

**TOWN OF GREAT BARRINGTON
SELECTMEN'S MEETING
MINUTES
TUESDAY, JULY 1, 2014
6:00 P.M. – SPECIAL MEETING
TOWN HALL**

PRESENT: ED ABRAHAMS
DANIEL BAILLY
STEPHEN BANNON
DEB PHILLIPS, CHAIR
SEAN STANTON - ABSENT

JENNIFER TABAKIN, TOWN MANAGER

1. CALL TO ORDER:

Deb Phillips called the meeting to order at 6:00 PM

2. THOMAS GLADWELL/MICHAEL WAINWRIGHT USA FOR TEMPORARY WEEKDAY OUTDOOR ENTERTAINMENT LICENSE FOR JULY 5, 2014 FROM 12:00 NOON – 5:00 PM AT 964 SOUTH MAIN STREET PARKING LOT. (DISCUSSION/VOTE)

MOTION: Steve Bannon to approve with the condition that the owner's permission letter be provided

SECOND: Dan Bailly

VOTE: 4-0

3. CONTINUATION OF FAIRGROUNDS COMMUNITY REDEVELOPMENT/BART ELSBACH FOR A SPECIAL PERMIT FOR A COMMUNITY CENTER USE AT 659 MAIN STREET, GREAT BARRINGTON, IN A B-2 ZONE AND ASSOCIATED WORK IN THE FLOODPLAIN, IN ACCORDANCE WITH SECTIONS 3.1.4 B(6), 9.1 AND 10.4 OF THE GREAT BARRINGTON ZONING BYLAW. (Discussion/Vote)

Ms. Phillips summarized the process so far. She read from a memo prepared by the Town Manager for the Board's guidance. She said this is a continuation of proceedings begun on June 9, 2014, and continued again on June 17, 2014, on the application of Fairground Community Redevelopment Project, Inc. for a special permit for certain activities in a Floodplain Overlay District.

She said on June 9, the Select Board approved a special permit for a community center use on the property. This was according to Section 3.1.4 (B), 6 of the Zoning Bylaw, which requires a Special Permit from the Selectboard for community center uses in any zoning district. The Fairgrounds parcel, reflecting the history of the site, was never categorized for a specific use. Since it was abandoned for many years, any official use designation it had was expired. The Select Board at the June 9th meeting voted to establish that the community use was the appropriate category. This vote was recorded in the minutes of the meeting. At the June 9th meeting the Select Board voted to close the public hearing. This was done at the conclusion of the public comments and receipt of the applicant's information. On June 17, the Select Board voted to continue the hearing, reflecting the request of the applicant and to allow for additional planning and legal advice.

Ms. Phillips said tonight the object was to review the findings on the remaining two parts of the application. The two parts are to consider if the proposed activities meeting the criteria of a special permit, which is if they provide benefits that are greater than their impacts, which is the standard for all special permits, as set forth in Section 10.4 of the zoning bylaw. And to consider if the proposed activities meet the special permit requirements of the Flood Plain Overlay District as set forth in Section 9.1 of the zoning bylaw.

Ms. Phillips reviewed Section 10.4.2 and read the decision criteria and considerations the Board must look at it. She asked Mr. Bannon to read a set of draft findings related to these criteria.

Mr. Bannon read the following draft findings:

Social, economic, or community needs: Proposal improves aesthetics of the site and surrounding property values and scenic views; provides recreational, educational, and agricultural uses open to the public; preserves a historic resources and site for the town; protects open space, scenic views.

Traffic flow and safety, including parking and loading:

There are no specific parking requirements for a community center use.

The Applicant has demonstrated that nearly 1,000 cars can be parked on the site in dry conditions.

Given the various and seasonal use of the site, the applicant should review and seek approval on their parking and traffic logistics prior to various type of events.

At peak times, traffic into and out of the site can cause traffic flow and pedestrian safety concerns on Main Street / Route 7 and for surrounding properties.

The Applicant shall hire police officers to direct traffic during these times, which will generally be known and can be planned for in advance.

The Applicant shall meet with the Town Manager to review traffic logistics and requirements prior to events.

Adequacy of utilities and other public services: The public water and sewer are adequate to serve the use; no detrimental impacts on any other public services.

Neighborhood character and social structures: Proposal is in keeping with the character of the site; improvements will benefit surrounding properties

Impacts on the natural environment: Proposal has no detrimental impacts on the environment. Subprojects in the first phases will have no detrimental impact on the floodplain or runoff. Projects for future phases will be subject to applicable environmental permitting.

