



Town of West Boylston

140 Worcester Street, West Boylston, Massachusetts 01583

Conservation Commission Meeting Minutes

Date / Time / Location of Meeting

Monday, 11/7/2022 6:00p.m./ MEETINGS TAKING PLACE AT WEST BOYLSTON TOWN HALL, LAND USE MEETING ROOM

Members Present

William Chase (Chair), Emily Eaton, Carl Haarmann, Jeffrey Perkins (Associate Member) and Clerk Toby Goldstein.

Members NOT Present

David Mercurio (Vice-Chair) and Colin Cahill

Invited Guests

N/A

Welcome – Call to Order

Time: 6:02 p.m.

Approval of Previous Minutes

Minutes of 10/3/22 Meeting

Motion Originator Emily Eaton

Motion Seconded Carl Haarmann

Treasurer – Financial Report

Mr. Chase reviewed the report prior to the meeting; he briefly discussed with board this evening.

Motion to Accept N/A

Seconded N/A

At 6:02 pm, Mr. Chase called the meeting to order.

Continued Public Hearing, David Brunelle and John Evangelista, Notice of Intent, 0 Shrine Ave.:

(Scott Goddard and Joseph Evangelista represented). (Ms. Eaton read aloud the continued public hearing notice). Mr. Goddard informed those present that there was no new information to present since the last meeting (October 3, 2022) except for the proposed Homeowners Association (Shrine Avenue Homeowners Trust) regulations, which were sent by email previously to the Commission. Mr. Evangelista explained that his lawyer laid out this document and discussed what it addresses, which are annual maintenance including clearing of the streets, control of the site and keeping the system in continuous working condition; in response to Mr. Chase, he replied that this applies to either those owning condos or renting apartments., individual or group ownership; they

have to abide by the trust. Rick McGrail of 4 Cavour Circle asked, if he were to sell a unit, would he receive 1/9 of the revenue in the trust? Mr. Evangelista replied that the reserves do not leave the account but noted that he was not a lawyer. Mr. Evangelista explained that each owner owns 1/9 interest in the trust and is responsible for 1/9; it is a division of costs. He said that he had never seen anyone leave with reserve funds. Mr. Chase opined that it would be part of the closing costs. As a resident of Angell Brook, Ms. Eaton explained that the reserve fund is separate and belongs to the trust and that the units are up for sales but not the trust; Mr. Evangelista added that it just remains there and noted that he would not get any of that. He explained that his attorney couldn't attend the meeting tonight but that he believes in Massachusetts the funds in a trust of this type stay there when a unit is sold, and he gave an example of a unit that he recently sold in another development. Mr. Evangelista added that the aforementioned maintenance document is to take care of the maintenance aspect of the project. Mr. Haarmann asked if the drainage will be sufficient? Mr. Goddard replied that MA stormwater management standards must apply for a development greater than five units, and the design standard is for 2-, 10- and 100-year storms, and explained that water will be attenuated on site before its discharged up to the 100-year storm. Mr. Haarmann asserted that the document stated that maintenance is partly done by covenant, and opined that covenants can be weak, depending on if they are enforced; he questioned if the extensive details to maintain this can be done by covenants? He added that his experience with covenants is that they are forgotten after a few years. (He added that he appreciated what Mr. Evangelista did for the vernal pool, but those were his two issues with the project). Mr. Evangelista replied that they will address it, and noted that his understanding is that the condo documents will have fees, budgeted for maintenance. Mr. Chase responded that his concern was that there have been problems as to who owns the properties but now they would have a body that they can go to for maintenance. Mr. Goddard suggested that there can be a condition in the Order of Conditions that the trust will submit an annual report to the Commission and they can enforce this (Mr. Chase and Ms. Eaton opined that this was a good idea and they can add this to the Order of Conditions section for "Conditions").

Rick McGrail of 4 Cavour Circle asked how this can be enforced? Mr. Chase replied that part of the conditions will be regular maintenance and an annual report. Mr. McGrail asked if they have gone back and evaluated the plan that the specs are based on? Mr. Evangelista and Mr. Chase replied that there will be an "as-built" where everything will be re-plotted when completed to be sure that it complies. Mr. Chase added that it will be a stamped plan by the engineer, which gives the board legal access.

Mr. Goddard continued that right now everything discharges into the wetland and the topography and drainage will continue to go toward the wetlands, and asserted that the water is not getting diverted to the adjacent property. Mr. McGrail responded that this is nature, and asserted that if there is an abutment such as through building, the water is going to go somewhere else. Mr. Chase responded that the water will go to the detention ponds and it is designed to do so. Mr. Evangelista asserted that the water will not reach Shrine Ave., citing the comments of a resident, who told him that water never came within ten feet of his property.

