

## TOWN COUNCIL MINUTES

**May 4, 2020, Monday  
VIA ZOOM # 812 6589 3417**

Present: Arthur Mathews, President  
Michael Molisse, Vice President  
Pascale Burga, Councilor  
Kenneth DiFazio, Councilor  
Jane Hackett, Councilor  
Fred Happel, Councilor  
Ed Harrington, Councilor  
Rebecca Haugh, Councilor  
Christopher Heffernan  
Maureen Kiely, Councilor

Also Present: Ted Langill, Chief of Staff  
Joseph Callanan, Town Solicitor  
Kathleen Deree, Town Clerk  
Richard Swanson, Town Auditor  
Owen MacDonald, Traffic Engineer  
Eric Schneider-Town Planner  
Robert Luongo-Director of Planning

Recording Secretary: Mary Barker

President Mathews called the meeting to order at 7:31 PM. After the Pledge of Allegiance, Town Clerk Kathleen Deree called the roll, with all members present.

### **ANNOUNCEMENTS**

Councilor Harrington read a statement from the Nash Parent Council, regarding the possible closure of the school building. He expressed his happiness with today's announcement that the school will remain open and he thanked everyone who voiced their support.

### **MINUTES**

#### **Budget/Management Committee Minutes of April 13, 2020**

A motion was made by Vice President Molisse to approve the minutes from the April 13, 2020 Budget/Management Committee meeting and was seconded by Councilor Hackett. A roll call vote was taken: Councilor Burga-Yes, Councilor DiFazio-Yes, Councilor Hackett- Yes, Councilor Happel- Yes, Councilor Harrington- Yes, Councilor Haugh- Yes, Councilor Kiely-Yes, Vice President Molisse- Yes, President Mathews- Yes.  
UNANIMOUSLY VOTED.

### **Town Council Meeting Minutes of April 13, 2020**

A motion was made by Vice President Molisse to approve the minutes from the April 13, 2020 Town Council meeting and was seconded by Councilor Hackett. A roll call vote was taken: Councilor Burga-Yes, Councilor DiFazio-Yes, Councilor Hackett- Yes, Councilor Happel- Yes, Councilor Harrington- Yes, Councilor Haugh- Yes, Councilor Kiely-Yes, Vice President Molisse- Yes, President Mathews- Yes. UNANIMOUSLY VOTED.

### **PUBLIC HEARINGS**

#### **20 026-Traffic Regulations**

A motion was made by Vice President Molisse to open the public hearing on 20 026 and was seconded by Councilor Hackett. This was advertised on April 24, 2020. A roll call vote was taken: Councilor Burga-Yes, Councilor DiFazio-Yes, Councilor Hackett- Yes, Councilor Happel- Yes, Councilor Harrington- Yes, Councilor Haugh- Yes, Councilor Kiely-Yes, Vice President Molisse- Yes, President Mathews- Yes. UNANIMOUSLY VOTED.

Traffic Engineer Owen MacDonald presented the measure with a PowerPoint presentation. It showed a part of the street to be made one-way. The original plan that was proposed had one driveway in from Broad Street serving the whole development. The design was changed to include a second driveway to serve the townhouse residential units.

The proposal's aim was to restrict traffic on the northeast segment of Filomena. Trash trucks need to access barrels on the right side, which it couldn't do easily if the direction was reversed. There is also a difference in gradients that makes it difficult to turn in one direction. A resident asked not to make the street one way, but to have a "Do Not Enter" posted at the end of Filomena, at the corner of Madison. The seven houses approaching Madison would have to go to Madison leaving the neighborhood. The "Do Not Enter" sign would allow them to continue to use their street as two-way, but would prevent traffic from Commercial Street using it as a through street. The street was accident free for the three prior years.

Mr. Schneider added that at Councilor DiFazio's request, the residents of the neighborhood were served with a mailing notice. There are residents in attendance.

