

## Compilation of Hoyts Wharf Materials Released from Executive Session

Released Hoyts Wharf parcel (249-51) and adjacent Town owned parcel (249-57) information includes executive session minutes and contractor reports on rare species habitats (see Rare Species Habitat Assessment Report authored by LEC on December 8, 2021), wetlands delineation (see Existing Conditions authored by Dillis & Roy on February 2, 2022, and soil exploration (*forthcoming*). For more recent Hoyts Wharf Parcel information, refer to regular session minutes.

### March 23, 2022 Executive Session minutes

#### Executive Session Topic #1 Review request for public records disclosure related to previous executive session [March 2, 2022 – Hoyts Wharf Rd./Cow Pond Brook Rd. (parcels 249-51 & 57)]

On March 4, 2022, Anna Eliot made a public information request for any and all documents used by the Affordable Housing Trust for its executive session on March 2, 2022. The Town responded on the same date and refused to release any documents based on the chair's determination that release at this time would defeat the purpose of the executive session. However, the documents would be reviewed at the next scheduled meeting of the Trust on March 23, 2022. Then, Anna Eliot submitted an Open Meeting Law (OML) complaint with the Attorney General's office on March 6, 2022. A copy of that complaint was previously distributed to the Trust. Town Clerk Michael Bouchard has stated that the Trust has 14 business days to respond to both Anna Eliot and the Attorney General's office. The 14<sup>th</sup> day is March 28, 2022.

Test holes were dug on March 22, 2022 with Dillis & Roy Engineering receiving the help of a DPW backhoe operator with backhoe to dig the test pits. Fran Stanley has not received any report from the engineering consultant on their findings as a result of this testing. Becky Pine said that even without specifics, the Trust can assume that the development capacity of the land will be limited. Fran Stanley was directed to write a site assessment summary for the two parcels similar to the report that was done for the Surrenden Farm Reserve Parcel. The summary will be shared with the Community Preservation Committee as expected and also posted in a couple of places on the Town of Groton website.

Becky Pine summarized the history of the Hoyts Wharf parcel executive session matters noting that the site was moved up as a priority for site assessment due to the potential for cooperation with the Heritage Landing developer (parcel 248-42 on Cow Pond Brook Rd.). In order to provide this site assessment information to the public, then the matter must come out of executive session first. That step would release the reports and documents and also the executive session meeting minutes pertaining to these parcels. Trust members discussed the December 2021 Natural Heritage meeting and that the possible affordable housing uses could be a group home or land provided for a Habitat for Humanity build. In order to pursue affordable housing by an outside developer, then the Trust would need to first have an engineer subdivide a developable lot.

The Trust discussed that the main purpose for the executive session on the Hoyts Wharf parcel and the adjoining Town owned parcel was for negotiation with the developer of the prospective 40B development across the street. Trust members acknowledged that they are still in the process of reviewing the site assessment data since the soils report hasn't come in yet but by consensus, they agreed to release the material now. Carolyn Perkins commented that the Trust did not throw Anna Eliot out of the meeting. Phil Francisco said that the Trust responded to every question asked, then asked if Anna Eliot had any questions and then the group stated that they were moving on to the next topic.

*Carolyn Perkins moved to release consultants' reports and expected pending reports on soils and to release a summary of Hoyts Wharf parcel site assessment to be created. Phil Francisco seconded **and the motion carried (4:0) by a roll call vote of Francisco – aye, Perini – aye, Perkins – aye, and Pine – aye.***

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*Phil Francisco moved to authorize Fran Stanley to extract the Hoyts Wharf parcel topic information for release from past approved executive session minutes. Carolyn Perkins seconded and the motion carried (4:0) by a roll call vote of Francisco – aye, Perini – aye, Perkins – aye, and Pine – aye.*

### March 2, 2022 Executive Session minutes

#### Hoyts Wharf Rd./Cow Pond Brook Rd. (parcels 249-51 & 57)

The Trust members introduced themselves and their cameras for this virtual meeting were turned on. Becky Pine said that the Trust knows that the Park Commission is interested in the use of property that the Trust knows something about and so called this meeting to share that information.

Becky Pine explained that in the fall, developer representatives for Heritage Landing approached the Trust about cooperating on development across both Town owned parcels and the developer's site (parcel 248-42). In order to evaluate this proposal and to prepare for negotiations with the developer, the Trust contracted for a wetlands delineation, a habitat assessment, soils testing and have met with Natural Heritage.

