

Bellingham Planning Board  
Town Hall Annex  
Bellingham, Mass.

Regular Meeting - December 9, 1982

Members Present- Carl Rosenlund, Chairman  
Sergio Rotatori, Vice Chairman  
Joan King  
Bert Boiteau  
1 John Murray

The meeting was called to order by Chairman Rosenlund at 7:40 P.M.

Mr. Hadley approached the Board and presented the properly stamped copies of the approval not required plans as requested at the last meeting. However, having left behind the Form A and \$10.00 fee, Mr. Hadley said he would return to the meeting later with these items and left at 7:50.

Members reviewed the mail and bills to be paid. On a Rotatori/King motion the Board voted 5-0 to pay the bills of: Registry of Deeds for Subdivision Access and for Flood Plain Subdivision Regulations, \$20.00; Philip Herr for 20 copies amended Subdivision Regulations, \$50.00; Martha Russo for reimbursement of postage, postcards & phone calls to consultant, \$20.38; secretary's salary, \$120.00; members payroll for period July 1, 1982 thru December 31, 1982, Chairman Rosenlund \$75.00, Mr. Rotatori \$50.00, Mr. Boiteau \$50.00, Mrs. King \$50.00, Mr. Murray \$50.00.

Mr. Rosenlund read the letter of certification verifying that the listed Government agencies were notified of the public hearing on the zoning bylaw amendments, which is to be signed and forwarded to the Town Clerk. 5 members signed the notice.

8:00 P.M. CONTINUED PUBLIC HEARING - EDMUND LAPOINTE, ET AL SPECIAL PERMIT

Chairman Rosenlund reconvened the public hearing and requested an update on what was done on the plan from the last hearing ( Oct. 28, 1982), regarding information requested. All members present at the last hearing are in attendance.

In review, Mr. Rosenlund said that information and some research was requested on the subject of right of way and communication with DEQE regarding the 1,000 ft. setback.

Fred Stavinski, representing Mr. LaPointe, opened the discussion regarding several points remaining unanswered at the last public hearing.

1. The discussion concerning a well on the adjacent property, formerly the Claussen property. Mr. Stavinsky said he had located the well and the well is in fact approximately 100 ft. from the property line. Mr. Stavinski showed the Board three sketches and said if it became absolutely necessary he could provide the Board with an affidavit to that effect. He said he does have the elevations and geodetic base of the well and pointed to the area showing this as well as the kettle hole.

2. Concerned Mr. Burr, his heirs and assigns regarding an easement over the LaPointe property. Mr. Stavinski said that their attorney had

*St.*

informed them that in his research has not shown that Mr. Burr has any right over his property. By right, he is referring to a legal document. Mr. Stavinski pointed out that their attorney is ill and therefore is not in attendance and he can only pass on the information he received.

Mr. Rosenlund stated to Mr. Stavinski that he had gone to the Board of Assessors and that their map definitely shows a right of way. He asked if Mr. Stavinski was disputing this. Mr. Stavinski said, yes, based on what their attorney has told them and said that a right of way as shown on a plan does not give a person a right of way over property. It must be accompanied by a document filed with either a plan and a document at the registry. You can propose a right of way, show it on a plan, take it to the registry and file it but this does not, infact, give you a right of way. The right of way must be mentioned in a deed or accompanied by a document recorded with the regis try. However, Mr. Stavinski said they do not wish to give Mr. Burr a hard time and in speaking with Mr. LaPointe on this matter and if Mr. Burr can show a legal document they would be in agreement. Mr. Stavinski said they are prepared to follow up beyond the roadway a suitable right of way to the property and give a document to that effect.

Mr. Burr, the property owner, is in attendance.


Maps of the area were taped to the wall for better viewing. Mr. Stavinski said that their attorney had received correspondence from the DEQE but he did not have the letter with him, and had not spoken with the attorney; however, took it upon himself to call the Southeast region of DEQE at Lakeville which district he is familiar with. He said he spoke with the Water & Resource Engineer concerning this matter, not specifically Bellingham, but concerning lagoons and their relationship to property lines, etc. Mr. Stavinski said he was told that when the regulations were written they were written for lagoons and not wells. For instance, you could propose a well here but when the lagoon went in and if there was a well here you would not have been able to put your lagoons in the particular location. He said that it does not mean that Mr. LaPointe's land cannot be developed within a 1,000 ft. radius. According to the engineer, this is not what the regulation means.

Mr. Stavinski said the Water & Resource Engineer at DEQE further told him that the regulation is changed again this year, and now it is 500 ft. Mr. Stavinski said he was told that he would have to go in accordance with the Town's regulations concerning wells.

