

Approved: February 8, 2021

**Select Board Meeting: January 25, 2021**

**Present: Freiman, Ulfelder, Olney, Sullivan Woods, Aufranc**

**Also Present: Jop, Frigulietti**

**Warrants approved: none**

**Meeting Documents:**

1. Agenda
2. Draft BOS Calendar
3. Images of 28 Crescent Road
4. 28 Crescent Road as built foundation plan
5. ZBA documents, decision and submitted plans – 28 Crescent Road
6. Timeline prepared – Amir Kripper
7. Encroachment Letter
8. Encroachment Policy
9. Minutes from ZBA Meeting re: 28 Crescent Street
10. Police Patrolman Union Contract & Tentative Agreement
11. Draft Annual Town Meeting Warrant
12. Slides from Advisory meeting 1/20/21
13. Draft Minutes: 10/1/20; 10/30/20

**1. Call to Order**

Ms. Freiman, Chair, called the meeting to order at 6:00 pm online.

Ms. Freiman announced the meeting was being streamed live on Comcast channel 8 and Verizon channel 40 and by Wellesley Media and recorded for subsequent viewing on the cable channels or at [wellesleymedia.org](http://wellesleymedia.org).

**2. Citizen Speak**

Ms. Theermann of Aberdeen Road joined the Board. On behalf of Sustainable Wellesley, she thanked the Board for its support of the SEC and the Climate Action Plan. She added that the Board had discussed Green Power at the previous meeting and reviewed actions taken by the Board, Town Meeting, SEC, and the NRC to support the Climate Action Plan to address the impacts of climate change. She asked that the Board support participation in the Green Power Program.

Mr. Novins, a resident, joined the Board. He stated that he was concerned about the Town's standing on the environment, and addressed climate change. He expressed his concerns that the Town was considering to end the Green Power Program.

Vaani Kapoor, a Wellesley High School Student, joined the Board. She stated she is the President of the Wellesley High School Climate Action Club. She expressed concerns that the Town was considering to end its involvement in the Green Power Program due to budget constraints. She noted that the Town was behind in meeting its climate goals.

Ms. Freiman stated that the Board had not discussed withdrawing from the voluntary renewable energy program, but rather, how to best utilize the Town's resources to achieve the Town goals.

### **3. Announcements**

Ms. Sullivan Woods stated that the Governor had made additional announcements regarding the COVID vaccine rollout and encouraged residents to visit the State website to learn about vaccination sites and eligibility for signing up.

Ms. Aufranc stated that she and Ms. Jop met with the MWRTA regarding the micro-transit initiative in Wellesley. She added that the program was currently in a pilot phase and continued to discuss the program with its current ridership and expected a full rollout in mid-February. She briefly described the program, noting that it was expected to work similar to Uber or Lyft service for intra-Wellesley trips.

### **4. Discuss Encroachment and Trespass on Town Land from 28 Crescent Street**

Mr. Harrington, Town Counsel; Mr. Hickey, Town Engineer; Mr. Hadley, Contractor for the homeowners; and the homeowners Mr. Kripper and Ms. Litani joined the Board.

Ms. Jop stated that a resident had sent a notice to the Board that construction at the property appeared to be impacting the aqueduct. She reviewed the Town's notice to the homeowners and contractor for the project as well as discussions with the Engineering Department regarding the encroachment onto and damage to Town property. Mr. Harrington reviewed the Town Encroachment Policy noting that the Board has control of the land and would be responsible for determining how to address the trespass. He stated that he believed that the trespass was at several points, including a concrete block wall constructed below grade and adjacent to the new construction; additional excavation up the hill leading to the cross-town trail significantly damaging trees; a retaining wall which prior to the excavation had been built on Town land; installation of a temporary chain-link fence likely to secure the foundation hole; and potential negative impact to the Cochituate Aqueduct pipe that sits beneath the trail. Mr. Harrington stated that Ms. Jop's office had determined that the encroachment was a level three, posing potential or immediate safety, health, or other hazardous condition. He added that the Board had the responsibility to establish a restoration plan, drafted by either the Town or the homeowner. He stated that he believed the homeowner would ask the Board to leave the concrete wall in place. Mr. Harrington stated that if the Board allowed the concrete wall to remain, an easement to the homeowner would be necessary which would require Town Meeting approval. He briefly reviewed the process outlined for a restoration plan in the policy. He added that Mr. Hickey would discuss the impacts of keeping the concrete wall in place or removing it depending on how the Board wished to act. Mr. Harrington stated that neither the ZBA special permit nor the Building Department permit addressed the means and methods of construction. He noted that he believed either permit would assume construction activity occurs exclusively on the permit holder's land.

