



# BELLINGHAM PLANNING BOARD

10 MECHANIC STREET BELLINGHAM, MASSACHUSETTS 02019

## MEETING MINUTES Thursday, June 23, 2022, at 7:00 pm Bellingham Municipal Center Arcand Meeting Room and Via Zoom

### **MEMBERS PRESENT:**

|                           |                  |
|---------------------------|------------------|
| William F. O'Connell, Jr. | Chairman         |
| Brian T. Salisbury        | Vice Chairman    |
| Dennis J. Trebino         | Member           |
| Philip M. Devine          | Member           |
| Robert Lussier            | Alternate Member |
| Nick Mobilia              | Member           |

### **ADDITIONAL OFFICIALS PRESENT:**

James S. Kupfer, Town Planner – via Zoom  
Amy Sutherland, Assistant Town Planner  
Tina M. Griffin, Recording Secretary – via Zoom

Mr. O'Connell called the meeting to order at 7:00 pm

### **CONTINUED PUBLIC HEARING FOR 353 MAPLE STREET, AS FOLLOWS:**

The applicant and owner, GWL Direct 351-353 Maple LLC, propose to amend the Development Plan and Stormwater Management Modification Decision dated July 27, 2019, the Major Business Complex Special Permit dated April 13, 2017, Flexible Parking Special Permit dated January 26, 2017, and the Scenic Road Permit decision dated January 26, 2017. The amendments are requested to construct a 58,600 square foot industrial building expansion with associated improvements to the existing 127,500 square foot industrial building at 353 Maple Street in Bellingham, approximately 22+/- acre of land, shown on Assessor's Map 37-01, zoned Industrial. The plans were prepared by Kelly Engineering Group, 0 Campanelli Drive, Braintree, MA 02184.

Mr. O'Connell asked Mr. Kupfer to give an overview on where the Continued Public Hearing for 353 Maple Street stands, as of tonight. Mr. Kupfer told members that at the last meeting, the Board had requested that a "draft" List of Conditions, be completed for the Board to consider for tonight.

That List of Conditions contains everything that has been discussed over the past 6 months or so, including Peer Review responses, early discussions with early hearings and including the last Planning Board meeting. Since that time, Mr. Kupfer has been able to provide the applicants and the Board with the List of Conditions and all Board Members should have a copy of in front of them, for consideration tonight.

Before the meeting proceeded, Mr. Devine informed the Members present, that Mackey & Mackey Law Firm had represented his family about 9 or 10 years ago. He just wanted to disclose that tonight but is not looking to recuse himself from this Public Hearing. Mr. Devine will file paperwork with the Town Clerk's Office tomorrow and go from there. He just wanted to make sure this information was disclosed, so that it didn't come up at a later time.

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There was discussion about the conditions and language as written. The applicant would like to either have a bylaw or some type of wording change for, if possible.

Condition Number 8 – regarding the “excessive noise” wording and Condition Number 18 – regarding the snow and ice removal. Some language changes were discussed with Mr. Kupfer this afternoon. I understand that we can’t argue with Mass General Laws, but we have existing tenants that we can’t add this too, regarding Condition Number 18.

Mr. O’Connell said that he understands, because if tenants were in there before, you can’t make changes to them now.

The Board was asked to look into language for this, so that they can have a resolution that is fair on all parts of existing tenants, new tenants, and the Town.

Also, as far as Condition Number 8, the applicant does agree that the Building Inspector should be able to visit the location and tell them to shut their doors, and we have no arguments with that. We would just like to say that it is based on the bylaws of the Town of Bellingham.

Mr. O’Connell asked the Board and Mr. Kupfer if he is agreement with these items. Mr. Kupfer stated that he thinks the red line changes in the draft are fine, but he just wants to discuss this with Town Counsel and have them look this over as well.

Scott Thornton from Vanasse & Associates, Inc. was present at this meeting and asked to address the Board for a moment. Mr. Thornton stated that he doesn’t have any updates since the last meeting. In addition, the comment letter that had come in from BSC Group didn’t have any additional comments either.

Mr. O’Connell asked the Board and members present, if they had a chance to review the June 20<sup>th</sup> memo from BSC Group and if anyone had any questions or concerns.

Dominic Rinaldi from BSC Group had joined the meeting and said he wanted to quickly summarize with the Board. At the last meeting, there was really only 1 outstanding comment and it had to do with some drainage calculations, which the applicant provided to us, and we believe everything is good with that. That’s basically the summary of what the memo had stated as well.

