

BELLINGHAM PLANNING BOARD  
TOWN HALL ANNEX  
BELLINGHAM, MASS.

Regular Meeting, January 22, 1981

Members Present: John P. Murray, Chairman  
Gerald Brisson, Vice-Chairman  
Sergio Rotatori  
Carl Rosenlund

The meeting was opened at 8:00 P. M. by Vice-Chairman Brisson.

The following bill was approved for payment on a Brisson/Rotatori motion, with all members unanimously in favor:

"The Call" (Public Hearing - Brookside Estates).....\$23.94

Planning Board consultant, Phil Herr engaged in a discussion with the Board, clarifying certain points of the proposed "Townhouse Development" amendment to the by-laws. He explained that Townhouses are Multi-Family dwellings and that in the wording of the new proposed amendment, they would not require 20,000 acres or 125 ft. frontage. The current by-law states that you cannot have more than 10\$ - 3 bedroom units or 10,000 sq. ft. per bedroom. He also explained that everything under Section 4420 would apply to the Townhouse Development amendment. The amendment, as written, would encourage more one and two bedroom units. Chairman John Murray asked if Mr. Herr thought that Townhouses should be allowed in B-1 and B-2 zones and Mr. Herr said he thought that they should be allowed in those zones. Mr. Joseph Johnson questioned whether this was limited to a lot in excess of 40,000 sq. ft., (twice the area of a single family dwelling) in a residential district, you would need a 40,000 sq. ft. lot and Mr. Herr said that they could. Mr. Herr said that there are two ways of handling minimum lot area and that one of those would be to require a 40,000 sq. ft. lot, plus 7,000 sq. ft. per bedroom. Mr. Brisson stated that he felt that what was needed was something to lock out Townhouse Development on small lots. The wording of the amendment was changed to accomodate just this.

A motion was made by Carl Rosenlund and seconded by Gerald Brisson to submit the article referring to Townhouse Development on the warrant for the Annual Town Meeting and all members were in favor. Mr. Brisson made a motion to hold a Public Hearing on this article, February 26, 1981, but withdrew his motion.

Mr. Herr then brought up the issue of clarifying Earth Removal as shown on the Earth Removal Clarification dated December 11, 1980. He said that by adding a new section, 4620 b, would prevent anyone from using this as a loophole for going in the business of Earth Removal. He said that in essence, the amendment would provide for the requirement of a permit for anyone who removes earth and that the way the by-law now reads, the removal of small quantities of earth is incidental.

On a Rosenlund/Brisson motion, it was unanimously voted to submit this article to be placed on the warrant for the Annual Town Meeting.

At 9:00 P. M., the notice of Public Hearing regarding Brookside Estates was read by the Clerk, Joan King. Vincent Thayer and Paul Robinson, Civil Engineer from Millis appeared before the Board. Chairman John Murray announced that the Planning Board had received two letters expressing concerns regarding this Sub-Division, one from the Conservation Commission and one from the consultant to the Planning Board, Phil Herr. Mr. Thayer said that he had received a verbal approval from the Conservation Commission. Chairman Murray then asked if we were supposed to hear from any other town boards and the Clerk replied that the only Board we had heard from, to date, had been the Conservation Commission. Mr. Thayer said that he had met with the Water Superintendent and he said that he would drop a letter off at the Town Hall with that Board's approval. Upon checking the box at the Town Hall, that letter and approval had been received. Mr. Murray then said that since we had not heard from any of the other boards, we should proceed with the hearing. Mr. Murray then read aloud the letter from the Conservation Commission, which in essence, expressed concerns regarding possibilities of siltation due to road construction, stream crossing of the water main and effects of run-off on the wetland environment, and effects of run-off on the downstream abutters and culverts. They also expressed the Planning Board to consider the need for an easement or other manner in which the stream could be maintained, since it is in the drainage way for not only this property but a substantial drainage area. Mr. Thayer announced that in that case, he would like to have a copy of the letter from the Conservation Commission and was presented with one.