Mr. Haarmann then asked Mr. Evangelista if he tried to sell the land? Mr. Evangelista replied that DCR did not want it, and opined that this project will be good for the Town and that more housing was needed. In response to Mr. Evangelista, Mr. Goddard replied that they need to file with Planning Board for Site Plan Review. Mr. Evangelista also opined that this project will increase property value and that it will look nice in the neighborhood.

With no more questions or comments, Ms. Eaton made a motion to close the public hearing. Mr. Haarmann seconded. All in favor. The board then deliberated. Ms. Eaton commented that she understood that many of the residents do not want this project, but based on what this board is allowed to do, she saw no reason to deny the project based on the technical specs. She made a motion to approve the proposal as written. Mr. Haarmann said he would second that. Mr. Chase, Ms. Eaton and Mr. Haarmann voted "yes", but Mr. Perkins responded that, even though he was not present at the earlier public hearings for this, he did not see much difference between these plans and the original. He explained that he had build a lot of subdivisions and opined that building to a 100-year storm is inadequate. He also asserted that the Town has problems with drainage in the entire area and he's concerned with the stress that it puts on the infrastructure, as the water will go where it wants to go; he said that he was inclined to vote "no" based on what he understands. Mr. Haarmann commented

that he was impressed with the applicant's presentation and opined that he did not know enough to find fault with it. He thought that this looked like a complicated maintenance issue. He added that his experience with covenants was that people forget about them, but thought that, if the board can require a maintenance plan and enforce it with severe penalties against violations then it would be alright. He noted that the board is concerned with the vernal pool but that the applicant has improved it. Mr. Haarmann commented that, as much as he is concerned, he cannot find any reason in the law to reject the proposal, and thought that if the citizens were concerned that someone would have bought the property with the neighbors. Conversely, he believed that there were property rights concerns regarding the property owner as well.

One resident asked if the board could take a vote of the residents attending this evening, as to how many were for and against the proposed project? Mr. Chase noted that his vote on the proposal was "yes", and that he would have the covenants and annual reporting condition for the record but that they will hold off on writing the covenants until the applicant appears before Planning Board and Planning Board gives their input. Mr. Chase said that the audience could give a show of hands as to who approves and disapproves. (When Mr. Chase asked for a show of hands, four residents were in favor of the project and five were opposed. Mr. Chase told them that he understood their feelings, but noted that the board can only do so much, as he asserted that the board has abided by everything in the law that they are supposed to do. Therefore, with a roll call vote, the vote of the board was 3 "yes" (Mr. Chase, Ms. Eaton and Mr. Haarmann) and 1 "no" (Mr. Perkins), and the Order of Conditions was granted.

Other Business:

Informal Discussion Regarding Updated Plans for 0 Bowen Street: (Scott Goddard represented). Mr. Goddard gave a brief history of this proposed project, which was to build a single-family home on this property. He discussed that he appealed the decision of the Conservation Commission to deny the Order of Conditions in November, 2021 to DEP and noted that the neighbors are not a party to this appeal. He mentioned walking the site with DEP representatives (he explained who) and that they wanted him, in the far back right-hand corner of the property, to have more separation between the project and the wetlands (he showed the board this on his updated plans). Mr. Goddard showed the board on the revised plans how he moved and rotated the house and garage to achieve what DEP wanted (he basically "flipped" the past proposal). He pointed out to Ms. Eaton the street, wetlands and stream, and noted that the neighbors had input. He asserted that DEP is ready to act and said that they issued a Superseding Order of Conditions but wanted feedback from the board on the revised plans; he thinks that they will approve his project but they want to integrate the Commission's comments.

Mr. Chase responded that he had a problem with the water at the location and the discharge onto Henry Street; he explained that Mr. Goddard's lot is dry but opined that water will move faster down to the neighbors. Mr. Chase's concern was that, even though Mr. Goddard's engineering is correct, the work will affect the neighboring properties. Mr. Goddard asserted that there is always a stream there and the water goes downstream. Mr. Chase asked if the water can be piped? Mr. Goddard opined that it would alter the intermittent stream, the stream bank and the bordering vegetated wetland, and added that DEP wants less impact, not more. Mr. Chase opined that there would be a problem with the neighbors; Mr. Goddard claimed that certain neighbors have filled in wetlands in their backyards (he pointed this out on the map) and have low-lying lots.