Council President Mathews asked if there were any comments from the public, to which there were the following responses:

**Beth Doyle, 27 Filomena Street**- she originally had emailed about the "Do Not Enter" sign. It is a very narrow street. When the proposal started the one-way was in a different direction. The sign would serve the purpose. Traffic from Commercial is using the street

as a cut-through, and traffic goes too fast. She respectfully asked for the sign and to let the residents maintain it to two-way traffic.

Council President Mathews reminded all that the measure remains in committee, which will meet again and will take the comments into consideration.

**Russ Drysdale, 475 East Street-** noted the prior speaker's suggestion would meet the goal, and he supports that.

A motion was made by Vice President Molisse to close the public hearing on 20 026 and was seconded by Councilor Hackett. Councilor DiFazio asked Mr. MacDonald to review the suggestion. A roll call vote was taken: Councilor Burga-Yes, Councilor DiFazio-Yes, Councilor Hackett- Yes, Councilor Happel- Yes, Councilor Harrington- Yes, Councilor Haugh- Yes, Councilor Kiely-Yes, Vice President Molisse- Yes, President Mathews- Yes. UNANIMOUSLY VOTED.

A motion was made by Vice President Molisse to open the Public Hearings, together on measures:

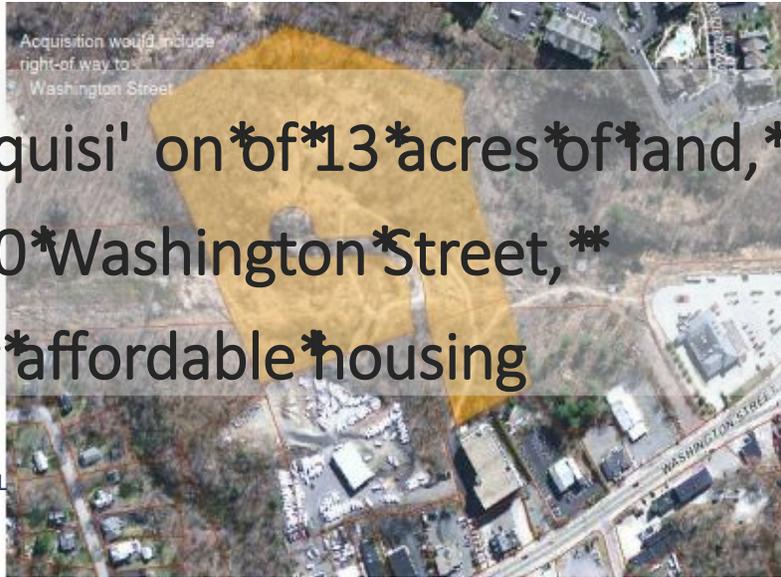
**20 021-CPA Funding Request for Acquisition of Land for Affordable Housing**

**20 023-Purchase, Foreclosure and Acceptance of 13 Acres of Land, 420 Washington Street**

**20 024-Taking and Restricting for Affordable Housing Purposes, 13 Acres of Land, 420 Washington Street**

These were advertised on March 6 and March 24, 2020. The motion was seconded by Councilor Hackett. A roll call vote was taken: Councilor Burga-Yes, Councilor DiFazio-Yes, Councilor Hackett- Yes, Councilor Happel- Yes, Councilor Harrington- Yes, Councilor Haugh- Yes, Councilor Kiely-Yes, Vice President Molisse- Yes, President Mathews- Yes. UNANIMOUSLY VOTED.

Solicitor Callanan presented the measures, which seek to acquire the land behind 420 Washington Street for affordable housing, and in order to protect the town's Ch. 40B Safe Harbor, via a Powerpoint presentation:



Acquisition of 13 acres of land, 420 Washington Street, for affordable housing

MAY 4, 2020  
TOWN COUNCIL  
7:30PM

## Agenda

### Main purpose of these measures:

to protect the Town's chapter 40B safe harbor

- History of Weymouth's chapter 40B safe harbor
- How to continue to protect the safe harbor
- What the Town will do to protect the safe harbor
- Why 420 Washington Street
- Next Steps & Likely Scenarios
- Questions