Phil Herr said that he was concerned about the substance of what the Conservation Commission requires. He said that their letter did not address the one fundamental question which he had, nor did he know what the attitude of the Commission was regarding allowing increases in run-off. He explained that according to the Commission's letter, Mr. Thayer would have to go through a review process. He also explained that siltation deals with the way in which construction operations go on and does not affect this plan at all, but if in fact

the Commission is saying that they will not tolerate any increase in run-off as a result of this development, then it would affect this plan and that is why he thinks that it is important that the Conservation Commission get together with the Planning Board to make it's feelings clear.

Mrs. Clementine Kutcher, 4 Thayer Street expressed concern about water run-off and sewerage running into catch basins. She stated that they have been there for fifteen years and have had nothing but water problems in that area. Her concern was with where the piping comes down. She said that in the Spring, when we get alot of rain, her yard is flooded, comes through her property and backs up into their cellar. She said that they had the problem corrected at their own expense. She also said that Vincent Thayer had an easement to take care of this and that in the fifteen years that she has been there, he has never taken care of anything. Chairman Murray then requested that Mrs. Kutcher point out on the map, where her house was and it was pointed out as Lot 41. Carl Rosenlund said that when he checked out this plan, there is no easement. Mrs. Kutcher said that they have an easement coming through a natural stream but that her main concern was with the drain. She said that the catch basins are sunk into the ground and that they had to have that repaired. She said that wherever the water is coming from, way in back, is wetlands and that her kids used to ice-skate on it in the winter. She said that her main concern is that if Mr. Thayer builds, the capacity of the drain now is causing trouble. If we have a storm and the snow melts, Mrs. Kutcher said that the drainage on the sidewalks, water comes up out of the drains and down into their property and that the pipe will not take more water. She said that her main concern is that when it goes around her property and down across into Mr. Thayer's Mother's yard, it floods the yards. Mr. Thayer said that when this happened last year, it was because of a broken pipe and not because of an overload on the drain. Mrs. Kutcher said that they have a cap that can be removed and that you can see the water and that this drain runs constantly, all year long. She said that they had it drained at the time they moved in and perk tests were done. She pointed out that the people in the back have their septic tank below the water level and that when the people wash and flush their toilet, the water runs out into the street. She wanted to know what kind of arrangements are going to be made if Mr. Thayer builds up there so that the people down below will not be backlashed with the excess water.

Mr. Brisson said that this was one of the questions that Phil Herr raised and that this is possibly a question which the Conservation Commission will also have. Mrs. Kutcher asked if anyone was present from the Conservation Commission and Mr. Brisson replied "No, they are not". Mr. Brisson asked Mr. Robinson if he had done any drainage calculations and Mr. Robinson said that they had not done any in the area being questioned by Mrs. Kutcher. Mr. Brisson stated that he thinks that himself and what everybody else was going to be concerned

with is what's going to happen at the outlet. He said that there was no concern about a potentially new road, at least not at this time.

Mr. Ronald McDonald, 20 Brookside Rd. spoke and said that on the other side of the street (Woodside Lane), there is a constant stream in the rainy and wet season and wanted to know what would happen if more houses were built here. He and Mrs. Kutcher both explained that there were alot of problems with water in that area. Mr. Murray explained that these are the problems which the Board would be addressing. Mr. McDonald said that there are two streams in the area, one which comes down by Mrs. Kutcher's property and one which comes down by his. Mrs. Kutcher said that you can go into the Burke's yard in July and you would loose your shoes in the back yard. She again questioned what kind of a situation there would be once more homes were built back there. She questioned whether the plans as shown were up to date, how much land was presently required to build a home, etc. and Mr. Brisson advised her that the plans, as ~~shown~~, do meet all the current requirements. She also wanted to know if all tests would be made such as sewerage, etc. and Mr. Brisson advised her that that doesn't fall under our board, that is the Board of Health. He said that we have no jurisdiction or no concern as to perk tests. He said that the Planning Board could approve this sub-division and that possibly nothing could be built there if perk tests did not pass, but that the Planning Board has no jurisdiction over that. Mr. Phil Herr stated that we do know that both from hearin what these people have said and from years of hearing about it , that there is a problem in this area. Mr. Brisson said that he feels that we need some kind of a study from the outlet on up . Mr. Herr said either that or some type of a retention system so that the flow to that point is restricted to what it now is and his concern is that the Conservation Commission may impose that. Mr. Rosenlund pointed out that we had received a letter from the Conservation Commission but Mr. Herr said that their letter did not make clear what standard they were going to impose.

