

Bedford Conservation Commission
Minutes of Meeting
September 26, 2012
Selectmen's Conference Room
Town Hall, Bedford, MA

PRESENT: Tim Gray, Chair; Steven Hagan, Vice-Chair; John Willson, Clerk;
Allan Wirth; Art Smith; Andreas Uthoff
Elizabeth Bagdonas, Conservation Administrator

ABSENT: Lori Eggert

The meeting was called to order at 7:00 pm. Mr. Gray read the Public Record Statement as approved by Town Counsel on 9/10/12.

Determination of Applicability: 7 Robinson Drive – Doug Harvey

A motion was made by Dr. Wirth and seconded by Mr. Hagan to waive the reading of the public notice. The motion passed 6-0-0. Mr. Harvey proceeded to describe his project, the replacement of three decks within the 100-foot buffer zone to a mapped wetland. He stated that the new decks would be the same size, shape and materials as the present.

Ms. Bagdonas reported on her site visit to the property, describing the steep topography and the possibility that the wetland did not extend as far as shown on the map. She recommended that the Determination be conditioned to allow a new wetland delineation within the 3-year Determination period.

A motion was made by Mr. Uthoff and seconded by Mr. Smith to close the public hearing and issue the Determination with the condition that the applicant may choose within 3 years to provide evidence that there is no wetland as shown on the wetland map. The motion passed 6-0-0, after which the Determination was signed.

Determination of Applicability: 2 Pine Street – Edward Flores

A motion was made, seconded and approved to waive the reading of the public notice. Mr. Flores described his project as construction of a deck across the rear of the house and linked to the existing porch. The total impervious surface on the property will be 8%, with the new footings being the only increase to the existing percentage. Ms. Bagdonas reported on her site visit, commenting that the flood plain is within the back yard lawn, near the foot of the slope just beyond the back of the house. She recommended that 3-5 haybales be kept on site to intercept any runoff.

A motion was made and seconded to close the public hearing and issue the Determination with an erosion control condition. The motion passed 6-0-0, after which the Determination was signed.

Determination of Applicability: 68 Dunster Road – Mike Gray on behalf of Ken Malsky

Mr. Smith recused himself from the hearing, due to a conflict of interest.

A motion was made by Dr. Wirth and seconded by Mr. Willson to waive the reading of the public notice. Ms Bagdonas explained that the Request for a Determination (RDA) was filed to cover additional work not included in the existing RDA on the property, which covers the addition.

Mike Gray of Gray Plumbing and Heating was present on behalf of the owner, Ken Malsky. Mr. Gray explained that three bore holes would be drilled for wells and a trench excavated from the wells to the house in order to install a geothermal system. The additional impervious surface within the 100-foot buffer zone will be an additional 1% increase to the existing 11% from present conditions. Dr. Wirth asked if the trenching was totally impervious. Mr. Gray responded that the trench would be backfilled and seeded, and that the trench was a temporary impact to the buffer zone.

Ms. Bagdonas asked for information on the impacts of the well drilling. Mr. Gray responded that all slurry is initially held in a slurry pit, followed by loading onto a truck and removal from the site. He estimated that there would be approximately one dump truck load of slurry to be removed. Ms. Bagdonas recommended a condition requiring the slurry to be confined within the pit until it is removed from the site.

A motion was made by Mr. Uthoff and seconded by Mr. Willson to close the public hearing and issue a negative Determination with the condition on the slurry. The motion passed 5-0-0, after which the Determination was signed.

Mr. Gray welcomed a group of boy scouts to the meeting. He explained some aspects of the process the Commission followed, and read a public notice to show how projects were normally announced.

Mr. Smith explained his recusal and conflict of interest.

Ms. Bagdonas explained the public record notice and list of documents, available with the sign-in sheet.

Continuation of Public Hearing: 9 Mudge Way and 7 Liljegren Way – Town of Bedford

Mr. Gray explained the status of the review of this project, and Ms. Bagdonas explained the continuation process.

Richard Warrington, Director of the Bedford Department of Public Works (DPW), stated that additional information requested by the Commission had been submitted on September 25th addressing the request for a Variance and alternatives analysis; this information had been put into a packet with other submittals that followed the Notice of Intent; he read out these documents. In addition, he had written a letter dated September 26th regarding the request for a Variance. Details had been obtained from Oxbow Associates, and Adrienne St. John and Dennis Freeman of DPW.