## History of Weymouth's Chapter 40B Safe Harbor

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- The Town approved 40B projects in the past including next door to 420 Washington at Avalon and on this property in 1987
- In September 2003, the Town opposed the proposed Arbor Hill 40B project and the state's Housing Appeals Committee (HAC) ruled that the Town met the land area safe harbor at 1.9%
- Since then, HAC has not approved another claimed land area safe harbor; (Stoneham, 2015, 1.3%; Newton, 2015, 1.27%; Norwood, 2016, 1.47%; Waltham, 2018, 1.29%)
- Since the September 2003 HAC decision, the Town dedicated two more acres of land to affordable housing
- In 2017, and subsequent amendments, DHCD changed the calculations—so instead of being higher than the 1.9% safe harbor, we are short less than ten acres according to the new guidelines
- 2017 guidelines add idea of “associated land area,” which reduces our area by more than 1/3

## How to continue to protect the safe harbor

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- Since DHCD introduced the new guidelines in May 2017, the Town has fought them:
  - Mayor Hedlund wrote a letter in July 2017 opposing implementation of new guidelines
  - Mayor Hedlund and local legislators met with Lt. Governor and DHCD in May 2018 about opposition
- DHCD has remained firm on their interpretation that new guidelines prevail over the 2003 HAC decision
- We disagree, but realize that disagreement can only be resolved in court:
  - after a developer files a 40B application
  - after DHCD considers our safe harbor, and likely rules against us
  - after BZA is forced to consider a 40B project, and likely denies it because of the land area safe harbor
  - after developer's appeal to HAC, and likely allows project because of DHCD's earlier decision
  - only then would a court consider our argument, years after developer files for 40B permit
- Instead, we propose to listen to DHCD, and acquire more land for affordable housing

## What we can do to protect the safe harbor

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- During & after our meeting with the Lt. Governor, DHCD criticized the Town for:
  - not acquiring more land for affordable housing
  - not spending more of the Town's CPC money devoted exclusively to community housing
- These three measures seek to accommodate DHCD, so they support the Town's argument that we meet the safe harbor:
  - We will show DHCD that we are acquiring more land for affordable housing
  - We will show DHCD we are appropriately spending money from CPC for community housing;
  - We will acquire enough land that even under the new guidelines, we will qualify for the land area safe harbor

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## Why 420 Washington Street

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- Property Characteristics:
  - The largest piece of vacant property—more than 13 acres
  - That has the most development potential—some wetlands impacts, but much less than other parcels
  - That owes the Town the most in unpaid property taxes—more than \$1.4 million
- The unpaid property taxes makes this property undesirable to a private developer, who would have to pay the Town the unpaid taxes
- The property has remained vacant for other reasons as well

# History of contaminated soil on 420 Washington

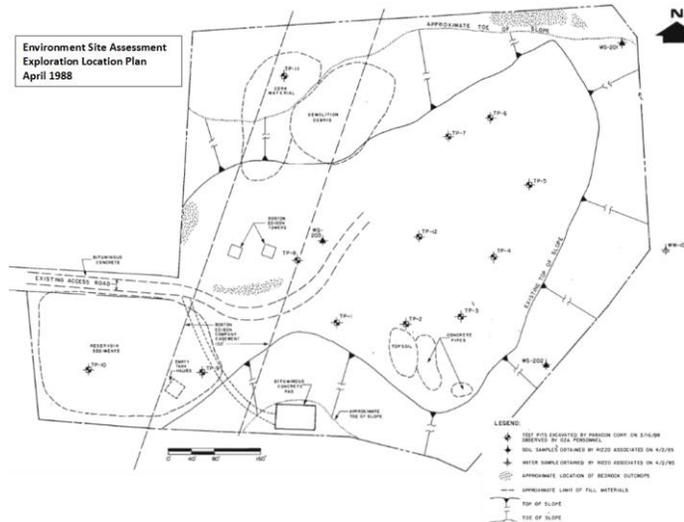
This excerpt is from the Health Department's February 2020 memorandum that we attached to the measures summarizing their review of hundreds of pages of DEP files on the property:

Some of the major fill materials placed throughout the site include:

- **sand and gravel material** from the Great Pond Reservoir excavations (1969);
- **demolition debris** from the old Weymouth High School (1971);
- **pulverized cork material** from Armstrong Cork Company (1968 - 1972); and,
- **topsoil** stripped from the Ricciardi Reservoir in Braintree, screened and spread on-site (1974).