Ms. Jop stated that the retaining wall was built without a permit, and added that depending on height not all walls require a permit; however, it was built on Town land. She added that there had been past instances of encroachments such as retaining walls or fencing that were ordered to be removed at the owners' expense. She noted that homeowners frequently clear portions of the aqueduct and are then required to restore the area to its natural state. Mr. Hickey reviewed prior removals of retaining walls in the area.

Mr. Kripper stated that he bought the house eight years ago and there had been a garage in the same location as the new garage being built. He added that the home was built in 1875 on a nonconforming lot and the retaining wall was added to reduce runoff and debris that had become a problem. Mr. Kripper stated that he knew he had the retaining wall built close to the property line but was unaware it was on Town land. Ms. Jop stated that when construction began on the new foundation for the garage, the soil in the area in question became destabilized and sand began coming into the construction which caused the contractor to add the concrete wall for stabilization. Mr. Kripper stated that the conditions escalated

quickly and expressed his apologies for acting without discussing the concrete blocks with the Town. He added that it was not his intention to encroach onto or compromise Town land.

Mr. Hickey stated that the prior garage was built on a slab slightly lower than the grade of the house. He added that the planned basement level of the garage aligned with the current basement of the home, making a connection. He added that while digging the test pit for the new construction, there should have been a focus on the soil composition prior to continuing construction. Mr. Kripper reviewed photos of the previous construction, prior surveys, and proposed construction on the footprint of the garage. He stated that he was proposing leaving the concrete blocks in place, raising the grade to mitigate the slope of the hill to the aqueduct. He added that he intended to replace a tree that had been lost.

Mr. Ulfelder expressed concerns that the homeowner and the contractor did not foresee problems with beginning the project so close to the property line. Ms. Olney noted that the homeowners had prior survey plans and should have been aware of the property line. She added that the project not only excavated Town land but also undermined the roots of at least thirty trees. Ms. Freiman reviewed the different trespasses by the homeowners outlined earlier by Mr. Harrington and asked if it was possible to stabilize the project while a restoration plan was prepared. Mr. Hickey stated that the project was currently more stable although erosion continued. He added that he had concerns for the backfill of the space between the foundation and the temporary blocks should the Town allow for the homeowners' mitigation proposal.

Mr. Kripper reviewed the survey that indicated the location of the aqueduct and believed it would not be impacted by the remediation proposal. Ms. Sullivan Woods stated she would like the immediate safety issues associated with the instability of the hill and current fencing installation remediated as soon as possible. Mr. Hickey stated he did not believe the aqueduct was in jeopardy but was a concern to be aware of as some of the slope had been lost. He added that leaving the concrete shoring would likely be the most static and least disruptive to the aqueduct. Mr. Hickey stated that filling in and freezing the walls and soil erosion may be the best solution from a public safety standpoint based on conversations and opinions of the on-call structural engineer who visited the site.

Ms. Freiman stated that the Board was responsible for developing a restoration plan. She added that the homeowners built a retaining wall without a permit on Town property, erected a temporary fence on Town property, and eroded the ground at the aqueduct and had already lost at least one tree. She asked for consideration of what the impacts would be if the Board required full removal and remediation before the owners could begin again with the permitted project. Mr. Ulfelder noted the position of the Board regarding encroachments and the precedent of requiring other homeowners to fully restore Town property. Ms. Freiman stated that allowing the owners' proposal to move forward opened the door to allow for other encroachments and damage to Town land. Ms. Aufranc asked that a structural engineer review the option to restore the area to be sure it would not cause more damage to Town land, the homeowner, or other owners in the area. Ms. Olney stated she would prefer to have a determination of the location of the aqueduct by an independent engineer. She added she did not believe the owners' remediation plan would be accepted by Town Meeting given the circumstances. Ms. Sullivan Woods expressed concern that the current concrete blocks were not secured and asked to consider how best to safely maintain the site until a determination is made for restoration. The Board generally agreed to engage a structural engineer or other experts to investigate and contain the site and to provide options to the Board how best to remediate the trespass and encroachment.

Mr. Hickey stated he had met with one of the on-call structural engineers and believed an assessment and recommendations could be submitted in a timely manner. He added that the two items that the Board would require additional information on was the temporary shoring and whether keeping it would be allowed as an easement. Mr. Hickey stated that if the current temporary walls were removed, another type

of temporary shoring may be necessary to avoid creating a larger hazard. He added that he believed there would be no way to install shoring within the boundary. Ms. Litani stated that the original retaining wall had been built due to erosion that had been taking place and believed the soil conditions and erosion had worsened over the time they have owned the home.