Mr. McDonald questioned what kind of houses were proposed for the property. Mr. Brisson answered that we don't know, ~~nor~~ do we have any control over it. He said that you can't tell a developer or any other person what kind of house they can build on their property. Mr. Thayer said that it was his understanding that they would be single family type houses. Mrs. Kutcher asked if they would coincide with the type of house that is there now, and not houses that stick out like sore thumbs. Mr. Thayer said that these people are his neighbors and he wants it fully understood from the beginning that he is just preparing this property for sale. He said "I am personally not building one single house". He said that according to his back-ground dealing, they will be single family houses and we won't be ashamed of what goes up there. He said that as far as he is concerned,

after and when this is approved by the various boards, he at the present time has prospective buyers who want to buy either one whole package of sixteen units or some who want to buy it as either nine and seven or ten and six, in other words, where the brook divides the whole lot, it could be divided into two separate purchases by a builder. He re-stated "I am not going to build any houses there" Mrs. Kutcher stated "Whoever he sells them to, if we have any problems, we are going to be stuck with them". Mr. Murray stated that this was Mr. Thayer's right to sub-divide the land and either sell them off as individual lots or as one package. He told Mrs. Kutcher she could come along and want to buy just one lot and nobody has any control over exactly what kind of house you would build on it. Mrs. Kutcher stated that they were not even notified that this was going on and that her neighbor across the street told her about it. The Clerk questioned whether she was an abutter of the property and Mr. Kutcher said that his neighbor across the street was notified. Mr. Brisson told the Kutcher's that they were not abutters and that their neighbor across the street was an abutter, this being the reason the neighbor across the street was notified and the Kutchers were not. Mr. Brisson stated that it was also advertised in two local newspapers. Mr. Kutcher wanted to know how he could possibly not be an abutter and Mr. Brisson advised him that he was not because he lived across the street. It was shown to the Kutchers on the plan, why they were not considered abutters. Mr. Kutcher stated that the first ten years he lived in his house, he had nothing but problems with water and that nothing was ever done about it. He said that the people on the other side of the street who are abutters, had water coming through their kitchen and cellars. He said that when all the water coming from the back is detoured into one pipe, it will come through his property. He said that he went through alot of years of water problems and wanted to know who was going to take care of all the water that is going to come through his property as a result of new building. Mr. Murray said that this is the same problem that we were addressing when Mr. Kutcher came into the hearing.

Mr. McDonald questioned what, in essence, did the letter from the Conservation Commission say. Mr. Brisson answered that the letter was not very specific but that what it does say is that apparently, the Conservation Commission is going to look into this a little further. He said that they were concerned with the affect of run-off downstream to abutters.

Mr. Kutcher stated that over the years that he has lived there, when we have had heavy snow or rain, they have had the water come up through the street drains and then run through his property and that he finally fixed the problem himself. Mr. Brisson asked the question: "If we were to have alot of rain today, would you have a serious problem" and the Kutchers said "Probably". Mrs. Kutcher said that what happens is that with the stream at the back of the woods and the catch basins on the street, they are collecting the water not only

from the overflow of the stream, but also from the run-off on the streets. Mr. Brisson stated that we were well aware of that and that it was one of his first questions several months ago and he knew that new building would add to the run-off.