In addition to those major fill materials, **dredged marine sediment mixed with creosote-treated wood piles and reinforced concrete** from the General Dynamics Shipyard was placed and spread over most of the site in 1972-1973, and **blasted rock or boulders** from several sources were placed in the north central portion of the site in 1982-1984.

## Where is contaminated soil on 420 Washington



## What to do with the contaminated soil

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- Town staff met last year with representatives of EPA & DEP about acquiring this property
- EPA staff suggested a program primarily for municipalities, *Targeted Brownfield Assessments*
- We would apply to EPA for a TBA and, if granted, EPA would hire an expert, a licensed site professional (LSP), to assess the clean up required
- The LSP hired by EPA would create a “phase I site assessment,” which would help understand the extent of clean up necessary and the likely costs
- We already have phase I site assessments from the 1980s, but DEP found them insufficient back then and the program is more stringent today, so those plans are helpful, but not sufficient
- With EPA’s TBA, we would likely have enough information about the property to develop an RFP to competitively bid the property for future development

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## What measures are before the Town Council

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There are three measures:

- Measure 20-021 – appropriate \$200,000 from Community Preservation Committee’s funds reserved ***solely*** for community housing
- Measure 20-023 – authorize assignment of mortgage and foreclose on that mortgage
- Measure 20-024 – take the property and restrict the purpose to affordable housing

## What would happen if authorized . . .

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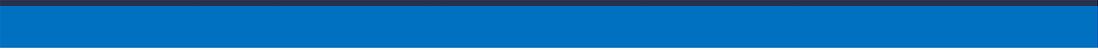
### *Ideal Scenario, . . .*

1. Finalize deal with lender
  2. Pay for and accept assignment of the existing mortgage
  3. Begin mortgage foreclosure process that could take 4-6 months
  4. Apply to EPA for TBA for phase I site assessment
  5. Finish foreclosure process and take title
  6. Take by eminent domain to clear title
  7. Restrict for affordable housing purposes
  8. After public input & community process, issue RFP to potential developers
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## What would happen if authorized . . .

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### *Less than ideal, for example, . . .*

1. Finalize deal with lender
  2. Pay for and accept assignment
  3. Begin foreclosure process
  4. Apply to EPA for TBA for phase I site assessment
  5. ***Before finishing mortgage foreclosure process, MassHousing issues a project eligibility letter for a 40B project***
  6. ***Take by eminent domain the land to acquire title before filing of 40B comprehensive permit application***
  7. Restrict for affordable housing purposes.
  8. After public input & community process, issue RFP to potential developers
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## What would happen if authorized . . .

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*Least ideal*, for example, . . .

1. **No deal with lender**
2. **Before finalizing deal with lender, MassHousing issues a project eligibility letter for a 40B project**
3. Take by eminent domain the land to acquire title before filing of 40B comprehensive permit application
4. **Forego mortgage foreclosure process**
5. Restrict for affordable housing purposes
6. **Apply to EPA for TBA for phase I site assessment**
7. After public input & community process, issue RFP to potential developers

## What would happen if *NOT* authorized . . .

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*Likely scenario, if NOT authorized* . . .

1. We would not go forward with acquiring additional land for affordable housing
2. When a developer files a comprehensive permit
3. We would invoke the land area safe harbor
4. Developer would likely dispute the safe harbor
5. Disagreement would first be resolved by DHCD, who would likely rule in developer's favor
6. BZA would then have to consider 40B permit
7. If BZA denied permit, e.g. the safe harbor, developer would likely appeal
8. Housing Appeals Committee, a part of DHCD, would likely reverse BZA denial
9. We would take HAC denial to court; and
10. Many years after developer files 40B permit application, court would likely rule in our favor.

