



Town of Boylston Conservation Commission conservation@boylston-ma.gov

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REGULAR MEETING MINUTES MAY 15, 2023

Members Present: Mark Coakley, Chip Burkhardt, Jeffrey Walsh, Ron Aspero

Members Absent: Joe McGrath

Others Present: See Attached Sign-In Sheet

Recorder: Melanie Rich

The Chair opened the meeting at 7:00 p.m.

Jeff Walsh made a motion to confirm Tuesday, June 20, 2023 as the next meeting date; Mark Coakley seconded; all voted in favor; motion approved.

Jeff Walsh made a motion to approve the April 10, 2023 Meeting Minutes; Mark Coakley seconded; all voted in favor; motion approved.

Jeff Walsh made a motion to approve the May 1, 2023 Special Meeting Minutes; Mark Coakley seconded; 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#115-427)

Scott Heim (Northeast Ecological Services) was present with an update. He spoke with DEP today about the 401 Water Quality Certification application. DEP wants it incorporated into the Order of Conditions the stormwater drainage analysis pre and post placement of the fill. Based on the analysis which was done by James Tetreault (Azimuth Engineering), they need to create some infiltration basins to handle the roof runoff from the restaurant. DEP said they would not issue a 401 Water Quality Certification unless additional wetland replication was provided; they are short approximately 179 square feet. They propose to come into the property from the north and create a small 200 square foot replication area. The remainder of the work as proposed in the NOI will remain the same. The infiltration basin will be installed outside of the buffer zone. Mr. Tetreault is preparing a revised plan. Mr. Coakley wants to see what the flow is in the replication area; is there enough water going into it to sustain it? Mr. Heim said once they propose to create the area, the Water Quality Certification will not be needed; it will meet the criteria of the Order of Conditions. Mr. Heim requested a continuance. Jeff Walsh made a motion to accept the request for continuance to June 20, 2023 at 7:05 p.m.; Ron Aspero seconded; all voted in favor; motion approved.

PUBLIC MEETING (continued) – 150 Shrewsbury Street (Fuller RV) – Request for Determination of Applicability Application to place a layer of crushed stone on the rear of Plot C to control mud to prevent sinking when parking on the lot.

Sheri and Robert Fuller were in attendance. From the last meeting, the Commission was looking for a larger scale plan. The Fullers explained what they measured from the center of the drain basin point to point and said they put in stakes. The basin is located almost in the middle of their driveway.

The Chair asked for public comment. Kyle Merkosky, representing Route 140 RW LLC was present. He said they would like to understand it because a portion of what was being described is owned by Route 140 RW LLC. They want to make sure that nothing comes back to them on this issue because some of the grading took place without a permit. Mr. Merkosky noted on the plan tonight that the property line shown is no longer there and pointed out where it was. He said months ago they purchased approximately 1,500 square feet and showed where; Mr. Fuller disagreed. Mr. Merkosky said they needed an additional length all the way up from when they subdivided the lots; they needed more frontage for each building. He did not think the property lines shown tonight were representative of what's out there currently. Mr. Coakley said the applicant didn't include the people that own the property. Mr. Fuller said their concern is that water is getting the RVs stuck in the mud in the middle. Mr. Coakley asked if any of the work the Commission would be approving was not owned by the applicant. Mr. Merkosky said according to town records, the property is now Parcel C2 and with it, when they purchased the property, which is Parcel C2, it does run all the way up; it was also included in their subdivision easement. Part of the problem that started this was that after they purchased that property is when some of the stone started getting moved and pushed into the buffer zone on their property. Now that they own that part of the property, it pulled them into the mix. They want to understand what is being done, and since they are the owner of the property, that there was some work done within the buffer zone without a permit. They are being advised by their counsel to make sure that everything is correct. Mr. Merkosky was actually expecting to see a plan distributed to them for a review of any of the work that was done or going to be remediated on their property for approval before it moved forward. They want to see it resolved but have to make sure that it isn't an issue in a few years for whatever reason.