Mr. Kutcher asked how they were going to consolidate what is approximately a million gallons of water in Spring to go through a 25" pipe when on some reasonably bad Springs, that pipe can't handle that run-off. Mr. Murray said that it may require a bigger pipe down below. Mr. Brisson stated that there were several alternatives and that it was not for us to determine what they are. Mrs. Kutcher asked who was going to determine who was going to do what. Mr. Brisson stated that was for an engineer to determine, either Mr. Thayer's engineer or one that would be hired by the Planning Board. He said that what we need is proof, verification with numbers and drainage studies that the drainage will work and will not create a hazard downstream. If that can be proven to us by a registered engineer, then we have no alternative but to believe it, whether it happens or not. Mrs. Kutcher asked who was going to maintain it and Mr. Brisson stated "at this time, I don't know". He said that he was not satisfied with the plan as it is, at least until he sees something further on the drainage.

Mr. Kutcher said "I assume you realize that that eventually runs into Route 140" and Mr. Brisson said "I really don't know where it runs". Mr. Kutcher stated that the drain on 140 is plugged up almost every year and that when that plugs up, the whole system plugs up. Mr. Thayer said that that is caused by leaves and debris in the street and not caused by the brook because that is 5 ft. above the brook level. Mr. Kutcher stated that whatever the reason, when the whole system plugs up, he is going to get the over-run into his yard and his cellar. Mr. Murray stated "We certainly don't want to create more problems for you people who are down there. He asked Mr. Thayer if he goes along with the fact that problems do exist in the area. Mr. Thayer replied that he knows that there are water problems in the area, mostly ground water problems and that back fifteen years ago, when the existing properties were built there, the contractor, at that time, correction, the buyer at that time was told that he would have to consider it as wetland and handle it accordingly and from that period of time, he personally has felt that these problems that Mr. McDonald and Mr. & Mrs. Kutcher speak about have just been there because they weren't properly taken care of to begin with. He said that he sees no reason why, with a 24" pipe for a seasonal brook, and that all that is for four months out of the year, shouldn't be able to handle it. The Kutchers disagreed, saying that it was not a seasonal brook. Mr. Brisson stated that he didn't think that Mr. Thayer was qualified to determine what size pipe was capable or not and Mr. Thayer agreed that he was not. Mr. Brisson stated that there may be something further down in that drainage system which creates a problem and this should be addressed



to Mr. Robinson. He said that what he thinks we are going to have is a complete drainage study from wherever this water outlets to where it ends. Mr. Thayer asked if he could ask the Kutchers one question. He said "I know that you spent alot of money either this year or the year before and when the contractor did the work, did he put a trap between the brook and your celler?" The Kutchers replied "No". Mr. Thayer said that he did go along with the study that the Planning Board recommended.

Mr. Kutcher asked why didn't the original contractor Morin & Dalpe take care of that when he originally built. He said that everytime the brook gets too high, it runs into his house. Mr. Thayer said that he wasn't going to mention any names but Mr. Kutcher said that he was and that the contractor did a bum job then and that General Contractors generally do bum jobs because there is nobody that takes care of them. They are the same people who put the Grant's septic system into the town sewerage and their house is almost condemned. Mr. Kutcher stated that at the time of his original problem, he was after a Selectmen, Mr. Scolovino and a bunch of other people and that he got no help and nobody knew what was wrong. He stated "What can the little person do?" What is some little person going to do against some contractor - what are you people going to do - you can't even do anything - you don't have the power to fight these people". Mr. Murray stated that this is the purpose of the Public Hearing and that the Kutchers and Mr. McDonald did bring many problems to light and that some kind of a study is going to have to be done. Mrs. Kutcher said that basically, that is what she would like to see done. She also stated that she didn't care who Mr. Thayer sells the land to, she just doesn't want anymore problems. Mr. Kutcher stated that for the first ten years, some other gentleman put a trap in the pipe and that during some of the coldest weather, he had to go out and pull the trap out of the pipe to let the water go down. Apparently, the other gentleman was worried about leaves going down the pipe. He stated "I would be out there dressed like an eskimo trying to clean out leaves and other debris trapped in the pipe. Mr. Murray re-stated that we were going to have to have some kind of a study done. Mrs. Kutcher asked "Who is going to pay for this expense" and Mr. Murray said "I really don't know - that's all been accepted by the town now, hasn't it? Mrs. Kutcher stated "That is a private way". Mr. Murray re-stated "I really don't know" and Mrs. Kutcher said "You had better find out because I'm not going to pay for it".