*This scenario would most likely to be the most costly in terms of time—years to resolve, money—hiring of experts and lawyers, and effort—hundreds of hours of time by elected and appointed officials, staff, and residents.*

## Would that previous scenario happen if authorized?

*Likely scenario, if authorized . . .*

1. *We would go forward with acquiring additional land for affordable housing*
2. When a developer files a comprehensive permit
3. We would invoke the land area safe harbor
4. Developer would likely dispute the safe harbor
5. Disagreement would first be resolved by DHCD, *who would likely rule in TOWN's favor*
6. *BZA would then deny 40B permit based upon DHCD upholding safe harbor*
7. *Developer would be unlikely to appeal*
8. *If developer did appeal, Housing Appeals Committee, a part of DHCD, would likely agree with BZA denial*
9. *Developer would be unlikely to take HAC denial to court*
10. *If developer did appeal, court would likely rule in our favor*

## Previous Question at CPC hearing: Who would be eligible for the affordable units

Any development on the proposed land would have to qualify under DHCD's "Subsidized Housing Inventory," as eligible housing.

One way to qualify, for example, would be "if at least 25% of units are to be occupied by Income Eligible Households earning 80% or less than the area median income."

To meet that criteria, the following would be the income limits:

	Areawide median income for a family of four	Income limits for household of one	Income limits for household of two	Income limits for household of three	Income limits for household of four
Weymouth	\$119,000	\$66,640	\$76,160	\$85,680	\$95,200

Councilor DiFazio asked Solicitor Callanan what happens once the \$200,000 is paid and the town regains Safe Harbor designation; does it then automatically gain the protection, or not until a project is started? Solicitor Callanan responded that under the new guidelines, it would occur once a permit was issued. Councilor DiFazio asked if it is reasonable to believe that DHCD is cognizant that there is an ongoing 40B application in process at the same time? Solicitor Callanan responded that they are aware of the efforts to acquire. Councilor DiFazio asked what the estimated cost of cleanup will be for the developer. Solicitor Callanan responded that it is unknown and will be determined in Phase I. Educated guesses are between \$3-4 million. The only way this project is marketable is if it less than \$2 million.

Councilor Hackett asked who is the real estate consultant? Solicitor Callanan responded it is a non-testifying expert, so it is not public information.

Council President Mathews asked about access to the site and potential number of units that could be built, and whether it is subject to special permit by BZA. Solicitor Callanan responded that it has an access- right of way and 40 foot right of way to Washington Street. It also has deeded access. The number of units will be based on the cleanup costs. The RFP process will determine what is advantageous. What is the level of density that the town is willing to tolerate? It could be more or less depending on amenities and is also subject to a zoning change. It is currently zoned business and POP.

The following are comments from the public:

**Chris Primiano, 82 Rindge Street** – noted this proposal hits home on three points: it’s a great use of CPA funds, the criteria for housing is a good use of the property, and it fills a need in the production plans of more affordable housing.

**Laura Sabadini, 386 Front Street-** supported the need for more affordable housing. She doesn’t like that it is contaminated soil, or what a developer would recoup. She asked what is the public process outside of the BZA? Solicitor Callanan pointed out that there are other places in town with housing built on contaminated land-- Weymouthport, Union Point – there are activity and use limitations in place. The town has a history and it isn’t unusual. The town would be cleaning this up; not a developer trying to skirt it so the town controls the process and makes the threshold. There are other opportunities for access. Volume or density will be determined with the public process. Density in other developments include 8 units/acre- Lakeview, 12/acre -Avalon. If restrictions are so onerous that no developer responds, they could then reassess. There are a lot of possibilities.

Director Luongo noted the number of opportunities for good public process. The town first needs to decide what type of housing and what density. There was a public process to create the Housing Production Plan – a tool. One thing was that Weymouth needs to have is more senior housing (residents aging out of their homes). It would convene a public process, and then hold meetings on the proposed zoning changes and solicit a lot of input from the community. It was successful in creating the Commercial Corridor zoning. They will engage the community at large, as well as engage a housing consultant for the contamination issues, density issues to get an outside look.

The following are comments from the public:

**Paul Murphy, 44 Branch Road-** the town needs to secure Safe Harbor. They don’t want to see a recurrence of what happened in the Ralph Talbot neighborhood. This unfriendly 40B should be an example.