Citizen Joseph Menendez of 61 Bowen Street asked how long these hearings for the property have been going on, as he is an abutter to an abutter and said that he had never been notified (Mr. Chase informed him that it is not required for him to be notified by letter). His wife opined that the lot is not buildable and building a house on the lot will cause more problems on both Bowen and Henry Streets, such as water running onto Henry Street and turning to ice in the winter, causing a dangerous situation. Mr. Menendez continued, that they live two lots up from 0 Bowen and they get water when it rains; he opined that the drainage is terrible there. Mr. Chase opined that this is from sheet water from the golf course, and asserted that what Mr. Goddard proposes is correct according to the law, but opined that they will end up in court. In response to Mrs. Menendez, he explained that the board does have regulations but asserted that Mr. Goddard has done everything according to Chapter 310, and asserted that when it is dry, water sitting on this lot is going to go to other lots. Mr. Menendez opined that people

on Henry Street would really be the recipients of the water. Mr. Goddard acknowledged that the neighborhood has drainage issues, but building on one lot will not cause it and that there is a broader issue. Mr. Menendez opined that it will affect Henry Street more than Bowen. Mrs. Menendez claimed that 0 Bowen is the only lot with a stream going through it. Mr. Chase described where the stream goes relative to other houses.

Mr. Goddard then mentioned, and pointed out on the map, two properties where building took place where he opined it should not have happened; he claimed that a resident on Henry St. put on an addition without a permit and that the same conversation should have taken place then. Mr. Chase responded that the Building Inspector did not tell him about this. Mr. Goddard asked, why punish the builder who does it right by abiding by the Wetlands Protection Act when others built without such permission?

David Femia (ZBA Clerk) wanted to know about DEP walking the property. Mr. Chase replied that the board was there (Mr. Chase himself was there three times) with Mr. Goddard and he has redesigned it, and responded that DEP can overrule the Commission. Mr. Femia opined that DEP should consider the effects that the project will have. Mr. Goddard responded that DEP could have acted without the board's input. Mr. Chase brought up the possibility of legal problems as a result. Mr. Haarmann commented that it was not as if the Town has not been having drainage problems in that area. In response to Mr. Femia, Mr. Chase replied that they can suggest to DCR that a swale can be built, then pipe a section below, and bring it across Franklin Street to wetlands down below. Mr. Chase responded to Mr. Femia that this is all DCR land (and showed it on the map) and added that DCR reviews all of the board's decisions. Mr. Goddard added that the Town could solicit a drainage study there. He referred again to the two aforementioned properties that he claimed should not have been built upon, commenting that they were actively in violation of the Wetlands Protection Act but are complaining against him now. He opined that there should have been enforcement orders against both. Mr. Femia asked if the board had talked with Town Counsel? Mr. Chase responded that they could do that, or issue an enforcement order. Mr. Femia asked what would be less expensive, to hire a specialist or for the Town to go to court? Mr. Chase opined that they should do a study. Mr. Femia opined that it would be a good idea to obtain Town Counsel's input on this and what could happen.

Mr. Chase then posed to Mr. Goddard the possibility of his selling the lot; Mr. Goddard replied that he did not think it was relevant to the discussion right now. Mr. Chase suggested that CPC could buy the property for the Town and Mr. Goddard agreed that it could be on the table and they could have an open conversation about it. Mr. Chase, Mr. Goddard and Mr. Menendez then discussed getting together a roundtable meeting with the Building Inspector, Town Administrator, Town Counsel and the neighbors involved. Mr. Goddard then reiterated that DEP is looking for comments from the Conservation Commission, stating if they approve of the new plans or if they see any red flags so they would not support the project. Mr. Chase continued that the water problem is his only red flag, but there are already other problems there as well. Mr. Goddard responded that they want to know if the Commission is on board with the revision or still in opposition. Mr. Haarmann commented that his impression when walking the property was that it wouldn't make sense to build a house there and asked how the situation could be sustained? He asked the residents, as these problems have existed for a long time, why the sheet water was allowed to keep freezing, and why did the neighbors not buy the property to control the use of it? Mr. Menendez and his wife replied that they did not know that it was for sale and asserted that they would have bought it if they knew. Mr. Menendez asserted that they tried to have the Town fix the situation years ago. Mr. Goddard continued, opining that the water problem probably was not just from this lot but a greater neighborhood problem, but all the discharge goes into catch basins and feeds the stream channel, and he opined that it should be disconnected from this conversation. He asserted that DEP was ready to approve. Mr. Chase noted that a restraining order can be placed on DEP. Mr. Goddard responded that DEP wants feedback, comparing the prior plan to the present one. Mr. Chase opined that this is a better plan but he was concerned with the neighbors and reiterated that he would like to go to the Town and get input from the Building Inspector, Town Administrator and Town Counsel, and suggested that they need to know if the Town has money for proper drainage. Mr. Goddard opined that the problem will always be there and that it is bigger than this situation. Ms. Eaton opined that this project will impact the area and, based on what is already going on and how much worse it will be after, she would vote "no". Mr. Chase asserted that he is trying to be fair to everyone. Ms. Eaton opined that there is a difference between this project and the one discussed previously this evening (continued public

hearing for proposed condo units at 0 Shrine Ave.) because the Shrine Ave. project will not cause problems for other people, whereas this one at 0 Bowen will make things worse down the line for the neighborhood and is a bigger issue.