The Commission was unaware that the applicant did not own all the property being discussed. The Commission could not move ahead without clarifying the issues in terms of access and a real plan with the real lot lines. Mr. Merkosky said in terms of access, when the purchase was made, there was an easement agreement to make sure they could maintain access to their rear parcel. When they purchased the second property, at the same time they executed the sale, there is also a document that amended their existing easement that granted the Fullers access in perpetuity back to the parcel; they never lost access to that parcel. Mr. Coakley said the applicant needs to have a document that says the owner agreed to the work. Right now, the Commission is in the position of approving work on someone else's land. Mr. Walsh said the application needs to be clear. The application is on C1A project location; the street address is 150 Shrewsbury Street, Assessors Map 12, Lot 17A Plot C in the rear. He said it refers to one piece of land; one owner. If the activity occurs on two different owners' properties, the application has to be clear about that. The plan needs to be an accurate map of the parcels properly labeled and the application updated; the application needs to be clear on whether the Fullers are going to place the stones on the lot they own or on both. Mr. Merkosky said the important part is that there has already been stone placed on the parcel they own since the purchase of it. He wants to be sure that whatever happens, happens on both parcels because they don't want to touch it; they don't have a permit to touch anything within that area in the buffer zone. He wants to make sure the paperwork is accurate and the Commission approves it. Mr. Walsh asked if the placement of stone took place because of construction activity and was told no. Mr. Merkosky said the stone was placed by Fuller RV. Mr. Fuller said when it rains the two catch basins on the corner clog up solid and the water gushes in. Mr. Merkosky said during construction they used silt sacks and there were a few times they did back up but the site is 95% stabilized now; there are now cape cod berms on both sides of the roadway drainage; corrective action was done the day after a storm. He never saw a backup to where it went into Parcel C.

When they paved the binder coat, they intentionally added a hump over near Parcel C and rounded out the grade to make sure they could get the RVs in and out smoothly, to avoid anything running from the road onto the Fuller parcel. Mr. Walsh will look at how well the drainage works and whether or not runoff in the gutter goes by Fuller's entrance to the rear lot or whether it stay is the gutter. Mr. Burkhardt said unless something comes up in this meeting or subsequent meeting, didn't know if the Commission was planning to have any remediation done; not sure if that rock will be removed since it will cause more disturbance than leaving it there. Mr. Merkosky said they would be looking for something from the town acknowledging that they are leaving it as is. They want to make sure that recognizing that what's on all of the topography when they started their project, that's now going to be different and there's a small chance of anything happening, but they want to eliminate that small chance; they want to remove any liability on their part. Ms. Fuller requested a continuance. Mark Coakley made a motion to accept the request for continuance to June 20, 2023 at 7:10 p.m.; Chip Burkhardt seconded; all voted in favor; motion approved.

PUBLIC HEARING – 578 Main Steet (Warren/Carol Leach) – Notice of Intent Application for the construction of a septic system within the 100-foot buffer zone; no work is proposed within the limits of the BVW.

Matt Marro (Environmental Consultant) was present. DEP issued file number 115-448 with no comments. Green cards and the advertising fee were provided. With the exception of an area very close to the wetland, most of it was ledge. They have received approval from the Board of Health. Erosion & sediment controls will be placed at F100 elevation prior to construction. Mr. Coakley said the Commission would like to see them on the plan. The plan before the Commission says it's not for construction at this time. Mr. Marro said we would receive the stamped set of plans after the approval tomorrow. The Commission had no issues.

The Chair asked for public comment; there was none. Mark Coakley made a motion to close the public hearing; Jeff Walsh seconded; all voted in favor; motion approved. Mark Coakley made a motion to issue a standard Order of Conditions with Special Conditions #35-the plan must be updated to include erosion and sedimentation controls at F100 as described in the Notice of Intent application; and #36-final documents will be held pending final approved plans being received electronically and two hard copies delivered to the office; Jeff Walsh seconded; all voted in favor; motion approved.