Carl Rosenlund said that he felt that we had belabored this point about drainage and that he agreed with the Kutchers that there is a problem and he thought that Mr. Thayer has agreed to it and we should find out what is required to be done, have it done and address the other problems that exist.

Mr. Murray then stated that he had the letter from the Water Board which approved the plans, as shown, to include four hydrants and asked

that the letter be filed.

Carl Rosenlund asked Mr. Phil Herr if he would address the points in question in his letter. Mr. Rosenlund suggested that if we had an extra copy of the letter from Mr. Herr, perhaps the Kutchers would like to have one and they were presented with a copy.

Mr. Herr said that there were no substantial issues in his letter that we had not been talking about. His real concerns were with drainage. The other points of his letter were mainly for information and he just wanted to make clear what it was that we were acting on and that the big issue is that stream.

Mr. Brisson asked Mr. Robinson if he could logically explain why the street was designed grade-wise why it is, being a 10% grade. He said that they wanted to reach a high point and split the drainage. He said that they did extend a drain 100 ft. with two additional catch basins in the area. Mr. Brisson said "What makes me uncomfortable is this 10% grade. I realize it is allowable under our sub-division rules, but if it's not necessary, why have it?" He asked why this could not be brought up on a more gradual grade with no high point, because they were going to have another set of catch basins in there anyway. Mr. Robinson said that he would review Mr. Brisson's suggestions on the grading.

Mr. Rosenlund questioned the easement. He said that there is an easement on the Kutcher's property and it stops there - it does not carry over to Carter's. He said that he couldn't find an easement and questioned if there was one. He said "It's too late to get an easement there now". Phil Herr stated "You can't very well of these people" and Mr. Rosenlund said "But you could get an easement on the new section, which would make sense to me to have the easement there. I'm surprised that there was never any easement there". He suggested that an easement be shown on the plan and Mr. Robinson suggested a retention area might also be shown on the plan.

Mrs. Kutcher asked "If you correct the water problem, who is going to maintain it?" She said "Right now on my easement, it says Vinny T hayer has a right to come in and maintain that brook". She said these are the questions they want answers to and that is why they were present and putting them to the Planning Board. Mr. Brisson stated that normally, when there is a drainage easement on a person's property, the maintaining agency is the Town. Mr. Rosenlund stated that the easement on the Kutcher's property, going back to Marchand & Dalpe is unclear because he researched both parcels going all the way back and it says there is an easement but refers to sections that don't even exist.

Mr. McDonald said that he gets water in his cellar in the Spring and that he lives on a hill. He feels that the water table must be very high in this area for this to happen. He is concerned that if a house



is built behind him, he would have worse problems. He said that at one time, he had 3" of water in his house.

Mr. Kutcher asked if the Board was aware of another 25 or 30" pipe running through Brookside or possibly Thayer Street and across the Andrew's property. He said that a couple of years ago, the water came down that particular pipe so bad that his son had five feet of water. Vincent Thayer said that this was perforated pipe and that it connects with a pipe behind Kutcher's house and that it doesn't go across Brookside, it goes under Route 140.

Mr. Kutcher said that it was his understanding that at the time his house was built, they performed a perk test and whatever was the standard perk test, if there was such a thing, at that particular time, we had been into what was a seven year drought and they were allowed to perform a standard perk test. Mr. Thayer wanted to make it clear that he was not the builder at that time and did not want to read in the paper that he was responsible for that.

Mr. Kutcher stated that he was very negative about contractors, whether they come from Boston or Bellingham, that they always wind up giving it to somebody and they get away with it from Town Officials because Town Officials don't have the knowledge at which point, Mr. Rosenlund stated "Be careful, you're not making any points with me" Mr. Kutcher stated "I'm not here to make points with you, I'm sorry" Mr. Rosenlund stated "I just don't appreciate your attitude that all politicians are crooked, O.K.?" Mrs. Kutcher said "All we're saying is that we always get the end of the stick". Mr. Kutcher asked "Do you consider yourself a politician?" and Mr. Rosenlund said "Somebody elected me to this Board". Mr. Kutcher stated that all politicians were not crooked, but the ones that are, want to give it to the public.