Mr. Femia continued, to Mr. Goddard, that what concerns him as a resident of the Town is a possible lawsuit. He recommended that they write to DEP and tell them that they would like to do further study on this. He opined that DPW must correct this and they need to know. He asserted that a lawsuit would affect everyone. Mr. Chase asked Mr. Goddard to give him until the next meeting (Dec. 5) and that they owe it to everyone's interests, and thought that the new design is better but there will still be problems for the neighborhood. In response to Mr. Menendez, Mr. Chase replied that the Board of Selectmen would get DPW involved in this. Mr. Goddard suggested that, if the Town bought the property, they could use it for water management purposes such as storage. Mr. Chase opined that this would alleviate other problems, and noted that CPC has funding that could be used for that and that this should be on the table. Mr. Chase, Mr. Haarmann and Mr. Menendez discussed how this situation might be bringing to a head the complaints that the residents have had for years. Mr. Menendez talked about past attempts to deal with the water coming from the golf course. Mr. Goddard suggested that building houses into the groundwater table, instead of using slab construction, causes problems. Mr. Chase responded that there is perhaps a 30-inch water table there. Mr. Goddard opined that it needs to be dealt with higher into the watershed. Mr. Goddard then asked for Ms. Goldstein to reach out to DEP to give him 30 days to respond on how to proceed next.

63 Shrine Ave., Unit 2, Request for Certificate of Compliance: Ms. Goldstein reported to the board that she discovered that the resident that was supposed to be represented by the attorney who sent the Request told her that she had sold the property; the attorney was going to check into this but Ms. Goldstein had not heard from him and he did not attend the meeting, so no discussion took place regarding the Certificate of Compliance this evening.

Quinapoxet Dam Removal Project Order of Conditions: This Order of Conditions was issued several months ago (May, 2022), but MA DEP did not want it released until a Combined 401 WQC application was completed and accepted by DEP; the applicant emailed the Commission a copy of DEP's response to the application, which was acceptance and certification, and Mr. Chase informed Ms. Goldstein that she can add this paperwork to the Order of Conditions and send it out to the applicant and MA DEP. (There was some conversation with Mr. Femia as to when work will begin, noting that it was held up by the 401.

Minutes of October 3, 2022 Meeting: After review of the draft minutes by the board members, Ms. Eaton made a motion to approve the minutes as written. Mr. Haarmann seconded. All in favor.

Issuance of Complaint to Bank of America regarding Prospect Street: Mr. Chase informed the board about this situation, which is that old containers with medical waste persist on the property that had belonged to Dr. Tashjian but was foreclosed upon by Bank of America. They split the lot and the trash is on one lot. Mr. Chase explained that the property owner will not respond to the Building Inspector's requests to clean up the lot, and Mr. Chase informed the board that the owner can be fined \$25,000 per day. The board members signed the signature page for an Enforcement Order, showing that the board agrees to send this to Bank of America.

Update Regarding 256 Worcester Street: Mr. Chase explained that Mark Meola, owner of this property, took down trees, which was upsetting to the neighbors. Mr. Chase had told him to cease and desist the cutting, stating that the neighbors want a buffer zone, cleaning up of the debris caused by the cutting, conversation before any other work is done and allowing of the land to stabilize. He said that all parties agreed to that and he will write up a letter with Ms. Goldstein and submit it to the Building Inspector to send on his letterhead as the Town's enforcement officer.

Treasurer's/Financial Report: Mr. Chase reviewed the most recent report at the meeting and discussed it briefly with the board.

Miscellaneous Mail and Paperwork: Mr. Chase had reviewed any mail prior to the meeting and informed the board that there was nothing of importance for them to go over this evening.

NEXT SCHEDULED MEETING – MONDAY, DECEMBER 5, 2022, AT WEST BOYLSTON TOWN HALL.

With no further questions or comments, Mr. Perkins made a motion to adjourn the meeting at 7:10 p.m. Ms. Eaton seconded. All in favor.

Submitted by: _____

Reviewed by: _____

Date submitted: _____