COMMISSION BUSINESS

Lucas Rose (Potential Conservation Member) – Mr. Rose is interested in becoming a member. He was introduced to the members. He will need to be appointed by the Selectmen. It was explained that the Mass Association of Conservation Commission holds classes to understand wetland resources, etc. There is a lot of experience on the Commission right now. There is a link for the Commission handbook. The members approved of Mr. Rose becoming a member. Melanie will follow-up with Allie tomorrow to make sure he is on the Selectmen's agenda to be appointed.

Stiles Road Enforcement Order & Order of Conditions (DEP#115-443) Farooq Ansari – Jeff Walsh recused himself from the discussion. Mr. Coakley said it appeared work was done; the road needs to be swept. The Enforcement Order was issued July 19, 2021 for road erosion and sediment issues into a resource area from heavy equipment working on soil sampling and pre-construction activity. Mr. Burkhardt said there was some work done to mitigate it, but it appears some additional soil testing or something went on that caused the subsequent issues. Mr. Ansari said there was some work that was done. They made sure everything was cleaned up. Mr. McGrath had written him a letter about what needed to be done. Mr. Ansari brought photos to show that the work had been done. There is an outstanding Order of

Conditions for the Enforcement Order. We need an as-built plan from the engineer and a request for a Certificate of Compliance to close it out; someone needs to certify the work. Mr. Ansari said James Tetreault will certify the work by the next meeting. Mr. Burkhardt said when they were doing the additional soil testing, they left two big flat rocks in the channel which is what diverted some of the water out of it; it didn't stay in the channel that was reestablished. Mr. Ansari said it has all been cleaned out, the rocks were taken out and everything was restored. Mr. Coakley looked at it today and said it hasn't all been cleaned up, there is still a lot of sediment. Mr. Ansari had pictures from a week ago. Mr. Burkhardt said it was disappointing that it happened again. Mr. Ansari knew there was an issue from the last time and he didn't leave the property in a condition so it wouldn't happen again; somebody made a mistake and it is disappointing that we have to talk about it again. Mr. Ansari agreed that it shouldn't have happened again; he doesn't always know what they do out there; the engineers make the decision. They've been told numerous times that there is an Enforcement Order there and if they do anything it has to be restored. He will have Mr. Tetreault send a letter of certification after his review. Mr. Burkhardt said they work for him and he should know what's going on; he owns the property; he owns the problem. Mr. Ansari was asked if he had to cross the stream again to do more soil testing and was told that he would. The Commission is not comfortable with him crossing without notification; Mr. Ansari is to give 48-hour notice prior to work being done; Melanie will let Dennis Costello know so he is aware before doing any soil testing. Mr. Walsh said if he has any work associated with the 2021 Enforcement Order (any construction activity to be done or any replication), to get the work done and the as-built prepared; get the work closed out.

Consider issuing Certificate of Compliance for Longley Hill (DEP#115-342) Farooq Ansari – Jeff Walsh recused himself from the discussion. Mr. Coakley said he hasn't seen an as-built and the last Graves review had a bond holdback estimation and said we should have a wetland scientist inspect the replication areas; the Commission agreed. Mr. Ansari was told that one of the reasons we did not recommend the road for approval at town meeting was because the last Graves approval letter still identified items that have to be completed. The Commission isn't going to issue any final documents until everything is resolved and complete. Mr. Ansari said there is one Conservation related issue. Mr. Burkhardt said when we receive a letter from Mike Andrade saying that all things are properly addressed, that would be the time to file for a Certificate of Compliance. If he insists on filing tonight, the Commission will deny it. He can withdraw it or refile it once the work is done. Mr. Ansari will file again for the next meeting for both the NOI and Stormwater Permit. There is a letter dated April 25, 2022 from Northeast Ecological; we received it May 3, 2023. Mr. Andrade had specifically asked if the replication area was done properly; the Commission does not have an answer. EcoTec will be asked to do a site visit to confirm the April 25th letter from Northeast Ecological.