Mr. Lussier said there were just a few items that needed to be corrected or rephrased in a couple of the Conditions, just to update for clarity. These modifications were discussed and in agreement with all Board Members.

A question was asked from the applicant about Condition Number 18, where it says, Eco-Friendly, is that referring to phosphorus or non-phosphorus based fertilizer?

Mr. Kupfer stated that you can’t have phosphorous in your fertilizers. That is based on Mass General Law. However, I think we could put a broader terminology in that Condition, if need be.

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Mr. O'Connell stated that they are trying to remove as much salt as they can, from these areas, especially with ice melt, so that it doesn't get into the aquifers. They are just trying to prevent salt and fertilizers from trying to runoff into the water, so the term they use is Eco-Friendly.

A suggestion was made if they could possibly add to the end of Eco-Friendly, that it is in order to minimize the salt impact on aquifers or salty chemical ambassadors.

Mr. Salisbury commented that Condition Number 8, does not state that the bay doors will be closed, when not in use. That was meant for the purpose of limiting noise. The Condition currently states that the doors "could" be closed, which may employ measures, but it doesn't mandate the closing of bay doors.

Mr. O'Connell told members that the problem with Condition Number 8, is that they are already working under a deficit of Conditions that were granted. Similar to the ice melt, it's difficult to hold an existing tenant to something new, for a condition that when they moved in, wasn't applicable.

Mr. Salisbury agrees with the Chairman but stated he don't see how keeping a bay door closed, when not in use, causes any harm to anyone. History has taught us that over time, those not keeping the bay doors closed have become a source of problems for neighbors and it's something that the Board has been included in previously.

The applicant would like to check with Mr. Kupfer on this, because everything that was originally in black for the List of Conditions, had been led to believe came from your previous decision and it didn't say that they would always be closed.

Mr. Kupfer stated that if you look at the draft of the List of Conditions, and track the changes for Condition Number 8, it does state that the user of the site shall close the dock bay doors, so Mr. Salisbury is right, in terms of what we have used in previous iterations, and in discussing with the applicant, and the concern was, as previously mentioned by the Chairman, is that previous applications were new developments and this one is an existing campus. This makes introducing a very specific language for a third of the building, is a concern, but again, the applicant is welcome to speak to that.

Mr. Lee stated that they have an existing building that has no condition about the door whatsoever, and I would like to bring to the Boards attention that we were required to do a sound study. We were required to do significant sound mitigation, which all leads to the conclusion that we would be compliant with your noise standards and the neighbors won't be harassed by noise coming off the site.

Two-thirds of this building, no matter what I write here, can legally fight us on this. We are trying not to set up a situation where I have one tenant who can do one thing and one that can't, and now we have tenants that are arguing.

Mr. Salisbury said that's exactly right and we're hindering with something that works and so by adding 58,000 sq. ft. of space and operation and additional trucks, additional people working there, etc., we are adding to the potentially ambient sound, and what we have learned over time, is that this is the Low hanging fruit, in terms of making the neighbors happy. I also can't believe that your commercial lease is so inflexible, as not to allow existing tenants to comply with these provisions.

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Mr. Kupfer stated that they can try to nail that down with Town Counsel, but the intent here is that it is incorporated in, as an addition to one of the existing ones. As you'll see at one of the last Conditions, it cites that the old decisions, as coming along with the new decisions here. So all the Conditions from the previous decisions still hold true and this is added to reflect the possible addition to the Condition.

Mr. O'Connell said that if you go back to Condition Number 25, it goes back to a modification decision dated June 27, 2019, and it lists other dates for special permits, scenic roads permit modifications, etc. So adding something like this to the List of Conditions is a possibility.

Mr. Salisbury stated that to the extent that there's any concerns about existing tenants and imposing upon them new terms in their lease, we could certainly add a Condition that says all new tenants shall comply with the following. Then all new leases will include the following provisions similar to the ones that we did for other warehouses in the area and it all makes sense that way.

Mr. Kupfer responded that some language could certainly be added, reflecting that new users could work with the applicant between now and the next meeting to confirm some language, if the Board chooses to.

Mr. O'Connell apologized and said it has been almost 3 years for these warehouses to go along with the long, drawn-out process that I believe was litigated and then difficult, because we have enhanced some of our language to go back retroactively and apply it to a current tenant. My understanding was that moving forward, we could strengthen those decisions for future tenants, but we couldn't weaken them, so I do feel comfortable with the way it is written. I don't know if many other Board Members agree. Also, the Board's decision wasn't based on contracts with tenants. Our decision was based on these items that we approved after three years of hearing this project.