Potential fiscal impact, including impact on town services, tax base, and employment. Proposal has minimal impact on town services or employment.

Ms. Tabakin said regarding finding 5 that it is not necessary to consider the project in phases. The Board was agreed.

Ms. Phillips asked regarding finding 2e if the finding requiring hiring of officers could be modified. Maybe hiring would not be required depending on the type of events.

Mr. Bannon asked if a use generating 1,000 cars should require traffic study, or can we reserve the right to require one later. Ms. Tabakin said a traffic study would probably not be useful because the events may be so different. She said even now the police details and management changes based on demand. The Board thought that continued management and coordination between the Applicant the Town would be adequate.

Ms. Phillips suggested amending finding 2e to say that the applicant shall meet with the Town Manager prior to and after events to assess what is required and whether it is effective, and shall work with the Town Manager to assure traffic continues to be managed properly.

Mr. Bailly regarding finding 5 that it was too bold to say that the proposal has no detrimental impacts. He said we are not sure yet. Ms. Tabakin said after you consider the floodplain findings you could come back to this decision. Ms. Phillips said that the Board cannot allow any detrimental impacts to happen because it would put everyone's flood insurance rates at risk. The Board agreed to revisit finding 5.

Ms. Phillips directed the Board to the floodplain findings. She asked the Town Manager to review all of the technical information regarding the floodplain regulations so that it would be in the public record.

Ms. Tabakin referred to her memo. She said the Selectboard is the Special Permit Granting Authority for Flood Plain Overlay District. The Board has this role because Great Barrington is a participating community in the National Flood Insurance Program (NFIP). In exchange for federally backed flood insurance being made available in the Town, the Town has the responsibility to adopt and enforce floodplain management regulations in the Town, and must adopt at a minimum the basic NFIP floodplain management criteria. In short the town

gets subsidized rates for flood insurance but the Board must oversee the regulations and make sure development is regulated properly. Section 9.1 of the Town's Zoning Bylaws establish a Floodplain Overlay District, which are coincident with the boundaries as depicted on the Town's Flood Insurance Rate Map (FIRM). The Select Board may grant a special permit to allow work to be done in the Flood Plain Overlay District, but the Town is required to administer the minimum requirements of the NFIP.

Ms. Tabakin said that most of the Fairground property is within the 100-year floodplain. This is depicted on the National Flood Insurance Map Panel No. 250024 0014 B, effective date July 19, 1982. According to this FEMA map, the elevation of the 100-floodplain line encompassing the property is between 674 and 672 feet above sea level. The elevation of the property, based on a draft topographical map the Town has on file, indicates that the elevation within the site varies, as there are numerous hills and slopes on the site.

She then referred the Board to the floodway map. The designated floodway is depicted on the NFIP Floodway Map Panel No. 250024 0014, dated July 19, 1982. She said the floodplain versus floodway distinction is important. Floodways are subject to more stringent FEMA and zoning regulations. The floodway is the area that must be reserved for flood storage and flood flow, so that flood waters levels are not increased. Development, construction, and encroachment within the flood way are strictly regulated by both our zoning bylaw and by FEMA and the NFIP. This is why Section 9.1.8 of the zoning bylaw requires and Engineer's certification.

The floodplain is the area that is inundated by floodwaters. These areas are important for water recharge and storage, but they do not impact the level of the flood upstream or downstream. Development within the floodplain can be more flexible, so long as the health and safety of occupants and property can be protected through flood proofing or construction that permits flooding without hazard or threats to public health and safety.

Comparing the FEMA floodway map to the Fairground proposal the Town Manager said it can be determined that it can be determined the only encroachments proposed in the floodway are the gazebo and park, and the bathroom removal. In other words, per Zoning 9.1.8, these are the only activities of the proposal that require an Engineer's certificate.

Ms. Tabakin said if the Board is comfortable making the findings required by 9.1.5, 9.1.6, and 9.1.7, then it could reasonably approve the components of the application proposed in the floodplain, subject to conditions and to other permits that may be required. Also, the Board could approve proposed developments in the floodway so long as the construction is accompanied by an Engineer's certification per Section 9.1.8, which could be done prior to getting a building permit.