Mr. Gray opened the hearing to questions. He began by asking if the footprint for artificial turf fields was the same as for natural turf. Mr. Warrington stated that the current footprint was the minimum size at this point, and that the fields had been sited away from the more valuable area of wetland, with the bare minimum of separation between the two proposed fields. Adrienne St. John, Public Works Engineer, added that the size of a natural grass field would be the same, but that detention basins would be about 5-10% smaller, relating to differences in the turf drainage characteristics.

Brian Butler of Oxbow Associates, Inc. described the new material submitted regarding the request for a Variance. The previous request information had been submitted on September 18th, but the new submittal includes a more detailed alternatives analysis, which he stated would demonstrate why the proposed site was the only viable or practical one available that would accommodate the required standard for such fields. He added that other possible field areas did not provide the same playing surfaces or parking options.

Jeff Knight of 6 Abbott Lane asked why no alternatives had been listed for other fields, and how the cost could be justified. He asked if the Selectmen had not created a committee that had voted the Sabourin (high school) field as the #1 option.

Mr. Butler clarified in response to a previous comment that the wetland alteration proposed was .8 acre, not 3 acres. Regarding Mr. Knight's question, he stated that fields do not serve the same purpose as those within the wetland regulations, which do not deal with economic alternatives except within the state riverfront regulations. Mr. Warrington stated that 7 Liljegren Way had been purchased in 2001 at the same time use was exceeding capacity at the then existing fields, and that the Town now needed these fields more than ever.

Michelle Saber of 6 Abbott Lane stated that the fields committee had still not completed its report on Page Field and other options, and she thought that today's hearing was supposed to consider other options. She asked that the hearing be continued until the report was completed, as there was now no knowledge of other fields and parking.

Mr. Gray stated that these questions were reasonable, but that the Commission's only jurisdiction related to the wetlands issues; a sense of how the Town makes decisions was not really part of the Commission record or decision framework. Ms. Saber stated that the Commission should defer judgment in the interest of reasonable other options to those that alter wetlands.

Mr. Warrington responded by referring to the H Field, whose potential redevelopment would mean losing practice fields. Originally a 90' diamond was also proposed at the former St. Michael's Church site, but now this was not proposed; the other diamond on the Mudge Way property would remain as part of the project. He added that he could not speak for the committee, and that their first priority would not be the only priority. Turfing Sabourin might be their #1. The DPW would be proposing funding for the final project design at the Fall Town Meeting. Mr. Gray asked if the Town would still need these fields if Sabourin were turfed, and Mr. Warrington answered that it would. Mr. Uthoff commented that the fields committee was not formed to evaluate alternatives, but rather to evaluate the fields' turf; their recommendations could not be used as an alternatives analysis.

Elizabeth Cowles of ORASC (“fields committee”) stated that she would present a report to the Selectmen on the following Monday on demand for field use. The number of full-size fields available was not enough compared to other towns. Bedford was short 3 full-size rectangular fields, with overuse conditions. Mr. Hagan asked if “full-size” was the same as the size of the fields proposed in this project, and was told that it was, with the same defining terms. The H and J fields were considered contiguous to Sabourin. At this point Mr. Gray stated that the discussion was going beyond the Commission’s area. Ms. Cowles responded that the need may be debatable but not in this forum.

Dan Coyne of 9 Abbott Lane stated that he was in favor of fields, acquired in the most cost-effective way, but that there was no report yet. He added that some decisions were being made as to what goes in the final report. He also stated that the wetlands on the proposed project site were not really wetlands and that they were not there before. He stated that he would be in favor of eradicating all of them, and that there was an “equity mismatch”, in that conservation restrictions were being proposed for undevelopable land of little value, marginally more than a zero value. He viewed the cost of moving wetlands was money not being spent on fields, and that all of the wetlands should be moved off site. He also believed that this was being done at the last minute and that there was not enough data to cost analyze. Dr. Wirth responded that he disputed that conservation restrictions were of little value; the Princeton land had important connections to other Town conservation areas and the recently protected Massport lands and trails. Mr. Gray added that he could not speak for the Town, but that high value was not a zero value.