Mr. Stavinski pointed out that Bellingham's regulation said that you cannot be within 100 feet of a sanitary system or a lagoon and said that is the regulation to follow.

Mr. Stavinski informed the Board that Central District of the DEQE, which covers this particular area, was very uncooperative. They told him that his attorney had been contacted, and would supply no further information other than to suggest Mr. Stavinski get in touch with his attorney for the information. It was not possible since the attorney is ill.

Mr. Ros enlund said, regarding the DEQE, he approached the Board of Health at their regular meeting requesting information on set back requirements or any information from DEQE. The Board of Health provided



a copy of the law but without the statement requested from DEQE stating in fact what the regulation was. From discussions with the Board of Health and subsequent discussion with one of the members who had contacted DEQE and conversations held with Mr. Barrows concerning this, Mr. Rosenlund said that for whatever the reason is he had not been able to get the DEQE to give us any kind of a letter of statement of fact. They have not refused to do so, but just have not provided it.

Mr. Rosenlund asked Mr. Barrows whether he has any update. Mr. Barrows said no.

Mr. Rosenlund said his information is the same as that presented by Mr. Stavinski. That being the lagoon must be 1,000 ft. away; however construction does not have to be 1,000 ft. away. This information was given verbally to Mr. Rosenlund through DEQE by the Board of Health.

Regarding the right of way, Mr. Rosenlund said the Board of Assessors showed him the map showing the right of way and it was recorded.

Mr. Rosenlund asked Mr. Burr to respond regarding the document showing right of way. Mr. Burr approached the Board and presented copies of maps. Members reviewed the maps with Mr. Herr, also Mr. Stavinski. Mr. Herr feels the right of way is good. Mr. Stavinski agreed it looks like a Land Court Deed with a right of way.

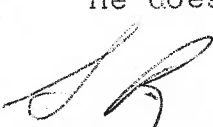
In a discussion of a right of way, Mr. Burr said he would be agreeable as his primary concern is access to his property. Mr. Rosenlund said he and the developer would have to agree as to the location of the roadway. Mr. Stavinski said they would have to get a release from Mr. Burr and provide him with a new right of way.

Mr. Rosenlund said our concern regarding the public hearing is a request for cluster development although we have been liberal in discussing other aspects of it.

Mr. Herr said he feels that this is germane to the cluster decision in two ways. First, if you approve it, you may want to approve it with a condition that a right of way be provided to that rear property line and any subdivision plan that would subsequently follow. Secondly, you may conclude that satisfying Mr. Burr's family's rights to a right of way is easier to satisfy with a cluster than it is with a conventional plan.

A question was raised as to why. Mr. Herr explained that in order to satisfy it with a conventional plan, a right of way or easement would have to be shown paralleling people's side lot lines or back lot lines. With a cluster you are dealing with some kind of common open space. In that respect a cluster is somewhat superior to a conventional plan. It should be a consideration.

Mr. Barrows said that as far as the Town of Bellingham Town line goes we would take care of Mr. Burr. He said he talked to Lee Ambler and he said when we are ready to have Mr. Burr go to his office and he would draw up the papers and give Mr. Burr a right of way through there. Barrows said he left two alternatives. One through the landfill, which he does not like, and in the back which joins Mr. LaPointe's land.



Discussion was held concerning the future requirements of roadway through this area. The roadway is 40 ft. because it only serves a small number of lots. Mr. Herr said if it is determined that a roadway is to be extended the Board may or would require 50 ft. Burr said that in the past his father could only get a 10 ft. right of way although he had asked for 20 ft.

Mr. Rosenlund asked if anyone would like to address the Board, either pro or con, in regards to this request for cluster development. There were no comments.

Mr. Rosenlund said he had a letter from the Conservation Commission and other information concerning taxes with regard to cluster development vs. conventional. There was some comment to the effect that if the Town was to allow a cluster development it would lose a certain amount of tax dollars on property.

For a comparison, Mr. Rosenlund said he asked Mr. Petrin of the Board of Assessors to figure out the tax base on a cluster and a conventional plan and found the difference on the tax revenue lost to the Town on cluster vs. conventional is \$107.00 in taxes. Mr. Rosenlund feels there is not a substantial difference as far as money lost in revenue to the Town on the cluster vs. the conventional. Mr. Rosenlund feels this to be useful for informational purposes.

Mr. Herr asked if the figure includes the assessed value of the houses to be built.