Chairman Murray stated that we had gotten off on a tangent and that what we were going to have to do was to have some kind of a study done and that maybe the final outcome might be that some of the problems might be cured, rather than added to. Mr. Thayer said that he hoped such a study would help with all his neighbors. Mr. Robinson said that a study would take approximately two weeks to one month and Phil Herr explained that a 60 day extension could be granted to Mr. Thayer to allow for this study. Sixty days from the date of filing or sixty days from the written request of the applicant. He said that the applicant must request the extension and that has to be filed with the Town Clerk. Mr. Herr suggested that nobody invest any energy in any further analysis of the drainage system until a connection is made with the Conservation Commission and ideally, that should happen when the applicant, the Conservation Commission and the Planning Board are in the same room at the same time. He said that he thinks that what we are talking about is a very complicated business and he had no idea of at what level the Conservation Commission was dealing with this problem, but he feels that that connection must be made or else the Board will be wasting its time.

Mr. Murray suggested that although the Conservation Commission addressed their letter to him, they probably should have addressed it to Mr. Thayer. Mr. Herr stated that Mr. Thayer has to notify the Conservation Commission before he starts to do anything physical on the land that triggers the Conservation Commission's process. He doesn't have to get permission from the Conservation Commission before the Planning Board takes its final action, but it is best for him to do so.

Carl Rosenlund suggested that we request that Mr. Thayer submit, in writing to the Town Clerk a request for an extension of 60 days, which would take us into March 28, during which time, whatever is convenient for everybody, to try to set up a meeting with the Conservation Commission. Mr. Murray said that he thought that would call for a continuance of the Public Hearing. Mr. Herr explained that under the Sub-Division control laws, the submission is the date that the plans are brought to the Planning Board and that was November 28th. Mr. Murray pointed out that if the Board had to act now, we would have to deny it and Mr. Brisson suggested that the Board re-contact the Conservation Commission, requesting that they be present at the next meeting on February 12, 1981.

Mr. Brisson made a motion to accept the extension as worded by Mr. Thayer and the motion was seconded by Mr. Rosenlund, with all members present voting in favor of granting the request for the extension until March 28, 1981.

On a Murray/Brisson motion, it was unanimously voted to continue the Public Hearing on Brookside Estates until February 12, 1981 at 8:30 P. M.

Mr. Phil Herr then wanted to make sure that the board had no more articles to bring to the Annual Town Meeting. He said that there had been two sets of proposals dealing with Sign Regulations. He also stated that there is a proposal regarding Mobile Homes for the Elderly, drafted at the request of the Board and revised twice. He was advised that this matter had been turned over to former board member, James Brennan. He asked if the Board wanted to place that article on the warrant for the Annual Town Meeting and the Board said they were not ready for it at this time.

The discussion then went back to Sign Clarification. Carl Rosenlund felt that some action should be taken at this time, at least to be brought to a Public Hearing. Phil Herr suggested that since the Board had two other Public Hearings coming up, perhaps it would be a good time to also have a hearing on Sign Clarification.

On a Brisson/Rosenlund motion, it was unanimously to voted to schedule the following Public Hearings:

On March 26, 1981: Sign Clarification at 8:30 P. M.  
Earth Removal at 8:45 P. M.  
Town House Development at 9:00 P. M.

Carl Rosenlund discussed a business which he felt was operating as a truck terminal on Route 140. John Murray said that the definition of a truck terminal was the parking and/or unloading of a truck and was not allowed in a B-1 Zone, but is happening there.

Mrs. Billie Gene Lavalee, 430 Pulaski Blvd. questioned who owned the property in question and the Board replied that they did not know who owned the property. Mrs. Lavalee described herself as a concerned citizen and stated that such an operation was also taking place in South Bellingham and suggested that the Board look into both matters.

On a Murray/Rotatori motion, it was unanimously voted to adjourn at 11:30 P. M.

Respectfully Submitted,



Gerald R. Brisson  
Clerk