Mr. Hagan asked if the field construction would eliminate all of the wetland on the project site. Mr. Butler responded that ½ acre of wetland would remain. He also stated that it was not possible to carry out wetland replication on the site, as all the trees would be gone. Some screening was desirable. He added that the wetland was not of zero value, as there was enough upland land for it to be significant. He also stated that even with the restriction, “open-ended” sections of the Princeton site were developable.

Mr. Warrington stated that DPW wanted to go to the Fall Town Meeting for the design, followed by spring Town Meeting for construction, adding that the planning process had taken 5 years. Mr. Gray asked about wetland conditions on the site. Mr. Butler stated that there were unequivocal hydric soils. The area had been altered several times, with soil movement on the east side. Mr. Hagan stated that this project was an unusual case, not a case of a higher developer not accepting the possibility of ...

Ms. Saber stated that she had questions relating to the Order of Conditions, and asked if the tree line showed where the wetlands were. Mr. Butler brought out the plan and explained the areas to her. Ms. Bagdonas commented that no change was proposed to the buffer zone boundary that extended toward Abbott Lane. Ms. Saber responded that her question was how much buffer was on her property. She added that the vegetation toward Abbott Lane should be left wooded. Mr. Hagan stated that if the Variance were to proceed, the Town would have to come back. Regarding the detention basin, the final drainage calculations would have to show that there was no increase in runoff to adjacent properties.

Jeff Cohen of the Planning Board asked what effect on the Princeton site there would be. Mr. Warrington responded that all the land except for the area outside the 100-foot buffer would be protected. Mr. Cohen commented that a lot of money had been spent on the acquisition of the Princeton site for future fields. He asked if playgrounds or other recreational opportunities were available there, and if there was room for parking. Mr. Warrington stated that nothing was cast in stone about the fields. Originally parking for 40 cars and 3 fields were proposed within a 4-acre area, but that potential might be different now. Dr. Wirth stated that the adjacent land of Massport had an extensive trail system now linking with other trails, forming an existing established resource. Mr. Gray added that the Town was just getting started in realizing the potential for this area. Dr. Wirth added that accessible upland in the front of the parcel was being retained for field development, with the undeveloped part to be under the restriction.

Ms. Saber stated that she had another letter to submit; this letter stated that any modification to the buffer zone should not encroach further toward Abbott Lane. The Commission accepted a letter from Ms. Saber and Mr. Knight dated September 26, 2012, but stated that it could not accept any letter generated after the close of the hearing.

A motion was made by Mr. Uthoff and seconded by Mr. Smith to close the public hearing. The motion passed 4-0-2, with Dr. Wirth and Mr. Willson abstaining as not part of the quorum.

Mr. Gray then introduced the deliberations, during which no additional information could be submitted, nor participation from the applicant or audience accepted, without the Commission's approval.

Deliberations

The Commission began the deliberations with a review of page 6.1 of the Findings and Special Conditions. Ms. Bagdonas referred to two documents, a new Bylaw Order of Conditions form and the Findings and Special Conditions section. With respect to page 6.1, the Commission had no comments. Mr. Uthoff stated that the contents were straightforward, and Mr. Hagan added that all members had reviewed it. Ms. Bagdonas asked the Commission to refer to the substance of each page for the public record; copies of the document were provided to the audience.

There were no comments on page 6.2, which Mr. Gray stated was accurate, along with the Summary on page 6.3. With respect to the section on the Wetlands Protection Bylaw, beginning on page 6.3, there were no questions or comments.

With respect to section 2.2.1 General Standards, the Commission had no comments or concerns.

With respect to section 2.2.2.4 Wetland, Mr. Gray read the separate parts of this section of the draft. There was some discussion on the wording, and in the last line, "this site" was changed to "Page Field". No further comments or discussion followed on page 6.3.

Findings on Town of Bedford Wetlands Protection Bylaw

Ms. Bagdonas explained that the draft contained an outline of the findings that the Commission could make, but not the wording of the findings. Town Counsel Karis North had reviewed this section and stated that each finding must be accompanied by the documents that particularly related to or addressed the relevant sections of the Bylaw. Ms. Bagdonas had added these references to the draft.

The draft findings on page 6.4 were then reviewed. With respect to the second finding on Burden of Proof, the Commission reviewed the wording of the Bylaw in section 1.4.1 Burden of Proof and added the additional wording of the finding.

