



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

OCTOBER 19, 2020

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

Members Absent: None

Others Participating Remotely: Nicole Hayes (Goddard Consulting); Paul McManus (EcoTec); Glenn Krevosky (EBT Environmental) Roland and Janice Lizotte; Ken Sydow; Tom Beals; Mark Anttila (46 Compass Circle)

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) with any questions which will be answered during the meeting; they can dial in as well.

Commissioner Roll Call: Chip Burkhardt, Mark Coakley, Dan Duffy, Jeff Walsh, 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 December meeting in order to complete the DCR and MEPA Variance process. Joe McGrath made a motion to accept the request for continuance to 7:00 p.m. on December 21st; Mark Coakley seconded; roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; Walsh-aye; McGrath-aye; 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 to the November meeting. Joe McGrath made a motion to accept the request for continuance to 7:05 p.m. on November 16th; Mark Coakley seconded; roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; Walsh-aye; McGrath-aye; motion approved.

PUBLIC HEARING (continued) – 100 Shrewsbury Street (Steve Venincasa/Casa Builders & Developers) – Abbreviated Notice of Resource Area Delineation Application for confirmation of all wetland resource areas on the parcel located at 100 Shrewsbury Street (DEP#115-428)

Nichole Hayes (Goddard Consulting) and Paul McManus (EcoTec) participated remotely. The resources on site consist of bordering vegetated wetland, isolated wetland, isolated land subject to flooding and bordering land subject to flooding. They want to confirm that the channel on site is intermittent and not

vernal on Sewall Brook. Ms. Hayes met Paul McManus on site today and reviewed the lines; two BVW flags were moved about 6-feet (changed to GC-40, made 40-R, and at A-12 put in an additional flag to bump out between 12 & 13); there were no flag issues with the isolated land subject to flooding. DEP requested that engineering calculations be provided for the ILSF; she will get it from the engineer.

Paul McManus said the BVW was pretty straight forward; he recommended changes which she flagged in the field. FEMA has a flood profile on points 451, 454 and 448 of the plan. Those elevation points need to be put on the plan, interpolate between the points, and attach a flood plain line as it moves upstream. The flood plain is tight to Sewall Brook. Upstream from 448 there is a line at that point where the flood plain line is just outside the BVW which would be considered BLSF (very small footprint). Assuming the topo is good, the BLSF is appropriate.

The next issue is on the north part of the site, wetland B is delineated with a closed basin; it is in an obvious topo depression; there is no channel. In his opinion, it is appropriate that she did not designate it as a BVW. The potential jurisdiction under the Act is ILSF. The threshold for ILSF jurisdiction is annually a ¼ acre foot volume, 11,000 cubic yearly. There was some water in it today. Once the threshold is crossed, it's a question of the boundary ILSF. The boundary is defined at maximum observed or recorded flooding. In the instance of a difference of opinion, the drainage calculations should be implemented. The ILSF itself is impervious, standard assumptions are made based on the runoff from the surrounding area, and calculate it based on a 100-year storm. Ms. Hayes flagged it based on evidence of water which corresponds with the wetland plant community; if it was bordering, it would be the BVW boundary. She did not think realistically you would get ponding of any substance above her flags. She did comment that the calculations could show something different, but that was his expectation. The Commission needs to decide whether they think this observational boundary is sufficient or whether they think it is necessary to implement the drainage calculations.

Mr. McManus said the contributing watershed is fairly small and thinks the ponding is driven to a very significant degree by groundwater. DEP has a formal policy on ILSF boundaries. The regulations and policies say you should consider groundwater, but how you consider groundwater and where you assume that base groundwater is when you add in the design storm, is not well spelled out. His opinion was that it is a pretty reasonable and potentially conservative delineation. Mr. Coakley agreed that groundwater was contributing to it. Mr. Duffy said DEP's comments did ask for calculations and felt we should have them so there are no concerns raised with DEP. With regard to DEP's comment of amphibian breeding, Ms. Hayes did two vernal pool inspections (3/25 and 4/13) and did not find any evidence of amphibian or breeding or egg masses. Mr. Walsh was comfortable with the "B" series flagging being the limits of the ILSF without going through the hydrology calculations.