**George Berg, 74 Summer Street-** important to protect Safe Harbor. Heavily involved in the formation of the HPP and in that report it showed 310 units coming off the rolls at the end of 2020. He appreciates the town taking a creative look at seeking projects of scale which present a great opportunity. HPP was a very vibrant public process. He asked the

solicitor about the timing of Phase I – could they embark on the process before owning the property? He asked if there is anything in new regulations that would negate the acreage? Make clear- the big misconception between low income and affordable housing. Solicitor Callanan responded that the EPA can be doing the assessment while the foreclosure is going on. This is the first step. As for Safe Harbor, it only need to meet one threshold.

**Pat O’Leary, 999 Commercial Street**, noted this is an opportunity to maintain the planning process and is safe from unfriendly 40B development. This is a good location; it abuts the development triangle, is on a bus route, and close to public transit and the highway. It’s a blighted location; and a great use of identifying and using for affordable housing.

**Erin Sergi, 11 Elizabeth Lane** – echoed comments in Matt Tallon’s memo- and urged a proactive approach. She supports the measures. Developers have preyed upon the town. It’s important to have the upper hand and fight off unsavory developers.

**Matt Tallon, 105 Trefton Avenue** – pointed out the highlights. This is a proactive step- this is what good town decision making looks like. 40B is not going away. There is an acute need for affordable housing; so control it- be proactive and not reactive. The risk of inaction is tremendous. Exclusion of the base lands in the calculation; this combined with the 2003 decision is why Weymouth is positioned to use the 1.5% calculation; make sure the town maintains that going forward. The expenditure of \$200K – CPA has built up and that is what it is for. Since 2006, only 6% has been spent of CPA on housing. The location is as ideal as it could be.

**Harry Castleman, 25 Hyde Street**- reiterate the arguments in favor of the project. As for risk, there are few decisions of consequence. The risk of not doing are much greater.

**Jim Lockhead, Lester Lane**- He supports the acquisition. The site is tailor made for it; it helps to solve taking control of development and it provides citizens with affordable housing. This is the first step. The current owner hasn’t paid taxes and the land is blighted.

**Matt Tallon**- added a plea to move it quickly through the process.

President Mathews reported he received other correspondence on the measures:

**Cindy Armstrong, 15 Hyde Street- in support**

**Robert Montgomery Thomas, Humphrey Street- in opposition**

**Harry Castleman** – asked that they articulate the next steps. Vice President Molisse reported that the measure was referred to the Budget/Management and advertised on April 24<sup>th</sup>. The goal is to address it at the May 18, 2020 Budget/Management Committee meeting.

**Dennis Gedziun- 54 Meetinghouse Lane-** supported the measure. He urged they fast-track the process.

A motion was made by Vice President Molisse to close the public hearing on measures 20 021, 20 023 and 20 024 and was seconded by Councilor Hackett.

A roll call vote was taken: Councilor Burga-Yes, Councilor DiFazio-Yes, Councilor Hackett- Yes, Councilor Happel- Yes, Councilor Harrington- Yes, Councilor Haugh- Yes, Councilor Kiely-Yes, Vice President Molisse- Yes, President Mathews- Yes. UNANIMOUSLY VOTED.

## **ADJOURNMENT**

The next regular meeting of the Town Council Meeting has been scheduled for Monday, May 18, 2019.

At 9:22 PM; there being no further business, a motion was made by Vice President Molisse to adjourn the meeting and was seconded by Councilor Hackett. A roll call vote was taken: Councilor Burga-Yes, Councilor DiFazio-Yes, Councilor Hackett- Yes, Councilor Happel- Yes, Councilor Harrington- Yes, Councilor Haugh- Yes, Councilor Kiely-Yes, Vice President Molisse- Yes, President Mathews- Yes. UNANIMOUSLY VOTED.

Respectfully Submitted by Mary Barker as Recording Secretary.

Approved by Arthur Mathews as President of the Town Council.  
Voted unanimously on 15 June 2020