Ms. Tabakin summarized the regulations in the zoning. She read the five items in section 9.1.5. She said there is a helpful publication, FEMA publication 480 called, "NFIP Floodplain Management Requirements: A Study Guide and Desk Reference for Local Officials" that has been helpful when reviewing projects and preparing plans and designs.

Ms. Tabakin went through the items of 9.1.5, reading from Exhibit B.

She said regarding safe elevation for occupied areas, the only potentially occupied areas are the renovated office building. There are no residential buildings. She said FEMA considers a building to be a structure with at least two rigid walls and a fixed roof, as defined in 44 CFR 59.1. Open structures, such as gazebos and picnic pavilions are not regulated in the safe elevation criterion, as defined by FEMA, aside from the need to be anchored to prevent floatation (44 CFR 60.3) (a) (3) and supporting utilities must be raised to above the base flood elevation or be flood proofed.

She said accessory structures, which would include buildings for storage or parking, are permitted by FEMA if they have openings that permit the free passage of floodwater through the building to equalize hydrostatic loads and must use flood resistant materials below the base flood elevation and be adequately anchored, with utilities elevated or flood proofed. Open structures, need to be property anchored to prevent floatation and supporting utilities must be raised to above the base flood elevation or be flood proofed.

Ms. Tabakin said no development is permitted in the river floodway, which is the area of the river that is most critical to the flood carrying capacity of the river, as defined in 44 CFR 59.1 unless it can be demonstrated it will not raise flood levels.

Ms. Tabakin said there are no residential buildings. Existing historic buildings do not need to be rebuilt or raised, unless a building is improved by 50% or more of its value, per 44 CFR 59.1.

Mr. Bailly asked what the solar array is considered. Ms. Tabakin said the solar array is not considered an occupied area. The solar array is not proposed to be in the floodway. She also said that the bathroom is being removed, for example, so there will be a little bit of credit for flood storage area. She suggested there is a good level of confidence that overall flood hazards would not be increased. Other permits from Conservation Commission would still be needed for the solar and the gazebo however.

Ms. Tabakin said with this background information the Board should be able to consider the findings.

Ms. Phillips suggested the Board review the required findings for floodplains, go through each subsection, and have one vote on the findings at the end. She read the required findings from Section 9.1.5 and the following proposed findings:

No areas of permanent residential occupancy are being created by the proposed activities.

The property will be used for periodic events, without any permanent residential occupants.

The office may be approved so long as any mechanical and utility equipment and occupied floors are above flood stage or are otherwise floodproofed.

No furnace or utilities are being installed as part of the proposed work.

Proposed buildings and structures are of an open nature and will not obstruct or divert the flood flow, water storage, increase runoff, or increase water levels during flooding.

There are no permanent occupants on the site, and events would be periodic and temporary in nature. If the site is in flood stage, it will not be used, so vehicular and pedestrian movement in flood stage is unlikely.

The Board of Health has reviewed this application and reported that there are no Board of Health related issues (June 6, 2014 letter to Selectboard). The site is on Town sewer.

Mr. Abrahams asked about the utilities and furnaces. Ms. Tabakin said none are proposed at this point, but if they did, the furnaces would have to be above flood level. Mr. Abrahams said it should read that no furnaces or utilities are currently planned. All agreed.

Ms. Phillips referred the Board to Section 9.1.6 and suggested the following findings:

The use is permitted per a special permit approved by the Selectboard

The use of the land will not interfere with the purpose of the district. It will not endanger residents or visitors; it will not interrupt the natural flood flow or flood storage, will protect persons and property from flood hazards, and will not impact the water quality, water recharge, public health, or public safety of the town.

There were no comments about the proposed findings.

Ms. Phillips referred the Board to Section 9.1.8 regarding floodway encroachments and suggested the Board find that, at present, the applicant has not provided an engineer's certification, which reflects the phased approach to their planned design and construction. However, based on FEMA floodway maps, it can be determined that the only encroachments proposed in the floodway are the proposed gazebo and park. The Selectboard can reasonably allow the Applicant to provide the engineer's certification to the Selectboard and to the Building Inspector prior to the issuance of any permit for the proposed gazebo or park rather than at this time.

Mr. Abrahams asked about this determination. Ms. Tabakin said the town's engineers at Tight & Bond clarified that floodways and floodplains are different and help us find the appropriate maps.