Mr. McGrath said DEP also had some additional comments about Sewall Brook and asked Ms. Hayes for her comments. She said they could not give any dry documentation data due to the drought. They had to go with historic information and provided historical information from multiple sites upgradient and downgradient of this site; they were determined to be intermittent. The sites northeast and southeast show that the brook dries up in many areas upgradient and downgradient. With the past determinations from the Commission, the basis is that it is an intermittent stream channel. DEP commented that it is not more recent data, but they don't specify a certain timeframe. Mr. McManus said the regulations talk about submission of photograph evidence. He thought it's reasonable to tally up the Commission's findings. He did check the regulations and did not find any reference that they had to be done in a specified time period, only that there needs to be four photographic documented no-flow days within a 12-month period; it did occur in all the other sites. The question for the Commission is do they consider the reference to the past findings to sufficiently have demonstrated a provision of the dry stream

photos. Mr. Duffy was not concerned with the age of the findings but said those determinations made in the past had evidence on the site that was in question and asked Mr. McManus if anything in the regulations specify the need to be made on the site where the work is occurring. Mr. McManus said you typically try to get upstream and downstream ends. In this case, the observations are not on the site but fairly close upstream and fairly close downstream. Mr. Coakley asked why it didn't include the finding from the gun range filing; it is downstream and they were not able to overcome the presumption. It was perennial through the gun range. Ms. Hayes did not know about that filing. Mr. McGrath said the Mass DEP summary says that 2015 dry stream documentation shows photos of a wet channel 200 Shrewsbury Street upstream. He thinks we have evidence of a perennial stream both upstream and downstream of the site. He said we are hesitant to accept the finding as intermittent at this location as is the DEP. Ms. Hayes would like to get more evidence, but said they have already demonstrated in several areas upstream and downstream that the Commission has voted that those areas were deemed intermittent and didn't know what other information she could provide. Mr. Duffy said at a minimum we need a plan showing where the stream has been deemed to be perennial and intermittent. She said she submitted all the data supporting that they found it intermittent up and down gradient of the site. Mr. Duffy said around 200 Shrewsbury Street there is perennial stream that goes to intermittent upgradient and then at the gun site perennial downgradient and crossing of School Street is intermittent. Mr. Burkhardt understands the assumption she is trying to make, but just because it was intermittent upstream at one point doesn't mean it is intermittent; this stream seems to vary, and in very close proximity downgradient of them there was a filing where the stream was found to be perennial. In his opinion, because of the drought and not having evidence during this time period, it is going to be very hard to overcome that presumption. He can't make that assumption just because upstream at one point it was intermittent, that this whole next section, before we know it is a perennial stream, is intermittent. The stream seems to be acting differently as it crosses properties that abut each other. She showed where the stream was deemed intermittent. Mr. Coakley feels she has not overcome the presumption. She said because we are in a drought, she can't take the photos, DEP won't consider four days of no flow. Mr. McManus said there will not be any data on this site until next summer. The options are to keep it open to get more data or close it and rule on the rivers issue, or amend the ANRAD and take the riverfront off the table. Mr. McGrath said if they decided to show it as a perennial stream and include the riverfront area impact and delineation they could resubmit the plans and ANRAD and we could reassess it. Ms. Hayes requested a continuance. Mark Coakley made a motion to accept the request for continuance to November 16, 2020 at 7:10 p.m.; Chip Burkhardt seconded. Mr. Walsh said the LEI facility upgradient at 200 Shrewsbury Street was found to be perennial entering the site and intermittent leaving the site. We need to explore the data submitted then and re-evaluate the evidence and agree that the right decision was made. He didn't think the gun range had the need to further evaluate perennial or intermittent because they were remediating the gun range. Mr. Burkhardt said part of the project was remediation of the lead in the backstops, but they also did a significant reworking of the site. They moved the backstops, the target areas and the staging areas to shoot; a wetland crossing was also part of it. Mr. Duffy didn't recall the status of riverfront of the Rand-Whitney site, but said there was a stream crossing that was reworked. Mr. Walsh said there was an intermittent finding near Sewall Brook, but not sure of the application; that data could be looked at as well. The USGS map shows a small pond where the river comes into and goes out of; it may have some impact downstream; the pond can be explored as well. Mr. McGrath said looking at the USGS map of Sewall Brook there appears to be a wet channel at the area of Sewall Brook behind the GNL Plumbing Building and Frontline building

Mr. McGrath asked for public comment. Glenn Krevosky (EBT Environmental) said impoundments, diversions or withdrawals upgradient on a perennial stream that dry up would have to have stream stats to prove that it should be flowing. Roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; Walsh-aye; McGrath-aye; motion approved.

