

BELMONT CONSERVATION COMMISSION
MEETING MINUTES

June 3, 2003

Members Present: M. Flamang, M. King, K. Baskin, J. Curro, J. Smith.
Associate Members Present: N. Davis, S. Sanders, M. Velie.

Additional Attendees: See attendance sheet.

The meeting was called to order at 7:08 p.m.

Minutes

Consideration of the minutes for the meeting of May 6, 2003, was deferred until the next meeting.

New Business

M. King proposed generally limiting the public's comments before the Commission. Without such limits, the Commission meetings can run as late as midnight. M. Flamang replied that, if the public has comments on a matter before the Commission, he wants to hear them. However, he will attempt to limit the amount of time that each commenter is permitted to have the floor.

K. Baskin pointed out that, at the last meeting, we took 45 minutes just to discuss whether the hearing on the application should be opened. That is not usually the case. She was on another Conservation Commission that met twice a month in order to get all applications heard. J. Smith thought that we should ask each commenter to be brief.

Public Hearing – Notice of Intent – Continued Hearing - Frontage Road and Acorn Park Drive – Four Story Office Building and Three Level Parking Structure (7:15)

M. Flamang reopened the hearing. He stated that, if he does not think that a particular question has been asked and answered previously, he will ask the presenters to answer it. He also noted that, while J. Curro was present, he would not participate in a decision on this matter because he was not present at the last meeting when the hearing began.

M. Flamang announced that Town Counsel had been asked whether site plan approval is required. Town counsel responded that, because the process of obtaining the site plan review and approval has not been completed, it is his opinion that it is within the Commission's authority to reject the Notice of Intent.

Darrell Oakley, appearing on behalf of O'Neill Properties, gave a short presentation, describing the proposed office building and parking structure. He then presented three DEP data forms to illustrate why they contend that the moist areas questioned by

Commission members are not wetlands. M. Flamang asked the applicant to restate the answers submitted in writing, first to respond to the DEP's comments, and then to respond to the questions submitted by the Commission after the site visit.

The applicant contends that, regarding the wetlands flagging, the moist soil outside the flagged areas questioned by the Commission does not necessarily indicate wetlands. They tested the soils in the moist areas upland of the flags and determined that they were fill rather than hydric soils. In addition, there were more upland plants than wetland plants in those areas. Based on all that information, they concluded that the moist areas were not wetlands.

Brian Sullivan of Rizzo Associates, also representing O'Neill, wants to clarify the difference between stormwater management and flood storage. The groundwater elevation was based on the level in 2000-2001. Those measurements were done by McPhail. When asked by a citizen about rubble on the site, he stated that he thinks that is in isolated areas. He also pointed out that the wetlands come close to the structures only at a single point.

B. Sullivan also asserted that they redrew the floodplain map to demonstrate what would happen if the flood plain level was determined to be 8.7 rather than 8.2, and their analysis showed that they would still have a 2.2 to 1 ratio of floodplain replication to floodplain impact.

Gene Benson, an environmental lawyer, proposed that the Commission reject the Notice of Intent for failure to obtain required approvals under Regulations Section 10.05(4)(e) and (f). He also stated that we know more now about wetlands delineation than we did when these wetlands were originally delineated. He requested that the Commission reject the Notice of Intent.

B. Sullivan responded that this plan was negotiated as the zoning by-law was written. That is, they planned it based on what the Town wanted. The site plan review and approval should therefore be pro forma and there shouldn't be any reason to hold up the Commission's review.

J. Smith stated that she was confused about exactly what Town Counsel meant in the last paragraph of his letter to the Commission, which deals with the Determination of Applicability. D. Oakley pointed out that the request for a Determination of Applicability was made in April of 2000 and acted upon in June of 2000. Therefore, the existing Determination was made three years ago, and they intended for this Notice of Intent to extend the wetlands delineation. G. Benson stated that the Determination of Applicability is only good for three years, and that if you do not build within that time, it expires.

K. Baskin asked about the basis for the wetlands determination. They responded that the data was based on trees within 30 feet, shrubs within 15 feet and herbaceous layer within 5 feet. K. Baskin then asked what hydrology they look for, and they replied that they

look for black leaves, marks on trees showing the water level and water near the surface when holes are dug.

M. King asked what changes to the flood plain are pending. M. Flamang replied that FEMA has indicated that they may change the existing floodplain delineations. N. Davis asked what the “existing percolation conditions” means. B. Sullivan replied that the perc rate does not matter for compensatory storage, only for groundwater recharge.

M. Velie asked what happened regarding the notification of the abutters. D. Oakley replied that he spoke with Patricia Provenzano and others at the MDC and they acknowledged that “they were well aware” of the Notice of Intent. They are required to notify all abutters within 100 feet of the property and they have done that (even the abutters in Cambridge).