Mr. Bannon said there is a series of proposals for the site. If there is a change in use or other activity, would it need another special permit? Ms. Tabakin said yes most likely. Mr. Rembold said that Board is approving a

community center use with various activities proposed within the floodplain including the dog park, cowshed, solar array, office renovation and grandstand renovation. So these are the construction activities proposed in the floodplain. If the applicant were to propose different building or activity in the floodplain a new special permit would be needed. The Board would have to evaluate the floodplain impacts of any activity it had not already reviewed. Mr. Bannon wanted to be clear that even if a special permit were granted tonight the applicants may still have other permits required from the Conservation Commission or others.

Mr. Bailly asked if the Town paid for the Tighe & Bond advice. Ms. Tabakin said no it was pro bono.

Ms. Phillips referred the Board to Section 9.1.7 and proposed the following conditions:

There will be no fill in the flood way, as mapped by FEMA. A floodway is the area of the river that is most critical to the flood carrying capacity of the river, as defined in 44 CFR 59.1. Construction of the proposed gazebo in the flood way is allowed under this special permit so long as the Building Permit application is accompanied by a certification from a registered Massachusetts engineer that the gazebo will not result in any increase in flood levels during the occurrence of a 100-year flood.

The Board had no thoughts, comments or question on that proposed condition.

That the applicant provides certification to the Building Inspector and Selectboard from a professional engineer that there is no increase in flood elevation caused by any new fill or new construction that is done in their project.

Mr. Bannon asked why this was needed. Ms. Tabakin said it seemed redundant with proposed condition 1. Mr. Rembold said the zoning is most concerned with the floodway, and other agencies such as Conservation Commission will be looking at floodplain volumes. The Board was comfortable removing this condition.

That the applicant provides compensatory storage, in the removal of the bathroom that would offset any potential increase to the flood elevation caused by any encroachments, if that is to occur, or to be used as extra compensatory storage, which would serve to improve the flood management conditions on the site.

The Board had no thoughts, comments or question on that proposed condition.

That the applicant utilizes open air type of construction to the maximum extent possible.

The Board had no thoughts, comments or question on that proposed condition.

That open structures be designed so that they are anchored to prevent floatation.

Ms. Phillips said she thought building codes would cover that. Mr. Bailly agreed. The Board decided to keep the condition in, in order to be sure the issue was covered.

Any supporting utilities on open structures be raised to above the base flood elevation or be floodproofed.

The Board had no thoughts, comments or question on that proposed condition.

Any non-residential buildings, which in the application includes the office space, will need to be floodproofed, or elevated to above the base flood elevation or 100-year flood plain, if required by 44 CFR 59.1, and shall be in accordance with 44 CFR 60.3(c) and (4) and applicable building codes.

The Board after some discussion, decided it would retain this proposed condition.

Solar arrays should be adequately anchored and raised such that the electrical components are above the base flood elevation or otherwise flood proofed.

Any other construction or structural alterations may require other FPOD special permits.

Mr. Bannon suggested revisiting Mr. Bailly's earlier concern about Section 10.4.2 finding #5, about whether the project has a detrimental impact on the environment. He said the wording of our proposed finding seems very certain and it might be better to say that the projects that we know about will have no impact.

Ms. Phillips suggested revising the finding to read: Proposal will have no detrimental impacts on the environment. Proposed subprojects will have no detrimental impact on the floodplain or runoff. Future projects will be subject to applicable environmental permitting.

Mr. Bannon asked if the Board had enough information to declare that there is no impact on the floodplain.

Ms. Phillips suggested revising it to read more as a requirement, as follows: Proposal may have no detrimental impacts on the environment. Proposed subprojects may have no detrimental impact on the floodplain or runoff. All projects will be subject to applicable environmental permits.

Hearing no other questions or comments from the Board, Ms. Phillips asked for a motion on the findings.

MOTION: Mr. Bannon moved to approve the findings under Section 9.1 and Section 10.4 as discussed and revised and the proposed conditions.

SECOND: Mr. Bailly.

VOTE: Mr. Abrahams – yes
 Mr. Bailly – yes
 Mr. Bannon - yes
 Ms. Phillips – yes

The motion carried, 4 in favor, 0 opposed

MOTION: Mr. Bannon moved to grant the floodplain special permit based on the findings we have made, subject to the conditions we discussed, to permit the following proposed use and activities to the Fairground:

a community center use at the subject property, which includes:

- Renovations to the former cow shed
- Office building renovation
- Grandstand renovation
- Solar Array
- Dog Park
- Community garden
- Gazebo renovation
- Removal of the old bathroom on the river bank
- Park
- Refreshment stand

The conditions of this approval are as follows:

Any other construction or structural alterations may require other floodplain overlay district special permits. Applicant shall meet with the Town Manager prior to and after events to put in place appropriate traffic control measures and assess their effectiveness.