Mr. Rosenlund said no. Mr. Herr said there might be a difference in the value of houses to be built. Mr. Rosenlund agreed there might be but feels it is a matter of interpretation of opinion. Mr. Herr agreed but feels the issue is whether one or the other of the plans is likelier to attract quality residential development.


Regarding the Conservation Commission. Mr. Rosenlund read the letter which stated that turning over the proposed common land over to the Town of Bellingham, Conservation Commission, would serve no functional purpose. Recommendation is that the lots be expanded to cover the entire area so that control of the wet area is with each individual owner in concert with applicable laws of the Commonwealth of Massachusetts and Town bylaws. Cluster zone planning is not recommended by the Commission for this project.

Mr. Rosenlund asked for any further comments.

Mr. Barrows asked how far away are the houses going to be from the lagoon. Mr. Stavinski replied saying he could only speculate; however, based upon developments such as this, most cases the builder generally would like to locate the house to within 10 to 20 ft of the set back requirements. For instance, if the set back requirements is 40 ft. and there is no obstacle, no natural obstacle in the way, he would generally put a house back 40, 50 or 60 ft. off the roadway. Probably would be 300 ft. from a well.

The question of elevation was discussed with reference to the lagoon. Mr. Stavinski said he did not take any elevation in or around the lagoon, that he preferred to be as far away as possible. But the lots are higher.

Mr. Burrows said there is a small pond on the property which they refer



to as a cranberry bog. At the request of the Conservation Commission they had to put a pipe in there. This drains into Silver Lake.

Mr. Stavinski said the ponding area should, in fact, be owned by the Town and if it were not, it should be a no trespass area. He was disappointed that no member of the Conservation Commission attended the meeting so that their views could be heard.

Mr. Stavinski feels that the most important issue is for the Town or the Conservation Commission to have control of the pond.

Further discussion was held on the issues regarding cluster vs. conventional as well as the benefits to the Town or to Mr. LaPointe.

Mr. Rosenlund asked for any further comments. Member Murray said he feels this is a bit different from a what a normal cluster development is all about. He commented on the issue of the well on one of the property owners property which was discussed earlier. (That property owner was not in attendance). He feels that a cluster plan would allow for greater distance between the roadway and the well in question. Regarding the right of way for Mr. Burr he sees no difference in one plan over the other. Regarding the issue of taxes he sees no appreciable difference in the amount. Regarding the proximity to the land fill and the lagoons, Mr. Murray said he sees the cluster development as superior to the conventional, and sees no disadvantage to the Town in granting a cluster.

Mr. Rosenlund cleared the matter of the well site as it appears on the separate plans and pointed out to Mr. Murray that as Mr. Stavinsky stated at the last meeting the proposed road entrance in distance on cluster would be the same as on conventional, but it does not show this.

Mr. Rosenlund said his concern is with the common ownership. With reference to statements that the land does not have to be deeded to the Town, that it could be deed to the co-op of homeowners. He pointed out that if it is all wetlands area that it is not land that can be used for recreation, he does not see where a common ownership by the homeowners would be desirous.

Mr. Rosenlund does feel preserving the ponding area for open space makes more sense. He said that evidently the Conservation Commission does not see it as such in their negative response.

Mr. Rosenlund also commented on the suggestions made at previous meeting that this open space could possibly be used for recreational purposes, or for wildlife refuge. He had received no answers to previous inquiries if there is wildlife back there, is it a sanctuary.

Regarding the roadway of approximately 200 ft. Mr. Rosenlund said he sees no problem with this. With reference to the proposed development, cluster, Mr. Rosenlund referred to section 4310. He also referred to Mr. Herr's statement that regarding cluster development under a special permit that the Board can impose conditions on the development its elf and perhaps have more control over what is developed there than on a conventional plan. Mr. Rosenlund said he is in agreement with this.

Mr. LaPointe feels that the open space could be utilized for recreation. Mr. Herr disagreed. He said he had walked the area and found it to be very hilly and noted the sloping to be extreme. A large area of the open space would not be useful for recreation, except tramping through woods.



Mr. Herr feels it would be troublesome for the land owners to own it. If the Conservation Commission does not want to accept it then the only vehicle the Town has for accepting it as Town property is through Town Meeting. However, he pointed out that if the Conservation Commission wanted it they could accept it tomorrow. Discussions continued regarding handling of the open space. Mr. Herr feels and said he would not recommend to the Board approving it until a better sense of how to handle the open space is acquired.

After further discussions and no further comments Mr. Rosenlund entertained the motion that the public hearing be closed. On a John Murray/Sergio Rotatori motion the Board voted 5-0 to close the public hearing.