Becky Pine stated that for various reasons we are not doing anything with this developer. The Trust has not yet received the soils report. Soon, this matter will come out of executive session but for now we ask you to keep this information private. Fran Stanley shared her computer screen and the attendees viewed Figure 1 and Figure 2 from the Habitat Assessment. Becky Pine explained that Blanding's Turtles move all over this site between vernal pools, marshes, etc. Natural Heritage said that the turtles probably travel from Town owned land on the Westerly side of Cow Pond Brook Road across the street to the Heritage Landing site.

Anna Eliot asked what is secret about it. She said that she feels uncomfortable with this conversation because this does not seem like executive session material. Becky Pine replied that it is the potential for negotiations with the developer is the reason why this matter is in executive session. Becky Pine asked if Anna Eliot had any questions. With no questions asked, Becky Pine said that they are going on to the next executive session topic. Anna Eliot said that she is sure that the reports will be shared with the public promptly. Anna Eliot left the meeting at 7:18 pm. Donna Main clarified her understanding of what the Trust members were saying, thanked the Trust and said that she will update the other Park Commissioners. Donna Main left the meeting.

Becky Pine noted that if as little as one structure can be built on the Hoyts Wharf parcel, then that might support a group home (every bedroom counts on the SHI) or perhaps a Habitat for Humanity build.

### February 16, 2022 Executive Session minutes

#### Hoyts Wharf Rd./Cow Pond Brook Rd. (parcels 249-51 & 57)

Becky Pine asked members if they had any questions about the Dillis & Roy February 14, 2022 invoice for the engineering work done so far on these parcels. The \$3,160 invoice matches the scope of work and agreed upon pricing. Stan Dillis has completed the wetlands delineation and created a map to display this information. The existing conditions map even includes more relevant information than the Trust had requested. There were no questions about the invoice.

Trust members agreed that they would like Stan Dillis to do the soil testing in the potentially buildable areas of the site. March is a good month to dig the holes as per Board of Health regulations. Fran Stanley was directed to communicate that request to Stan Dillis.

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### Heritage Landing

Trust members discussed the change out of developer representative from Edward O'Neill to George Defelice. Apparently, Edward O'Neil did not complete post construction accounting requirements on an earlier 40B project and so has been barred from participation on this new proposal. Becky Pine cited several Cow Pond Brook Road residents' written comments from February 14, 2022. Those comments referenced negligent actions by DeFelice Corporation in 2010 that resulted in the destruction of one home in the Hyde Park neighborhood of Boston. The DeFelice Corporation's actions were adjudicated and the company was found responsible for several Dig Safe violations related to this incident.

In view of these considerations, Becky Pine suggested that for the Trust's comments to MassHousing, the Trust's position might be that of expressing positive, but not gushing thoughts about the proposal. Carolyn Perkins said that the nearby presence of the shooting range is a concern. Phil Francisco added that its presence may create a form of attractive nuisance.

### January 12, 2022 Executive Session minutes

#### Hoyts Wharf Row and Cow Pond Brook Road parcels

Becky Pine and Rick Perini provided an update on the December 13, 2021 Natural Heritage meeting. In that meeting, Jesse Leddick, the Chief of Regulatory Review for the Massachusetts Division of Fisheries & Wildlife, spoke with Affordable Housing Trust representatives about the development potential/constraints for two publicly owned parcels on Hoyts Wharf Row and Cow Pond Brook Road (**see assessors parcels 249-51 and 249-57**). The Trust's environmental consultant Daniel Wells was in the meeting. Groton's Conservation Agent Nikolis Gualco was also present. Jesse Leddick used the December 8, 2021 Habitat Assessment that Daniel Wells prepared for the Trust as the primary focus for the discussion – particularly useful was the Figure 2 Land Cover and Photopoint Map. The Commonwealth maintains its own records on rare and endangered species. Some of that information remains confidential for the protection of those targeted species.

Becky Pine said that the good news is that the possible rare/endangered plant is not an issue since the past report of a sighting is so old (about 25 years old). This leaves the Blanding's Turtle as the main concern for Natural Heritage. As described in the Habitat Assessment, the two parcels of about 34 acres contain intermittent streams, shrub swamp, deep emergent marsh, shallow emergent marsh and three certified vernal pools. The site is large enough to have twenty or so upland acres of white pine and oak forest.

Jesse Leddick suggested that one single family home with an entrance off of Hoyts Wharf Road would be his preference. Fran Stanley thought that surely more could be built on a site of that size. Rick Perini noted that Jesse Leddick's comments were in the context of the owner not presenting him with a particular plan. He continued, stating that in his experience Jesse Leddick was by far the most responsive and solicitous employee he has encountered from the Natural Heritage office. Rick Perini said that the three vernal pools are tough site conditions and that the location of those pools is problematic as well. Jesse Leddick was familiar with the Cow Pond Brook Road site owned by DefCon 1 and commented that that site was less impacted by Natural Heritage considerations.