I am also concerned for the neighbors, but it's difficult to go back and attach something to these tenants, because we now want to enhance what we are doing for the benefit of the Town.

Again, it is just my opinion, but I think it makes sense that the opportunity to have the bay doors closed is what we aim for. However, if we have a week where it's 100 degrees and the tenant wants to open the doors partially, or all the way, for ventilation or cooling, that should be considered acceptable.

Mr. Salisbury said it doesn't make sense that they can't keep their doors open when loading or unloading trucks and have to close and open the doors, every 10-15 minutes. If this does become a problem down the road, and there is music playing, banging, pneumatic tools, hydraulic lifts, etc., then they would be considered to be in violation of the previous language as well? Does this supersede, or is it in addition to, the special permit that was put in place a couple years ago, regarding decibels, etc.

Mr. Kupfer said that is correct and they would have to adhere to all the previous decisions as well, so they would still be in violation and your business would be explaining details on what noise they generate, loading and unloading trucks, bringing material in and out, etc. The building inspector needs to be able to go there and enforce bylaws, if the tenants are violating any. This is the reason we need to be in agreement and have the bylaws in black and white, so that the Building Inspector or Zoning Compliance Officer can issue violation(s), if necessary.

Mr.. Salisbury wanted to give the members present an example. There was a facility off South Maple Street, near a condo association. The facility kept their doors open and it wasn't in their permit to keep

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them closed. This became a huge problem for this Board and for the people that lived next door to it. We couldn't get them to do the right thing and the Building Inspector was there regularly. So the Board has learned from experience that whenever a warehouse is relatively close to neighbors, we say to please keep the doors closed, to help us and the warehouse owner avoid problems in the future. I understand where your tenants come from and they probably want to keep this as clean as possible, but it's the Board's job to make sure there's no problem from the Town's perspective, and that's where I'm coming from. So, would it be fair to say that when not in use, the bay doors could be closed, except for in extreme weather situations?

Mr. Dietweiler addressed the Board and asked for a moment to discuss the practicality of this condition request. Mr. Dietweiler said let's assume we are negotiating a new lease with a tenant and we incorporate this requirement. You know that if it is a lease, it's negotiated at a corporate level and usually a long distance from Bellingham. So if the lease gets executed, the people that are working at that site may never see that lease. There are going to be supervisors and foremen that may get told of this provision and directed to enforce it, but they will come and go and there are probably from 5 to 30 employees, potentially on site that are told they're coming and going and they're opening the doors and closing the doors and no one is ever going to pay attention to what the lease says. Not that we wouldn't want them to, but as a practical matter, that just won't happen and I think that the much more effective enforcement mechanism is what we've incorporated into our proposed language here which is for the town to threaten to shut them down. There is a better way to incorporate language as such, by possibly including: Closing the doors or other measures, so that the noise is mitigated to the satisfaction of the Town. There's just no way that the day laborers working the warehouse or laborers in these buildings are going to understand that they're supposed to keep the doors down. It's just going to be so remote from the intent that however well intentioned, will be near impossible to enforce.

Mr. Salisbury said that is exactly his point. That from 15 minutes to 5 years from now, nobody at the operational level is going to know and they will keep the doors open, which causes problems with the Town. That is something that we can enforce specifically. We don't have to call them in; we don't have to wait until they file a development plan or special permit, that we could just have the hook to fix the problem. That's what happened the last time. It just gives the Town a tool to make things right for the neighbors. So you made my point, for me. It's not ever going to be truly enforced unless it's a problem and when it becomes a problem, it could be right there to fix it.

Mr. Lee stated that the Town still has a broader remedy to accomplish and to mitigate the noise that's being made in violation of the bylaws.

Mr. Salisbury replied that we have always added this little extra tweak to make things better and to help the neighborhood and the applicant themselves, because then we can point to the List of Conditions and bylaws. I don't think it's really such a big deal. I get it that you guys want to be clear. You want a national tenant to come in. You want it as neutral and clean as it can be to negotiate these things and make it work; but that's not the Board's job. Our job is to make sure there are no problems for the neighbors. However, if there was a problem, the Town will have the solution to fix it. I'm not trying to be mean, it is just that we had this experience and it's never really been an issue to have this additional line placed in the List of Conditions.

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It was suggested to reach out to the applicant and draft some alternative language that addresses the Board's concern, and the Town's concern. Also, while doing that, I think another avenue you might want to look at, is incorporating a noise program into an O&M Program, so that it is on site and can be reviewed as part of their risk management or safety management manual for each future tenant. Then it is outlined in a document, in the building, in an O&M Plan, in regards to noise, once we decide on an agreeable language.