Mr. Ansari said he is finishing Lot 11 (DEP#115-442 and SCP#2022-2). He said he is passing papers this month and told the potential buyer that he could get them an Occupancy Permit in June. The Occupancy needs the Conservation signature. He asked what he needs to do so we can sign off on it. Mr. Burkhardt said there were a lot of conditions about stabilization of the slope and septic system. He was not sure the septic system was constructed as approved by the Commission. Mr. Ansari said it was and that Mr. Tetreault submitted a plan for approval. The Commission does not recall ever seeing it. Mr. Burkhardt asked with the retaining wall? Mr. Ansari said they had to buy some land from a neighbor to get it done. Mr. Burkhardt said the last plan he remembered reviewing was that there was suitable material at the top of the slope and that the septic system was going to be installed at the top of the slope. There were calculations done on slope stability based on the loading and the septic system. What has been since constructed is a raised bed with a wall with a different profile and different weight; a different profile for slope stability than what was originally approved. It was a change that the Commission should have looked at before it was constructed. Mr. Ansari said he submitted it to Dennis Costello and it was approved by the Board of Health. He was told Dennis Costello is not the Commission. He said he would

have Mr. Tetreault send us the plan. Mr. Burkhardt said once again he had made a substantial change. We approved what we approved on that lot based on the plans that were submitted to us. The septic system that was constructed is not on the set of plans we have. He doesn't remember the Commission talking about that change; we do not have to approve it. The onus is on him to tell us. In Mr. Burkhardt's opinion, that changes the slope stability calculations because instead of having a septic system that was flat on the top of the slope, there is now something and we don't know how many feet high it is, and a rock barrier wall which preferential loads that half of the slope differently than the other half. The Commission was very very clear that we were worried about slope stability with that construction. He hired Mr. Tetreault and we went through many different drawings and surveying and calculations on the slope and then something different was constructed. Mr. Ansari will ask Mr. Tetreault how different it is. Mr. Burkhardt said if he is looking for any type of quick approval, that is something that definitely has to be addressed. Mr. Coakley said before we sign off for a Certificate of Occupancy an attempt has to be made to stabilize the areas and the owner has to know at the closing that once it closes, it is his or her responsibility. Mr. Coakley asked if the geotechnical consultant gave his approval. The Commission has not seen anything.

Consider issuing a Certificate of Compliance for 12 Bay Path Drive, DEP#115-446 (Jack Wentzell) – Jeff Walsh made a motion to issue a Certificate of Compliance for 12 Bay Path Drive, DEP#115-446; Mark Coakley seconded; all voted in favor; motion approved.

Correspondence & emails were reviewed/discussed.

Onni Wirtenan (5B Cheryl's Way) attended with questions regarding Compass Pointe. He was told the Commission has not received an as-built plan; there has been no communication. The bonds are still in force. Mr. Wirtenan provided photos of detention basins. Mr. Coakley said when they send in a request for a Certificate of Compliance, it will be evaluated completely. Mr. Wirtenan asked about conveyance of land. The Commission was never included in the discussions about the town taking sections of Spruce Pond and the DEP and doesn't know if it was ever offered to the town.

Additional Item(s): CPC Discussion (Ron Aspero) – Mr. Aspero said the CPA met and is looking for input from various boards in regard to board's desires, i.e., priorities, developing criteria for open spaces acquisition, priority list of properties most important to protect wildlife and habitat resources. A certain amount of money (10%) will be devoted to land acquisition and conservation. It doesn't have to be spent in the first year; it could be set aside. Mr. Burkhardt said as an entity we can't acquire land; the town would do that based on our recommendation. Joe McGrath would be the knowledgeable person to speak; he has advocated to the Selectmen in the past.

Having no further business to discuss, Chip Burkhardt made a motion to adjourn; Mark Coakley seconded; all voted in favor; motion approved.

The meeting was adjourned at 8:50 p.m.