



Town of Boylston Conservation Commission conservation@boylston-ma.gov
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REGULAR MEETING MINUTES DECEMBER 21, 2020

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

Members Absent: None

Others Participating Remotely: Scott Heim (Northeast Ecological Service); Nicole Hayes (Goddard Consulting); Paul McManus (EcoTec); Mark Anttila (46 Compass Circle); Attorney Matt Watsky; Steven Van Dessel

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 Zoom and explained the process.

Commissioner Roll Call: Chip Burkhardt, Dan Duffy, Jeff Walsh, Mark Coakley, Joe McGrath

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) attended with an update. He filed a Water Quality Certification application with DEP and forwarded a copy to the office. The only difference between that and the NOI that was filed is that the depth of the loam has increased from 2" to 4". Mr. Heim requested a continuance. Joe McGrath made a motion to accept the request for continuance to 7:05 p.m. on Tuesday, January 19, 2021; Mark Coakley seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-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)

Nicole Hayes (Goddard Consulting) was in attendance. Mr. McGrath reminded her that there is still an outstanding ad fee of \$42.00. Dan Duffy spoke with Kimberly Roth (DEP) after the last meeting relating to the filing. Ms. Roth made two main points: (1) if a permit (OOC/ANRAC, etc.) is complete (i.e., COC issued) or expired, the delineation associated with that permit (including intermittent stream determination) expires with it, and that any new application (even for the same piece of property) should include new delineation/resource area determinations, which is why the comments from DEP on the ANRAD discussed expired permits; and (2) photographic evidence needs to be available from the site that the application is filed for. She suggested that since we do not have that documentation, that we cannot override the perennial stream determination until the applicant can obtain that evidence during a non-drought year. Ms. Roth suggested if the applicant wants to make an intermittent stream

determination they need to wait until they can observe the stream bed dry and there are no drought conditions.

Ms. Hayes had no new information to present. She asked for an opinion about the DEP information that was provided. Jeff Walsh said the Commission would have to find the stream to be perennial because of the DEP requirements (photos and no outdated Orders from other sites). The applicant could revise the filing, so we are not considering perennial/intermittent status and confirming the other resources, or put it on hold. Mr. Coakley thought the only option was to accept it with the stream as perennial or withdraw without prejudiced. Paul McManus (EcoTec) said the applicant could amend the filing and not ask for riverfront boundaries. Mr. McGrath said that would be acceptable to him because it is reducing the number of resources. Mr. Walsh wants the Order to note very clearly that perennial/intermittent status has not be determined and not subject to the Order issued. Mr. McGrath said there will be a permanent condition on the ORAD that any work within 200-feet of that area would have to come back with an additional filing before the Commission. Mr. McManus said it could note that it is presumed to be a perennial stream with riverfront and there has been no overcoming intent with respect to that (with respect to the ORAD, that presumption would stand). Mr. Coakley said any plan we approve has to delineate the 200-foot riverfront area on it because they have not overcome the presumption. If they want to amend it later, they can. Mr. McManus said the Commission needs to make a clear and unambiguous finding. The regulatory presumption is perennial. The applicant has not asked and therefore not succeeded in overcoming that presumption, so the presumption stands. Ms. Haynes will revise the form to remove consideration of riverfront but will include the riverfront boundaries on the plan. She requested a continuance. Jeff Walsh made a motion to accept the request for continuance to 7:10 p.m. on Tuesday, January 19, 2021; Dan Duffy seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-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 requested a continuance. Jeff Walsh made a motion to accept the request for continuance to January 19, 2021 at 7:15 p.m.; Mark Coakley seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

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)

A request for continuance was received. Chip Burkhardt made a motion to accept the request for a continuance to 7:05 p.m. on March 15, 2021; Mark Coakley seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

PUBLIC MEETING – 750 Main Street (Keith Lewis) – Request for Determination of Applicability Application to clear existing trees and brush, remove existing building and construct new building.

Joe McGrath read the meeting notice into record. Mr. Lewis said the current building is not repairable. He will be removing trees for more parking at the future building. Mr. McGrath asked if he had a plan showing where the trees are being removed; he did not. He said came here to find out what he needs to do and can do. He was told that the Commission needs a plan prepared and signed by a certified land surveyor or engineer showing the planned construction, limit of work, lot lines and resource areas. Mr. McGrath said there is a resource area at the base of the driveway at Tower Hill that extends towards

Main Street; part of it is on the lot shown on the assessors' map. Chip Burkhardt commented that is another resource area on the opposite side of French Drive. We need to know how much he is disturbing; if additional trees need to come down as a safety concern, they should be noted as well. Jeff Walsh said when an applicant wants to work in a resource area or in a buffer zone to a resource area that has potential impact, it needs an NOI filing. The perennial stream has a 200-foot riverfront; work within a resource area requires an NOI; he was not sure if an RDA is appropriate for the work to be done; a professional will determine that. Mr. Lewis' options were to continue or withdraw without prejudiced.