PUBLIC MEETING – 100 School Street (Roland & Janice Lizotte) – Request for Determination of Applicability Application to remove a full exotic invasive plant including the roots

Glenn Krevosky (EBT Environmental) and the Lizottes attended remotely. Exotic invasives are overtaking the back lawn. They will not take out any native species and not working in the wetlands; small machinery will be used; riverfront and BVW are flagged. The areas are delineated and asked the Commission to visit if needed. The wetland does not go up to the back of the house. Mr. Krevosky said the root system on most of them are very shallow. He explained that it is about a two-year project and the process involved. Mark Coakley asked what the annual maintenance is. Mr. Krevosky said if required they would put back native bushes/plantings. They are not looking for more lawn. Mr. McGrath questioned how close they would be to the resource area from the limit of work. Mr. Krevosky said it would be close. It is a deep slope, rocky, upland and goes directly into wetlands. They are proposing to go up adjacent to the wetlands. Mr. Duffy did not have a problem with the project onset but would like a little more information; cross section details showing where the wetlands are, the limit of work, and how close it is to the house so there are no misunderstandings of what is to be done. Mr. Krevosky said a site visit would be self-explanatory. The Commission could look at it but would like something in writing so there are no misunderstandings. Mr. Krevosky will provide a sketch. Mr. Walsh would have been reluctant to take action without more information for the file. He requested a continuance to provide additional information. Mr. McGrath asked for public comment. Hearing none, Joe McGrath made a motion to continue the public meeting to November 16th at 7:15 p.m.; Chip Burkhardt seconded; roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; Walsh-aye; McGrath-aye; motion approved.

COMMISSION BUSINESS

Compass Pointe Update – Jeff Walsh recused himself from the matter. Attorney Watsky requested via email this afternoon to continue the discussion for the Compass Pointe Update and Compass Pointe Bond Status to the next meeting. The email read..I request to continue the discussion scheduled under Compass Pointe Update and Compass Pointe Bond Status, to the Commission's next meeting. I have spoken with Mr. Haynes, and with the surveyor, and am advised that the surveyor did the field work to locate the toe of slope in the area where high water was observed this past spring, but he has not yet plotted out those data points on a plan for submittal. The key question posed at the last meeting was whether that toe of slope was properly located consistent with the approved plan. To ensure that the Commissioners and any interested public have an opportunity to review the survey plan prior to the meeting, we should continue tonight's scheduled meeting to a later date. The surveyor has indicated that he will be able to produce the plan soon, and I will file it as soon as it is available. I assume that it will be available in time for all to review it prior to the next meeting, which I understand is scheduled for November 16, 2020.

Mr. McGrath asked for members' comments deferring the discussions. Mr. Duffy had no issue relating to the Bond Status and did not think we should limit the discussion about the status of the site. He wanted to let the residents attending have a chance to discuss their observations.

Mr. Duffy expressed his disappointment since at the that meeting we were told that specific action would be taken and that topsoil and seed would be done within days, but they proceeded to do something different. This appears to be a standard practice, committing to do something and doing something different. The goal is to get the site stabilized and vegetated. He found it hard to believe that they did not know what they were going to do on Tuesday when they talked to us on Monday night. He is frustrated over the actions of the applicant. He was also taken surprised when the applicant said they didn't agree to have us use our surveyor to determine the as-builts. He said he doesn't believe the

applicant has the right to dictate how we use the 53G account as long as it is within the general understanding of why the account was set up. He said monitoring the site and how it is constructed would fall under the use of the account. He was glad they did what they said on the lots closest to the pond, but we need more information on the lots with the steep backyards. Chip Burkhardt was also disappointed. There is the approved level of work they were supposed to (topsoil and hydroseed) and the next day they used an engineered product. He also found it hard to believe that they didn't know they were going to use them. We want to see the erosion on the slopes controlled but again, they had an approved process and didn't use it; very disappointing. Mr. Duffy also commented that we have not received any monitoring reports or any updates from Mr. Marro as to the status of various activities on the site. They agreed to give us weekly reports on the status of the site but haven't.