Mr. Rosenlund pointed out that the Board must act within 90 days from the time of the public hearing. This would bring it to the end of January, or our next meeting prior to that, January 27, 1983.

Mr. Rosenlund asked if the Board wishes to take any action at this time. Mr. Murray asked if Mr. Herr could foresee any difficulties or does he see any reasons why we should not vote tonight because of the problem of the acceptance of the open land, or does he think it could be worked out in some form. It was suggested that someone talk to the Chairman of the Conservation Commission. However, Mr. Rosenlund pointed out that once the public hearing is closed this could not be done.

Mr. Murray asked if a vote had to be taken tonight.

Mr. Herr suggested the Board not take final action as this particular special permit is tricky and proper wording should be worked out to do what the Board wants to do. He suggested that this could or should be worked out between members, himself and Mr. Ambler. He feels this is necessary if the Board wants to accept the cluster.

Mr. Murray expressed concern as to what would happen to the open land if the Board accepts the cluster before that question is resolved.

Mr. Rosenlund pointed out that Mr. Herr had suggested the Board take this under consideration with instructions to Mr. Herr or whomever to come back with suggestions on the different areas of concern.

Mr. Rosenlund suggested it should be taken under consideration until these areas are worked out and suggestions brought before the Board.

On a Sergio Rotatori/John Murray motion the Board voted 5-0 to take under consideration.

Mr. Rosenlund, addressing the audience, said that those who have been notified of the public hearing will also be notified of the Board's decision. Once the decision has been filed there is a 20 day appeal period at which time the decision of the Board can be appealed.

Mr. LaPointe acknowledged.

Mr. Rosenlund pointed out that a vote of 4 of 5 is required to render a decision and the decision in writing must accompany same. Mr. Murray said he does not plan to render a written decision.

Mr. Stavinski and Mr. LaPointe thanked the Board and left at 9:52 P.M.

At 9:55 P.M. George Lumentti of Page Realty approached the Board requesting a release on lot 93 in Pilgrim Village. Property address 33 Mohawk Dr. This is in reference to a covenant on the lot which was





placed on the books back in 1961 and it is still on the books and it was a matter of concern to a Boston lawyer to release that covenant. Mr. Lementi presented the Board with records and information concerning Pilgrim Village and specifically to lot 93. Peg Forte of Austin Realty was in attendance, who is the selling realtor on this property.

Following further discussion, and on a Rotatori/Murray motion the Board voted 5-0 to release lot 93. Mr. Lumentti said he will handle the notarizing. He thanked the Board and left at 10:15 P.M.

Jane Hadley returned with the Form A and \$10.00 filing fee for the approval not required plan. On a Rotatori/Murray motion the Board voted 5-0 to sign the plan. She thanked the Board and left.

Mr. Rosenlund referred to the articles pending. He noted that the Town Warrant closes January 21.

Mr. Herr said that he would send a letter to Mr. Rosenlund on the articles pending.

Mr. Herr presented the new Flood Plain Zoning map to the Board.

Mr. Herr read a letter received from Mr. Ambler on Accessory Truck which had a minor change in wording, from person to owner or his agent.

Mr. Herr agrees.

Mr. Rosenlund inquired if Mr. Herr sends copies of pending articles to Mr. Ambler. He said he sends everything.

Regarding Mr. Herr's contract with the Board, Mr. Rosenlund asked if any changes in fee was anticipated. Mr. Herr said no; however, because of the fact of rising costs that it could limit some the the extra services, such as rush copies of maps to the Town Clerk, etc. And if a meeting did not require his attendance he would not make the trip.

Regarding the budget, Mr. Rosenlund gave each member a copy wo work with. Each item was reviewed and discussed. The Board agreed to maintain its present members' salary. Mr. Murray suggested requesting a salary increase for the secretary.

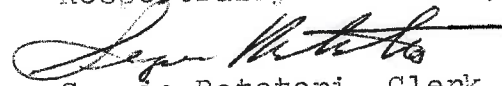
Expenses were gone over. The secretary is to get the cost of purchases anticipated for office paper and printed envelopes. The secretary to fill in the budget sheet as discussed with nine copies for the Finance Committee due December 22nd.

Due to the foliday, the Board voted 5-0 to hold the next regular meeting on Thursday, Jan. 13, 1983.

On a Rotatori/King motion the Board voted 5-0 to adjourn.

Adjournment at 11:20 P.M.

Respectfully submitted,

  
Sergio Rotatori, Clerk