Becky Pine stated that Jesse Leddick was interested in having the existing driveway to the ballfields off of Cow Pond Brook Road moved to an access further down Cow Pond Brook Road as that would be less sensitive. As for total buildable units, this was not covered in the Natural Heritage meeting but there is an estimate of twelve to fifteen units. If that is the total yield and cooperating with the prospective 40B developer across the road is a way to build those units, then the Trust would gain only three to four affordable units. So far, Ed O'Neil, as the representative for the 40B developer, has not offered to create any more affordables than those

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required by the Chapter 40B zoning law. That result may not be worth the time and effort of cooperating with the 40B developer. Also, the Trust may want to see if a 100% affordable project could be built there instead which might be a more advantageous prospect.

The Trust is still expecting to receive a wetlands delineation and soil test from Stan Dillis.

### December 8, 2021 Executive Session minutes

Becky Pine introduced the Rare Species Habitat Assessment Report written by Daniel Wells on December 8, 2021 for discussion. The report provides information on two Town owned parcels, one parcel with frontage on Hoyts Wharf Road and the other parcel with frontage on Cow Pond Brook Road (see assessors parcels 249-51 and 249-57). Altogether, these parcels comprise approximately thirty-four (34) acres. Phil Francisco noted that the Blanding's turtle habitats are in specific places on the site. The group's consensus was that accommodating the turtles will add expense. Daniel Wells scheduled a December 13, 2021 virtual meeting with Jesse Leddick from the state's Natural Heritage office to have a pre-filing discussion with the Trust.

Becky Pine said that there are a couple of questions related to this meeting for the Trust to decide. Becky Pine plans to attend. Fran Stanley will attend. One other Trust member can attend without tipping the meeting over into a public meeting since the Trust has a three-person quorum. Trust members agreed to send Rick Perini to this meeting. Also, developer Ed O'Neil asked to attend the Natural Heritage meeting. The group agreed to allow Ed O'Neil to attend. Fran Stanley will send Ed O'Neil a copy of the Daniel Wells report, an invitation to the meeting and ask him for the habitat assessment report prepared for his Cow Pond Brook Road property (parcel 248-42).

Fran Stanley will follow up with engineer Stan Dillis on the soil tests and wetlands delineation work.

### October 27, 2021 Executive Session minutes

Trust members welcomed Attorney Robert Collins who is well known to the group. Ed O'Neil introduced himself as the prospective developer of parcel 248-42 on Cow Pond Brook Road. This parcel has frontage on Cow Pond Brook Road and is adjacent to the Town owned transfer station.<sup>1</sup> Bob Collins stated that his client's property is a bald site. On the other hand, the Town owns two parcels across the street that may be suitable for residential housing. These parcels are 249-51 (Hoyts Wharf parcel) and 249-57 (portion of the site is used for baseball field and access to same). These parcels are treed. The Hoyts Wharf parcel in particular was graveled and excavated close to ground water. Consequently, these parcels may not be able to support a septic system which requires separation between groundwater and the surface among other requirements (for example, fill can be problematic as the soils must be 'naturally occurring'). Bob Collins estimated that the uplands portions of these two parcels are perhaps capable of siting 50 to 60 units which would yield 13 to 15 affordable units under 40B zoning. Bob Collins said that these would be better units and more units.

If the Town owned parcels have sufficient uplands to site more housing units in a more attractive wooded setting away from the transfer station, then septic for these units might be placed on Ed O'Neil's Cow Pond Brook Road site. The 10,000 daily wastewater limit is a factor but the Town might apply to DEP for a sewer discharge permit to gain permission to install a septic system that will support the 50 to 60 units even with a greater than 10,000 per day wastewater discharge.

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<sup>1</sup> Note that the portion of the transfer station land closest to Ed O'Neil's site has solar panels running along two thirds of the property line and an outdoor gun range about 100 feet from the property line that is in active use by the Groton Police Department.

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Trust members are aware of species issues that might constrain development of the Town owned sites. Ed O'Neil has already contracted for a report on species involvement on his site and Natural Heritage has already visited there. For the Town owned sites, Bob Collins noted that Ed O'Neil has other property that might be used to offset development there. Bob Collins is familiar with the Natural Heritage mitigation formula that calls for a 2 to 1 mitigation formula for species habitat.