Mr. O'Connell then asked if there were any residents, neighbors or general public that had any questions. There were no other people present with questions.

Mr. O'Connell then asked Mr. Mackey if he thinks they could have the new language drafted and to the Board with enough time to review, before the next and only meeting and July? Mr. Mackey replied that is acceptable with them and will have the revised draft to the Board, prior to the next meeting.

Mr. Kupfer said that would be fine to have the new draft provided for the next meeting and also asked if the plan set for the emergency access road got updated. Mr. Lee stated it was updated and provided to the Fire Chief for review.

Mr. O'Connell asked Mr. Kupfer if they are at a point where we can have him draft a decision. Also, because of this being pending; does this mean we have to leave the current meeting open. Mr. Kupfer replied that the Board can leave the meeting open, if they want to incorporate any additional information. However, if you have exhausted your review, you can definitely have him start drafting a decision for review at the next meeting.

Mr. O'Connell said he would entertain a motion if anyone would like to make one. Mr. Mackey said he has one more brief comment to make that might answer everyone's questions. We took a look at it, and to Mr. Salisbury's point, the last sentence actually starts with the wording, that the user may shut the doors. Mr. Mackey would like to change the wording to: The Zoning Enforcement Officer may require them to shut the doors. Mr. Mackey is thinking this language would give the hook back to the Town, to be able to enforce and issue a violation to a tenant that is not following the protocols. Would that language be acceptable to the Board and to Mr. Salisbury?

Mr. Lussier said he had a verbiage comment, as well. Asking if the verbiage was changed to: The user shall enforce measures, such as closing the dock bay doors when not in use and/or any other remedy that will limit noise at the guidance of the Building Commissioner, acting as the Zoning Enforcement Officer; would that be acceptable on all parts?

Board Members and Mr. Mackey agreed on this verbiage to remedy this discussion.

Mr. O'Connell asked if all are in favor of having Mr. Kupfer draft a favorable decision.

Mr. Trebino made a motion to draft a favorable decision, pending the changes of this document, at our next meeting. Motion was seconded by Mr. Devine and a Roll Call Vote was made, as follows:

### **Roll Call Vote:**

William F. O'Connell, Jr.     aye

**BELLINGHAM PLANNING BOARD MINUTES FOR JUNE 23, 2022 - CONTINUED**

Dennis J. Trebino            aye  
Philip M. Devine            aye  
Robert Lussier              aye  
Brian Salisbury             aye  
Nick Mobilia                aye

**Motion passes**

Ms. Sutherland advised Mr. O’Connell that before the applicant leaves, they do need an extension for the deadline of the decision, as the current decision deadline was June 30<sup>th</sup>.

Mr. Lussier made a motion to continue this meeting until July 14<sup>th</sup>. Seconded by Mr. Salisbury and a Roll Call Vote was made, as follows:

**Roll Call Vote:**

William F. O’Connell, Jr.    aye  
Dennis J. Trebino            aye  
Philip M. Devine            aye  
Robert Lussier              aye  
Brian Salisbury             aye  
Nick Mobilia

**Motion passes**

Mr. O’Connell stated that the next item on the agenda is to sign the plan set for Roger Street. Mr. Kupfer stated that the Board has already recommended this for Town Meeting acceptance. The Town Meeting has accepted it. The Registry of Deeds requires the Planning Board and the Selectboard to sign the Mylar Plan.

Mr. Devine made a motion to approve the signing of the Right-of-Way Mylar Plan for Roger Street. Seconded by Mr. Mobilia and a Roll Call vote was made, as follows:

**Roll Call Vote:**

William F. O’Connell, Jr.    aye  
Dennis J. Trebino            aye  
Philip M. Devine            aye  
Robert Lussier              aye  
Brian Salisbury             aye  
Nick Mobilia                aye

**Motion passes**

Mr. Mobilia made a motion to approve the minutes from the June 23, 2022 meeting, as submitted. Mr. Trebino seconded and the motion carried. **Vote is unanimous.**

Mr. Devine made a motion to adjourn the meeting at 7:52 pm. Mr. Lussier seconded and the motion carried.

**Roll Call Vote:**

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William F. O'Connell, Jr.     aye

Dennis J. Trebino           aye

Philip M. Devine           aye

Robert Lussier             aye

Brian Salisbury            aye

**Motion passes unanimously**

**The next meeting will be held on Thursday, July 28, 2022 at 7:00 pm.**

Respectfully Submitted,

*Tina M. Griffin*

Recording Secretary

Approved 7.14.22