Mr. McGrath asked for public comment; there was none. Mr. Lewis asked for a continuance. Chip Burkhardt made a motion to accept the request for continuance to 7:20 p.m. on Tuesday, January 19, 2021; Jeff Walsh seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

COMMISSION BUSINESS

Compass Pointe Update – Jeff Walsh recused himself from the matter. An email and photos were received from Bart Laganelli (8A Cheryl's Way). Joe McGrath commented that is what was observed at the site visit in October/November. Mark Coakley noted that there was some talk about the application of the spray material being loam and seeding. Attorney Watsky emailed a report from Matt Marro today. Paul McManus (EcoTec) sent an email disputing the claim that it was loam and seed. He said it is not loam and seed; it is not topsoil; it is a spray-on application product. It can be applied with seed but does not mean there is seed in it. Dan Duffy's concern is that Mr. Marro continues to refer to future activities including having loam and seed applied in the spring. Mr. Duffy was not happy with them saying loam and seed in a meeting, then putting spray on the site. Attorney Watsky said his understanding is that the material is not just organic fibers, it has mineral materials in it. It provides nutrients to the seeds that are there and is exactly intended to be loam. He said the intention was to re-examine the site in the spring and acknowledges that the Commission called attention in the spreadsheet to those areas that need to be monitored and need additional work. He said in one area the Commission was concerned about where jute netting was not growing, he observed growth coming through the jute netting. Attorney Watsky said the Order does not specify what is meant by loam. Mr. Duffy said it does say it requires 4" thick, and despite what Mr. Marro told the Commission the day before it was applied, there was no intention to put it down 4" thick; that's not how this product is applied. He disagreed that it can be defined as loam and would appreciate when they do provide a report, they are more forthcoming with what their intention is because no one ever explained the intention. Attorney Watsky said they told the Commission they were applying loam. The product was marketed to Mr. Haynes as a sprayable loam; it includes mineral materials. Mr. Duffy said it was not clear what the product was; the day before it was done, no information was provided to the Commission. Attorney Watsky said the conditions do not specify that they have to submit something to say where the loam is coming from. Chip Burkhardt didn't think loam needed to be defined to understand what 4" of loam needs to be put on a hill slope. He was confused how an engineered product can be described as loam when clearly it is not; it should have been explained to the Commission. Mr. Duffy would find it very unlikely that the engineered product sprayed on with minimal thickness with a requirement of 4" was contained in the Order of Conditions. Mr. McManus commented that it is clear the Commission was looking for topsoil. Attorney Watsky said there is no working going on right now and hears the Commission is looking at old fashioned topsoil being placed over the slope. He will discuss it with his client, Matt Marro and Paul McManus and make plans for the spring.

Mark Anttila (46B Compass Circle) would like the applicant to provide specific information about the material and what tests they ran specific to the site. Attorney Watsky said the email today has the manufacturer materials. Mr. Coakley said Mr. Marro's report did not include the manufacturer's materials, test reports specific to the site, guidance or testing that was done that would recommend to the applicator what to use. Attorney Watsky said his email should have contained the attachments. When he sends it, it will be forwarded to the members as well as Mr. Anttila. Mr. Anttila asked if the additional work to be done before the winter was done; based on Mr. Marro's report, they were not.

1240 Main Street (Steven Van Dessel) Update – Mr. Van Dessel has provided a site plan, existing conditions plan, assessment of the resource areas by MaryAnn Dipinto, and a letter why he feels he is exempt from the Stormwater Bylaw. The Commission was unaware that he plans to do some limited farming or agricultural use in the future. Chip Burkhardt thought it was for an existing farm or agricultural use. Paul McManus said the agricultural use is for land in agricultural use.

