mr. Burke directly for his comments to be sure all the revisions requested by Graves Engineering were included in the plans the Commission received and did not impact the permit.

71 Perry Road Request for Partial Certificate of Compliance – No request was submitted.

100 Pine Hill Road (Appraisal of Property) – No one attended.

21 Woodland Road (2 Lot Subdivision) – Request for Waiver from the Stormwater Bylaw – Joe McGrath recused himself from the matter. Mark Coakley explained that it is a 2-lot subdivision which includes a 4.35-acre parcel. Only one page of the two-page plan was received. After discussions, the members felt

a waiver could be issued with the assumption that if there are any wetland associated impacts, they need to properly file according to the Wetlands Protection Act. Because it is a waiver from the Stormwater Control Bylaw, a public hearing will need to be held. Use of best practices to control stormwater will be encouraged. Mark Coakley made motion to request the applicant to submit a formal Stormwater Permit application; Chip Burkhardt seconded; roll call vote: all in favor; motion approved. Melanie will inform the applicant tomorrow.

Reorganization – Dan Duffy made a motion that the Commission remain as is with Joe McGrath being the Chair and Jeff Walsh being the Vice Chair. Mark Coakley will remain as the representative on the Earth Removal Board; Joe McGrath and Chip Burkhardt will remain as representatives on the Stormwater & Open Space Committees. Mark Coakley seconded; roll call vote: all voted in favor; motion approved.

Correspondence and emails were reviewed. An invoice for Tighe and Bond for \$2,930.00 was received today. The date is July 15, 2020 for services rendered through June 27, 2020. According to the accountant, FY20 funds were already spent and it cannot be paid out of the FY21 funds. Mr. McGrath spoke with Cassandra and Emily and they were aware of the time constraint to receive any bills before the end of June but they were late sending it. Mr. Duffy said Tighe & Bond needs to know that this is unacceptable and going forward in the future that it won't happen. Their accounting department delayed the process for payment. Had we known the bill was coming, we could have encumbered the money from the FY20 budget. Mark Coakley made a motion that the Tighe & Bond invoice for \$2,930.00 be paid from the Wetlands Protection Fund; Chip Burkhardt seconded; roll call vote: all voted in favor; motion approved. Mr. McGrath will follow up with Cassandra and Emily.

Dan Duffy made a motion to approve Meeting Minutes dated June 22, 2020; Chip Burkhardt seconded; roll call vote: all voted in favor; motion approved.

August 17<sup>th</sup> was confirmed as the next meeting date.

Lilymere Estates – Mark Coakley received an update, but not yet confirmed that 90% of the open slopes have been hydroseeded. Chip Burkhardt said there are some areas that are not restored but significant progress has been made. Regarding a request for bond reduction, it appears the developer did something last May but never reduced the bond based on that estimate. Graves will be notified that no action can be taken without the Commission's approval. Dan Duffy said that if Graves has correspondence on a project, it needs to come to the Commission and we will forward it to the appropriate parties; the request comes from the Commission and not a third party. Joe McGrath will include that reference in the letter to Attorney Watsky and make it known bond reductions must go through Commission for approval. Mr. Duffy said the permit never constituted the reduction of the bond. The only provision for reduction is the submittal of an as-built plan and a request for a Certificate of Compliance.

Mark Coakley made a motion to adjourn; Chip Burkhardt seconded; roll call vote: all voted in favor; motion approved. The meeting adjourned at 8:29 p.m.