The Board discussed the encroachment, construction, and the best course of action to secure the site while restoration of the site was determined. The Board agreed to have Ms. Jop, Mr. Hickey, and Mr. Harrington engage a structural engineer to advise the Board on the best short term safety options. Ms. Freiman added that the Board would discuss and determine a restoration plan.

## **5. Discuss and Vote Contracts**

Ms. Jop stated that the contracts had been approved the tentative agreements to the contract. She added that the contract language had been updated based on the tentative agreements and to be gender neutral. She noted minor errors that had been distributed to the Board prior to the meeting.

**Upon a motion by Ms. Sullivan Woods and seconded by Mr. Ulfelder the Board was polled and voted (5-0) to approve the contract as amended with letters as discussed with the Wellesley Police Patrolman's Association from July 1, 2020 through June 30, 2023 and to authorize Executive Director Meghan Jop to apply the Boards digital signatures.**

**Sullivan Woods – Aye**

**Olney –Aye**

**Ulfelder – Aye**

**Freiman – Aye**

**Aufranc – Aye**

## **6. Annual Town Meeting Preparation**

Ms. Jop stated that the Planning Board was discussing at its meeting that evening whether they would modify or remove some of their potential articles from the warrant. She added that the Board was expected to sign the warrant on February 1<sup>st</sup> and would begin working on bylaw language to consider for the Affordable Housing Trust. Ms. Jop stated that Ms. Frigulietti continued to review and assess information regarding the potential article for a reduction in seating requirement for alcohol licenses. She added that a revision to the seating requirement would not require a ballot vote but only Town Meeting action and then a Home Rule petition to modify the Special Act. Ms. Jop stated that she would be providing additional information regarding the Town Clerk's salary article language. She added that a draft would be sent to Department Heads to review and clean up language and sent again to Town Counsel.

Ms. Jop stated that she had presented a budget overview to Advisory the previous week. She added that capital reductions remained in process and incremental progress was being made. She noted that the School Committee would be voting on the School Department budget. Ms. Jop stated the Town-Wide Financial Plan should be presented in early March. The Board discussed the budget assumptions and progress made to close the deficit.

## **7. Executive Director's Update**

Ms. Jop noted the sets of minutes.

**Upon a motion by Ms. Sullivan Woods and seconded by Mr. Ulfelder the Board was polled and voted (5-0) to approve the minutes of October 1, 2020 and as amended October 30, 2020.**

**Sullivan Woods – Aye**  
**Olney –Aye**  
**Ulfelder – Aye**  
**Freiman – Aye**  
**Aufranc – Aye**

**8. New Business and Correspondence**

Ms. Sullivan Woods stated that for any resident wishing to run for Town Meeting Member, papers were due to the Clerk's Office on January 26th.

Ms. Jop stated that some residents were unaware of several announcements made and encouraged residents to sign up for the Town News and Announcements on the main Town webpage.

**9. Executive Session**

Ms. Freiman requested a motion that the Board vote to convene in Executive Session for the purposes of discussing strategy with respect to collective bargaining with all unions and to consider the purchase or lease of real property and declared that having such discussions in Open Session would have a detrimental effect on the Town's bargaining position.

**At 7:52pm upon a motion by Ms. Sullivan Woods and seconded by Mr. Ulfelder the Board was polled and voted (5-0) to enter Executive Session under M.G.L. c. 30A, §21(A), exemption #3 –to discuss strategy with respect to collective bargaining with all unions for health insurance and to enter executive session under M.G.L c. 30A, §21(A), exemption #6 to consider the purchase or lease of real property as the Chair has declared that having such discussions in Open Session would have a detrimental effect on the Town's bargaining position and to invite Meghan Jop and Amy Frigulietti to join the meeting. Upon the adjournment of executive session, the Board will resume the meeting for the sole purpose of adjourning.**

**Sullivan Woods – Aye**  
**Olney –Aye**  
**Ulfelder – Aye**  
**Freiman – Aye**  
**Aufranc – Aye**

**Upon a motion by Ms. Sullivan Woods and seconded by Mr. Ulfelder the Board was polled and voted (5-0) to exit Executive Session and return to Open Session.**

**Sullivan Woods – Aye**  
**Olney –Aye**  
**Ulfelder – Aye**  
**Freiman – Aye**  
**Aufranc – Aye**

The meeting was adjourned at 8:37 pm.

The next regular meeting is scheduled for February 1, 2021 at 6:00 pm online.