M. Velie also asked about the potential vernal pools. They replied that there is one across Acorn Park Road and the other is nowhere near the property. S. Sanders expressed concern about the roof runoff going into Little River. That will affect circulation into Little Pond and thus the herring. B. Sullivan replied that it doesn’t literally go into Little River, it infiltrates into the ground. S. Sanders pointed out that the woodcock habitat and other wildlife is affected by the building in the buffer zone, and asked if they would consider removing the fragmites and dredging – it would help the wildlife. There was further discussion of the impact on wildlife. L. Rome said that O’Neill has agreed to a habitat restoration program under the open space plan.

Carolyn Bishop stated that she thinks the Commission should reject the Notice of Intent, get vernal pool certification and wait for the FEMA changes to the floodplain. In the past ten years, we have had four 10-year floods in Belmont. Steve Kaiser agreed with her. He also said the old Little River is a tidal basin, so chapter 91 may apply. Roger Wrubel also stated that the Commission should vote to reject the Notice of Intent, as did G. Benson, who pointed out the a sewer connection permit has not yet been applied for or obtained, and that is another reason to reject the Notice of Intent.

Mike Nakagawa from Cambridge argued that the Commission should get an independent review of the wetlands delineation and reject the Notice of Intent for failure to apply for the necessary permits. Also, the DEP has said that work outside wetlands can affect wetlands.

Ellen Mass stated that the inventory of wildlife on the Uplands is on the website of the Friends of Alewife Reservation. She urges the Commission to get independent advice. She believes the old Little River runs along Frontage Road, and it’s still MDC property. She urged the Commission to reject the Notice of Intent. Sue Bass offered the services of a hydrologist that several organizations would pay for. She also pointed out that the Regulations at Section 10.03(a)(3) require that the applicant bear the burden of proof that any work in the buffer zone will contribute to the protection of resource areas.

Tim Sullivan from the Arlington Conservation Commission objected to the fact that the road was not included in the Notice of Intent. It impacts more than 5,000 square feet of habitat; therefore, it should be included. Nancy Hammett from the Mystic River Watershed Association noted that they had a problem with the stormwater management which was part of the MEPA filing. The infiltration rates were not based on on-site calculations. They also had a problem with the baseline runoff because they think it's been overstated. They also have concerns about the snow removal plan, which has not been set forth.

Elsie Fiore of Arlington and Jim Graves, president of the Belmont Citizens Forum, both urged the Commission to reject the Notice of Intent. Over a quarter of the building is in the buffer zone. Also, the necessary permits have not been obtained. The sewer connection permit should be applied for, because the sewer connection could occur in several different ways, affecting the wetlands differently.

Roger Wrubel of Massachusetts Audubon Society also urged rejection because of the negative impact on wildlife. It would impair the ability of the wetland area to support wildlife. He has submitted a letter to the Commission detailing the impact. This project will result in the loss of two-thirds of the upland forest there. Darrell King, Elsie Fiore and Jennifer Paige agreed that the Notice of Intent should be rejected.

K. Baskin and J. Smith expressed their concerns that the road and sewer connection were not included in the Notice of Intent. M. Flamang stated that the Commission now has enough information to make a decision, but the road and sewer are not described in the application. He is also concerned that the amount of the project within the buffer zone is a problem. G. Benson noted that the Regulations, Section 10.05(6)(c) permits the Commission to prohibit the work for incompleteness of the application. D. Oakley suggested that the Commission could issue an Order of Conditions dealing with the sewer and road by saying that those aspects of the plan must come before the Commission. M. Flamang stated that he is also concerned about the lack of information regarding other utilities. M. Flamang gave the applicant an opportunity to respond to the suggestions that the Notice of Intent be rejected.

The applicant proposed that the hearing be continued to allow additional information to be submitted, rather than rejecting the Notice of Intent. The Commission discussed that suggestion. G. Clancy proposed that the Commission decide whether to require that the applicant file for site plan approval. He is not sure whether a sewer connection permit is required from the Town of Belmont. G. Benson stated that it is a local permit, not an MWRA permit. G. Clancy pointed out that the Town approves the hookup design but he does not think the by-law requires a permit. Sue Bass said that Tom Gatzunis told her that Belmont does have to issue some kind of permit regarding the sewer connection.

The Commission then voted to reject the Notice of Intent and prohibit the proposed work for incompleteness for failure to include the road work and sewer work, and for failure to obtain or apply for the site plan approval and sewer connection and other utilities, and for

failure to sufficiently describe the impact of the percentage of the project located in the buffer zone.

The meeting was then adjourned at 11:00 p.m.

Prepared by:
Johanna Smith