Mark Anttila asked what the 53G account was for; Mr. McGrath explained it to him. Paul McManus (EcoTec) did do a site inspection. He was asked to look at the material that was being put down on the slopes and where they were being applied to, plus the status of the site in general including the erosion and control measures at other parts of the site. The Commission uses the account for peer review; we have never used the funds for survey work. Mr. Coakley said the 53G account in the general legislature is set up to implement rules promulgated by Conservation Commission established by cities or towns. There is nothing specific that says it can only be used for one thing; it needs to be used associated with enforcing rules promulgated by the Commission. Mr. Burkhardt said the project proponent can disagree with whatever they want in front of the Commission, but in reality if we so choose and there is money in the account in support of the project, we can hire a consultant to do what we need done on the project. The project proponent hired a surveyor for one section of the slope and we have a concern that there is runoff into the wetland, that was the area where they said the water level had risen because of the beaver activity. He has seen lots of evidence of slope erosion; it is clear they have been eroding and sloughing off. Mr. Anttila said the frustration is that it has been going on for a long time. Mr. Duffy said at this point in time there is no additional construction activity that he would want to see happen because he would be concerned that if something was disturbed, it would not be stabilized before the cold weather. Mr. Anttila asked if the Commission would look at the severe runoff problem on Compass Circle #42 & #44. Mr. Duffy is concerned about the slopes behind 4A & 4B Cheryl's Way. The Commission did not approve a 1:1 slope. Unless the applicant comes back with revised engineered drawings telling us it is not only stable with regards to erosion but stable with regards to slope stability, he would be very reluctant to approve a Certificate of Compliance. The members agreed to do a site visit on October 31st at 9:00 a.m. Mr. Coakley will contact Town Counsel regarding the 53G account expenditures.

Compass Pointe Bond Status – Jim Haynes is requesting the release of the Reduced Letters of Credit #3042 (\$51,597.00) and #3078 (\$16,200.00) – Members agreed to defer this item to the November meeting.

Lilymere Estates (Revised Site Stabilization & Drainage/Stormwater Estimate) – Jeff Walsh recused himself from the matter. Mr. Haynes sent an email requesting the Commission send a letter to the bond company requesting the new bond amount of \$94,740. Mr. Duffy did confirm with Graves Engineering that they believe there is adequate topsoil on site to stabilize the remaining area. Joe McGrath made a motion to send a letter to the bond company agreeing to the reduction of the bond for Lilymere Estates only with a revised amount of \$94,740.00; Chip Burkhardt seconded; roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; McGrath-aye; 4-0-1; motion approved.

Consider Request to Extend ORAD (Route 140 RW LLC Shrewsbury Street) DEP File No. 115-415 – Jeff Walsh made a motion to extend the ORAD for three years; Dan Duffy seconded; roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; Walsh-aye; McGrath-aye; motion approved.

Ken Sydow to discuss work in the resource area at 8 Boulder Way – Mark Coakley said there was a small Kubota stuck up to the axle; they were trying to remove it. He attempted to talk to the owner, but no one was home. He asked Melanie to follow up to have the owner contact us to see what they were doing. The photos show that the tire tracks and bucket marks were visible in the bank; it was sunk deep; there was work done in the resource area. The house is rented; the owner is Ken Sydow.

Mr. Sydow said the machine was on 4 Boulder Way, not 8 Boulder Way. The area between 4 and 8 has an intermittent stream; maintenance is required to keep it open. #8 was rebuilt about 28 years ago and the issue was discussed then. He said Don Jodrey was on the Commission at the time and said it goes under necessary maintenance and doesn't require future reviews; they have been doing it over the years. With the water so low, it was a good time to clean it and move the flow restrictions; there was no intent to violate anything. If there are new regulations to follow, he will do that. He explained where the machine was and said it wasn't stuck badly, but they often have it hooked up to a four-wheeler and cable. He explained where the intermittent stream was since the photos did not show it. Dan Duffy asked if he had a copy of the Order where it was specified; Mr. Sydow didn't think there was one. He said inspections were going on continuously when they were building and the documentation for the road said they didn't have to come back indefinitely; he was not sure about the stream. Chip Burkhardt questioned whether it was a stream or a drainage feature. Mr. Sydow said it is a stream. Mr. McGrath said it is water that comes off the hill on the side of Boulder Way. There used to be problems with road runoff. Mr. Sydow said they put an 18" culvert under the road and it stopped. Mr. Duffy said to see if there was something that allowed for the periodic maintenance and if not, there should be a submittal, putting a piece of equipment in there should not be part of anything that is allowed; it should be restricted to be done by hand. Mr. Coakley asked if they were planning to revegetate it. There should be proper permitting. Mr. Sydow said there is nothing to revegetate; it is broken down weeds and muck and backs up; underneath is all sand. Mr. Coakley saw rocks pulled up on the upward side of the bank and asked if that was all sand also. Mr. Sydow said it is muck with the sand; a rock rolled down into the stream. Mr. McGrath said any filings with conditions that dates back 25-30 years would be long expired. Putting a piece of equipment on the bank of a stream in a resource area is not an acceptable policy; the Commission should have a filing so it is documented and conditioned. Mr. Walsh agreed and said because it is an activity in a resource area a NOI is required.