Ed O'Neil stated that he is close to submitting a Chapter 40B comprehensive permit application which would have 44 homeownership units. 11 of those units would be deed restricted affordables. Ed O'Neil plans to build all 44 units as 3 bedrooms with 2 baths and a 2-car garage. His plans allow for 1<sup>st</sup> floor master bedroom suites. Ed O'Neil said that his plan calls for 34 single family homes and 5 duplexes. He added that he checked with the Groton Fire Chief and he does not need to sprinkle the buildings if he maintains 25-foot separation between buildings. Ed O'Neil said that his site can accommodate a conventional septic system. He would bring town water to the site. Ed O'Neil added that he intends to file with the plan for his own site but that he is prepared to ask for an amendment/modification if a suitable alternative plan using Town owned land can be arranged.

Trust member were interested in the ideas presented. Trust members suggested that the developer plan for amenities on his site as that might increase the appeal of the project for Town Meeting voters. The group discussed the possibility of using local multi-family zoning designed to meet the MBTA community standard (not yet passed). Trust members asked why the developer planned all 3-bedroom units. They asked about increasing the number of affordables. Trust member agreed that exploration of the Town owned sites needed to be done. Ed O'Neil declined to spend funds on Town owned land.

Ed O'Neil and Bob Collins left the meeting at 7:45 pm. Before they left, Trust members thanked them for coming to speak with them about this idea.

Trust members discussed the testing needed and the preferred order of testing. If cooperating with this developer to build on Town owned sites is predicated on these sites not having stand-alone development potential, then that premise needs to be investigated. By consensus, the group agreed to collect certain information upfront. Specifically,

- soil analysis is necessary to evaluate the site for septic suitability,
- a consultation on species is advisable, and
- a wetlands delineation is needed to find the uplands and determine access.

But the group agreed that surveying can be deferred to a later time. Ed O'Neil had mentioned that he obtained a species report for about \$1,500 on his Cow Pond Brook Road site. The septic evaluation may cost a relatively small amount like \$2,000.

The developer essentially is required under Chapter 40B to make one quarter of the units affordable. While the wooded location on the West side of Cow Pond Brook Road may be intrinsically more appealing than the transfer station adjacent parcel and more total units would yield a larger number of affordable, so far, the developer has not offered any additional incentive to the Town that would encourage Town Meeting residents to support the transfer of public lands. If this idea comes to fruition, then the developer is expected to have increased profits due to the fact that there will be more and better market rate units. In future, once site assessment has been conducted on the parcels, then the Trust can continue the discussion with the developer to see if there is anything else that he is willing to offer that might encourage the Town to participate in this way.

*Carolyn Perkins moved to authorize spending funds to look at septic, wetlands delineation and species on parcels 248-51 and 248-57. Rick Perini seconded and the motion carried (3:0) by roll call vote of Perini – aye, Perkins – aye and Pine – aye (Lane-Hand absent).*

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Fran Stanley will speak with chief procurement officer Mark Haddad regarding public procurement rules to follow before contacting an engineering firm. Often, smaller total costs (less than \$10,000) call for less strenuous procurement measures. Trust members directed Fran Stanley to send an email informing the Select Board regarding the Trust's intention to conduct site assessment activities on these two parcels. Fran Stanley will ask Michelle Collette who serves as Groton's Earth Removal Stormwater inspector to please search for Town records related to site conditions on these two parcels.

### **October 6, 2021 Executive Session minutes**

Regarding other affordable housing developments, the group asked Fran Stanley to invite Attorney Robert Collins and his client Ed O'Neill to attend (developer of Cow Pond Brook Road parcel) to attend its next meeting so that development ideas for the Cow Pond Brook Road parcel (owned by DefCon1) and the Hoyts Wharf Road parcel (owned by the Town) can be discussed.

### **July 22, 2021 Executive Session minutes**

Regarding Ed O'Neil's potential Chapter 40B development on Cow Pond Brook Road, Becky Pine spoke with Attorney Robert Collins who is representing the developer. Attorney Collins' impression was that the Town owned Hoyts Wharf parcel was not a candidate for septic because prior owners had extracted gravel down to groundwater. This is news to the Trust as no prohibition of this sort was found during initial research.

Attorney Collins hypothesized that the Town might cooperate with the developer by allowing the developer to build units on the Hoyts Wharf parcel and instead locate the septic for the project on the Cow Pond Brook Road parcel which is across the road and down the street. If feasible, the benefits to this plan would be more units (and therefore more affordable units) and placement of units further away from the shooting range, solar panels and transfer station.

Fran Stanley said that Ed O'Neil has been planning a homeownership development. Rick Perini contrasted this decision with some of the larger residential developers in the state who are presently focused exclusively on rental projects. For example, a 400-unit rental development (1/4 affordable) in Billerica cost \$140 million. Rentals are so profitable now that the entire project costs are projected to be paid off in three (3) years.

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