With respect to the third finding on section 2.2.1.1, the Commission was under the impression that this finding related to State Stormwater Standards. However, upon request, Adrienne St. John, Public Works Engineer, clarified that documentation had been submitted with the Notice of Intent to demonstrate compliance with state standards; however, the Department had submitted an additional document on September 25th that specifically addressed compliance with the stormwater standards set in the Bylaw under section 2.2.1.1, including velocity and discharge standards. The wording of the finding was then completed.

With respect to the fourth finding on section 2.2.2.4 b), the wording of the Bylaw standard was read into the finding by Mr. Gray, with no comments. With respect to the fifth finding on section 2.2.2.4 c), Mr. Uthoff recommended adding the language from the Bylaw section to complete the finding.

With respect to the sixth finding on section 2.2.2.4 c), the Commission completed the first sentence of the finding, but discussed adding additional detail. The concern was the issue of using the proposed undisturbed area for replication, and the consequences if this were done. The Commission agreed to add the following sentence to the finding: "The Applicant has shown that it would be possible to meet the on-site mitigation requirement; however, the consequences to abutting properties would be too great. Therefore, off-site mitigation is proposed."

Findings on the Request for a Variance to the Town of Bedford Wetlands Protection Bylaw

Proceeding to the Variance section on page 6.5, Mr. Gray read each of the three findings. There was no discussion on these findings, to which all agreed.

Ms. Bagdonas referred to the Bylaw in order to read the specifics of this section.

Discussion followed on the proposed conditions to the Variance. Regarding #6 (conservation restrictions), the Commission wished to know who would hold the land and how much the restriction would cost. It was explained that the Town owned the land in any case, whether it continued to be held as municipal land or converted to conservation land.

Mr. Hagan asked those present on behalf of the Town if proposed condition #7 would work for the Town. Mr. Warrington said that it would.

Ms. Bagdonas then asked the Commission to read the letters that had been submitted to the Commission since the last hearing. The Commission then took time to do this.

Discussion followed on the use of “St. Michael’s” for identifying 7 Liljegren Way. The Commission agreed to remove these references from the document and use 7 Liljegren Way and 9 Mudge Way to identify the proposed project site.

The Commission then reviewed the draft special conditions section, which Ms. Bagdonas had prepared using the revised language and layout developed by Mr. Willson. She explained that the residential model had been used, with additional conditions that had been reserved for other models.

The Commission had been asked by Ms. Saber to set a condition on the proposed wooded area to be left undisturbed. The Commission agreed upon the following wording for an additional condition: “Vegetated areas as shown on the current Notice of Intent plan and Mitigation Area Comparison Chart shall remain undisturbed.”

Ms. Bagdonas suggested an additional condition requiring an Amendment to the Order to reference final design and plans. The Commission discussed this suggestion and was not in favor of requiring an Amendment. However, the Commission then agreed on an additional condition that states “Final design plans, drainage calculations and stormwater management shall be submitted to the Commission for review prior to construction.”

A motion was made by Andreas Uthoff and seconded by Mr. Smith to issue the Order of Conditions/Variance as revised at the meeting. The motion passed 4-0-2. Ms. Bagdonas asked the Commission to rephrase the vote as subject to final review and approval by Town Counsel. A new motion was made by Mr. Smith and seconded by Mr. Uthoff to issue the Order/Variance subject to this condition. The motion passed 4-0-2, with Dr. Wirth and Mr. Willson abstaining as not part of the quorum, having been absent at the public hearing of September 5, 2012. The Order of Conditions/Variance was then signed.

1 Lavender Lane: Letter to Board of Appeals

The Commission reviewed and approved the letter.

Lantern Lane Bridge

Ms. Bagdonas explained the current status of the bridge, in that it would not be removed at present, and asked the Commission to approve hiring a structural engineer to make a site visit, evaluate the bridge and, if appropriate, make recommendations for any repair or reconstruction. The Commission agreed to this proposal, which Ms. Bagdonas had discussed with the Town Manager, who was also in agreement.

The meeting was adjourned at 10:00 pm.

Minutes prepared by Elizabeth Bagdonas.

Minutes approved at meeting of October 17, 2012.