No building permit shall be issued for activities within the floodway unless and until the Applicant submits a written certification by a registered professional engineer demonstrating that proposed flood way encroachments will not result in any increase in flood levels during the occurrence of the one-hundred-year flood, in accordance with Section 9.1.8 of the Zoning Bylaw.

The special permit is subject to compliance with all requirements of the Great Barrington Conservation Commission, Massachusetts DEP, the Massachusetts Natural Heritage & Endangered Species Program and other governmental bodies having jurisdiction over the subject property.

Any other construction or structural alterations on the property not part of this proposal and within the Floodplain Overlay District shall be subject to the special permit requirements of Section 9.1 of the Zoning Bylaw.

This approval is limited to Fair Ground Community Development Project, Inc.

There will be no fill in the flood way, as mapped by FEMA. A floodway is the area of the river that is most critical to the flood carrying capacity of the river, as defined in 44 CFR 59.1. Construction of the proposed gazebo in the flood way is allowed under this special permit so long as the Building Permit application is accompanied by a certification from a registered Massachusetts engineer that the gazebo will not result in any increase in flood levels during the occurrence of a 100-year flood.

That the applicant provides compensatory storage, in the removal of the bathroom that would offset any potential increase to the flood elevation caused by any encroachments, if that is to occur, or to be used as extra compensatory storage, which would serve to improve the flood management conditions on the site.

That the applicant utilizes open air type of construction to the maximum extent possible.

That open structures be designed so that they are anchored to prevent floatation.

Any supporting utilities on open structures be raised to above the base flood elevation or be floodproofed.

Any non-residential buildings, which in the application includes the office space, will need to be floodproofed, or elevated to above the base flood elevation or 100-year flood plain, if required by 44 CFR 59.1, and shall be in accordance with 44 CFR 60.3(c) and (4) and applicable building codes.

Solar arrays should be adequately anchored and raised such that the electrical components are above the base flood elevation or otherwise flood proofed.

SECOND: Mr. Abrahams

Mr. Bailly asked whether the certification from the Engineer could be provided both to the Building Inspector and the Selectboard. He asked Mr. Bannon to revise his motion to include this requirement. Mr. Bannon agreed.

Amendment:

MOTION: Mr. Bannon moved that condition #3 be amended to require the written certification from the engineer for work in the floodway be provided to both the Building Inspector and the Selectboard.

SECOND: Mr. Abrahams

VOTE ON THE AMENDMENT:

Mr. Abrahams – yes

Mr. Bailly – yes

Mr. Bannon - yes

Ms. Phillips – yes

Ms. Phillips asked for a vote on the original motion, with condition #3 as amended.

VOTE: Mr. Abrahams – yes

Mr. Bailly – yes

Mr. Bannon - yes

Ms. Phillips – yes

The motion carried and the floodplain special permit was granted, with conditions.

**4. TOWN OWNED PROPERTIES ACQUIRED THROUGH LAND COURT FORECLOSURE.
(DISCUSSION/VOTE)**

Jennifer Tabakin wanted to provide an update to the Board on this issue. Properties owned by the town, following foreclosure, are due to be auctioned off. She said some properties are wetlands and some are landlocked. Previous Board designated the properties as surplus town properties and designated the Town Treasurer as the custodian to sell the properties. She wanted the current Board to be aware of the issue. She does not need any action from the Board.

Steve Bannon asked if the town spends money maintaining them. Ms. Tabakin said no.

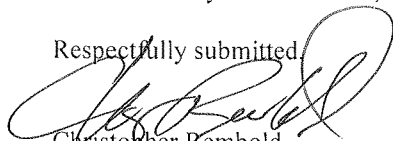
The Board asked Ms. Tabakin to provide more information about the properties at an appropriate time.

Ms. Tabakin also said she is working on properties that have not paid taxes. She said some have paid but others are still behind and have tax liens on them. She said she just wanted to update the Board on this issue.

5. ADJOURNMENT:

On a motion by Steve Bannon, seconded by Dan Bailly, the Chair adjourned the meeting at 7:19 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Rembold", written over the text "Respectfully submitted,".

Christopher Rembold
Town Planner