1240 Main Street Complaint – An anonymous call was received about filling in a resource area. Mark Coakley visited the site and said it was clear that several acres (10-15) of trees were cleared. They are potentially stockpiling chip grindings in the buffer zone. This is a sizeable piece of property and was in receivership at some point. There is no grubbing going on, but they definitely disturbed a couple of acres. Do we have any jurisdiction under the Stormwater Bylaw? Is there a forestry plan? Mr. Walsh said disturbance over one acre, but not sure if tree clearing with no grubbing is considered disturbance, would tend to think where there is a stormwater bylaw and regulations the answer might be yes. Mr. McGrath said for a forest cutting plan there is a minimal amount of acreage required but doesn't know how it applies to a single-family property. Melanie will check with the Building Inspector to see if there were any permits pulled on the site. A certified letter can also be sent; a violation notice will not be sent at this time.

Lot 7A/7B Gulf Street Complaint – Chip Burkhardt recused himself from the matter. A complaint was received from DEP about fill activity. Mr. Beals has a potential P&S on the lot and was doing clean up

and removing equipment. There was fill on the upland side that he did push over, but it was 25-feet away from the silt fence. Mr. McGrath confirmed the distance from the wetland area. Mr. Beals said he would stand the silt fence back up and sent photos showing that it had been restored. If the sale goes through it would be the responsibility of the new owner to replace the silt fence and straw wattles. There is no erosion at the site; it has been stable; there are boulders around the limit of work. Mr. Beals informed the new owner that the erosion controls would have to be replaced and provided him with a copy of the Order which has been extended to 2022.

Kim Ames Donation of Land (Parcel 4-47 at the end of Roy Street) – The parcel has a stream on it and is worth protecting. It is in tax title. If it becomes town-owned land the Commission could ask that the town deed the lot to us. Ms. Ames could also go to SVT for a conservation easement. If she wants the Commission to take it over, we would have to ask Town Counsel to do a title search on it and see what the next step is to land taking. It would have to go through the same process as was done for the land by East Woods and the old landfill. Mr. McGrath will send a letter to the Board of Selectmen telling them of the Commission's interest, that it does have some environmental merit, and would they be amenable to accepting it as a gift and deeding it to the Commission.

Newton Pond LPCP Plan Discussion – Joe McGrath, along with the Town Administrator and Emily Scerbo (Tighe & Bond) attended the discussion. As part of the EPA, they had to prepare a financial analysis memo which shows what we have to do to meet the state's current requirements to implement a phosphorous control for Newton Pond. The consensus and recommendation of Tighe & Bond is that we approach DEP and ask them to update their phosphorous control TDML list of waters that are under the requirement to prepare this plan because the recent list of bodies of water in the state basically says that phosphorous is not the problem in Newton Pond. The problem is an overgrowth of vegetation. If DEP updates the TDML paperwork, it would remove Newton Pond from the list of bodies of water that require an LPCP plan. It is a very involved process expensive plan. Tighe & Bond also recommended contacting the Shrewsbury Conservation Commission. Mr. McGrath reached out to Brad Stone, the Conservation Agent, and was told it is the Town Engineer who works on stormwater. We are going to ask them to approach DEP at the same time as us. Mr. McGrath will let the commissioners know when the conference call is scheduled. Mr. Walsh would like to see us work cooperatively with Shrewsbury since it is in both towns and an interest to both communities. Mr. Duffy said it seems to be a technicality that they don't have updated criteria for the pond. Mr. McGrath said given they just released the 2016 list this year, they are behind. Mr. Coakley asked where is the data that shows that it is not phosphorous. Mr. McGrath said there is a list of state bodies of water and their major pollutants. The EPA said if the state updates their list, they will as well.

All correspondence and emails were reviewed.

Review & Approve Meeting Minutes dated September 21, 2020 – Dan Duffy made a motion to approve the September 21, 2020 Meeting Minutes; Jeff Walsh seconded; roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; Walsh-aye; McGrath-aye; motion approved.

November 16th was confirmed as the next meeting date.

The Stiles Road Advisory Committee meeting will be held on October 27th at 12:30 p.m.

Having no further business to discuss, Mark Coakley made a motion to adjourn; Jeff Walsh seconded; roll call vote: Burkhardt-aye; Coakley-aye; Duffy-aye; Walsh-aye; McGrath-aye; motion approved. The meeting adjourned at 9:41 p.m.