Chip Burkhardt explained that the Commission has two responsibilities to act on: the Wetlands Protection Act and the Stormwater Control Bylaw. What the Commission was discussing now was potential applicability under the Stormwater Control Bylaw to this parcel. A vote will be taken after the Bylaw discussion regarding wetland issues. Mr. Burkhardt says there is an exemption for single-family homes because they will not disturb greater than an acre. It is also clear in the bylaw that the disturbance on those properties is cumulative. His opinion is that the exemption claimed for installation of utilities was meant for the roadway, not meant for installation of utilities to a house; he didn't think it was applicable to a single-family dwelling; Mr. McGrath agreed. Mr. Coakley said all we are looking for is the adequate erosion and sediment control plan for the property, not looking for compliance because it is a single-family home. Mr. Burkhardt said we are working to exempt it from the bylaw and make sure erosion controls are in place when construction is done. He did not think we would agree with the proposed exemptions; we are looking for proper erosion controls. Mr. Van Dessel may need temporary drainage measures during construction. Mr. Van Dessel's intent is to avoid getting a permit according to the information provided. Because he noted that he could be doing agricultural activity which could qualify as a soil disturbance, he needs a letter from his engineer that the total amount of area on the lot, including the agricultural area, is less than an acre of disturbance, he is exempt and doesn't need a permit. We need an assessment of the whole disturbance including the agricultural work. The info provided is not enough to make a decision. If he wants the flexibility to expand area on the site, he should have a stormwater permit. It provides the Commission with the application and how he will control erosion on the site during the construction of the house. It would also give him assurance that when the work is done by the builder it is done with best practices and with as little sediment and control issues as there can be. The Commission needs a plan with the erosion and sediment controls during construction and a narrative with details on what he plans to do; a plan is needed for all the potential soil disturbances on site. He will take the information to his engineer.

As to whether the work performed by MaryAnn Dipinto is subject to the Wetland Protection Act, Mr. McGrath felt that based on her assessment, did not believe the work is jurisdictional to the Wetlands Protection Act; the members agreed. Joe McGrath made a motion that the land subject to our review at 1240 Main Street is not jurisdictional under the Wetlands Protection Act based on the current planned activities and the nature of the site; Chip Burkhardt seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

Kim Ames Donation of Land Update – Joe McGrath received a copy of the deed from Kim Ames. The land is in tax title. He will contact the Assessor and Town Counsel about the status.

Consider issuing Certificate of Compliance for Dean Polnerow, DEP#115-156 (46 Columbus Road) – Previously completed.

Consider issuing Certificates of Compliance for Pine Street Boylston Realty: DEP#115-405 (Lot 1 Pine Street); 115-406 (Lot 2 Pine Street); 115-407 (Lot 3 Pine Street); DEP#115-408 (320 Sewall Street Pine Street Extension); SCP-2017-1 (320 Sewall Street Pine Street Extension) – Mr. Ricciardi is still working on the information.

Consider issuing Partial Certificate of Compliance for Scott Goddard, Goddard Consulting, DEP#115-420 (85 Sewall Street) – The Commission had no objections to removing parcel A from the Order of Conditions. Dan Duffy made a motion to issue a Partial Certificate of Compliance and remove Parcel A from Order of Conditions DEP#115-420; Mark Coakley seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

Joe McGrath made a motion to issue a Partial Stormwater Control Certificate of Compliance for SCP#2018-3; Mark Coakley seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

Consider issuing a Certificate of Compliance for Longley Hill (DEP#115-342) and Stormwater Control Permit SCP#2009-2 – Joe McGrath reviewed the plans. The last formal activity was in May 2018. We received a stabilization bond estimate from Graves Engineering for \$21,480. Mr. McManus was last at the site on December 27, 2019. Graves had issues with regard to some of the stormwater structures. Information is needed on lots 5, 6, 8 & 11 along with an accurate as-built plan including the basins, all drainage structures, and lots. Mr. McManus suggested he also provide a compliance evaluation by his engineer. We need to make sure Graves' comments with the Planning Board are resolved and would like something from Graves that he is in compliance. A wetland scientist's opinion for the replication area is also needed. Mr. McGrath will email Mr. Ansari with what he needs to submit to close out the project.

Annual Report – Joe McGrath will review the draft report and forward it to the members.

No new correspondence was received for tonight.

Joe McGrath made a motion to approve the Meeting Minutes dated November 16, 2020 as amended; Jeff Walsh seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

Tuesday, January 19, 2020 was confirmed as the next meeting date (due to Martin Luther King Day).

Review FY22 Budget – Joe McGrath recommended that the Stormwater Management line item be increased to \$25,000 based on the fact that there will be more activity related to the NPDES Permit; members agreed. He is also working with Sarah Scheinefein (BOH), Jeff Vander Baan (HR) and April Steward on an increase for Melanie.

Having no further business to discuss, Jeff Walsh made a motion to adjourn; Joe McGrath seconded; roll call vote: Burkhardt-aye; Duffy-aye; Walsh-aye; Coakley-aye; McGrath-aye; motion approved.

The meeting adjourned at 8:59 p.m.