



# BELLINGHAM PLANNING BOARD

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## Meeting Minutes November 17, 2016

**MEETING LOCATION:** ARCAND MEETING ROOM – MUNICIPAL CENTER

### Present at the Meeting

Brian T. Salisbury (BTS), Chairman  
William F. O'Connell Jr. (WFO), Vice Chairman  
Peter C. Pappas (PCP), Secretary  
Dennis J. Trebino (DJT), Member  
Bruce W. Lord (BWL), Member  
Nikyda Resto (NR), Alternate

### Other Officials:

James S. Kupfer (JSK), Town Planner and Zoning Compliance Officer  
Jean Keyes (JK), Planning Board Coordinator – absent

BTS opened the meeting at 7:00 p.m.

### **160 High Street Lot 1 & Lot 2 Development Plan Review, Stormwater Management Permit, Major Business Complex Special Permit, Flexible Parking Special Permit, Scenic Road Special Permit, 160 High Street, Continued Public Hearing, Decision Deadline: 12/30/16**

JSK stated that the Cliff Matthews, chairman of the Con Com was asked to be present, as the Con Com has been discussing storm water for over a year. The first part of the discussion will be about storm water management and then the Board will discuss parking.

Present: Present: David Kelly of Kelly Engineering Group Inc., Mark Pilotte of Campanelli, Rob DeMarco of Campanelli, Molly Kelly of Campanelli, Attorney Rob Fitzpatrick of WilmerHale, Cliff Matthews, Chairman of the Conservation Commission (Con Com), and Dave Sanderson of PSC, peer review engineer for PSC representing both the Planning Board and the Con Com concerning stormwater.

Mr. Kelly explained that the Applicant has spent a lot of time with the Con Com working on the storm water management plan. Mr. Kelly explained the latest plan and all but three items have been resolved. The first item is concerning groundwater separation. The system has been redesigned to fully comply with this requirement. The second item related to the proximity of the system to the wetlands. The project was reduced in size and scope and the Applicant was able to pull back the limits of the project from the resource area.

Mr. Kelly explained that the third item was concerning storm water recharge and it focuses on three components: 1) Quality of water runoff: The Applicant wants to be sure that the quality of the water runoff is at a high level. The system far exceeds what DEP requires and is in compliance with phosphorous requirements of the Charles River; 2) Peak mitigation to slow down the runoff from the impervious surface on the site at a higher rate than today. Large retention ponds slow the water down and it is in compliance; 3) Recharge of the water: While the stormwater management regulations do not require this, the Local Wetland Bylaw requires that the 25-year storm water must be able to get back into the ground. Restrictive soils and shallow groundwater makes it difficult to comply with the 25-year recharge

requirement. The Con Com's requirements are more restrictive than DEP's requirements. The latest plan shows changes that have been made to try to be as close to compliance as possible. The Applicant has asked for a waiver for this recharge requirement from the Conservation Commission's local wetland bylaw.

Mr. Matthews explained that the wetland delineation has been verified and many hours were spent on the site analyzing the soil and the topography. The Con Com was concerned about the initial size of the impervious surface of the project and the runoff in a post-development condition. The Con Com wants to get most of the water to recharge into the ground and not runoff. In addition, the Con Com worked hard to get separation from the groundwater. Every basin was raised to create more separation from the groundwater. The wetland bylaws are very restrictive and the Applicant meets the groundwater separation standard. PCP asked if the soils at the other three retention ponds can recharge adequately and comply with the groundwater separation and Mr. Matthews responded that they can.

Mr. Matthews further explained that according to the bylaw, the velocity of the water leaving the site in post construction condition must have less velocity when it leaves the site. This system meets that standard. The volume of water runoff from impervious surface must be stored on the site to recharge it. However, this may affect minimum stream flows and cannot lower this level in the Charles River. The Con Com is currently reviewing this component as it has recently been revised. The Con Com's regulations are more restrictive than the Planning Board's regulations concerning storm water.

Mr. Matthews explained the waiver of the 25-year storm regulation. The Con Com is still discussing this issue and the regulation as it pertains to this project. Since the Applicant has been able to recharge substantially more water, the Con Com has to meet again to discuss this change as it pertains to the regulation.

BWL asked how the removal of the Pearl Street Dam would affect this property. Mr. Matthews stated that this dam is downstream of this property and it will have no effect on this property.

BTS asked about the separation of water and oil and how this system works. Mr. Matthews responded and explained how the storm water system works and separates the oil. The Con Com has also requested a shutdown system if there is a large spill. The operation and maintenance plan is critical to remove the oil from the system. The Applicant has indicated that one of the buildings will be sold and it is incumbent upon the Planning Board and the Con Com to condition in their decisions to ensure that the new owner continues the annual and bi-annual maintenance. Mr. Kelly explained the maintenance plan and that it stays with the deed to the property. Mr. Matthews further explained that as a private site, the owner is expected to complete this maintenance and that no storm water annuity can be collected. The Certificate of Compliance is issued after the Con Com's inspection it is recorded with the deed. Once the property has been sold, the Town does not have the right to enter private property to inspect. However, the operation and maintenance plan can be recorded with the decisions and maintenance reports could be required in the decision.

Attorney Fitzpatrick explained that the Con Com could enforce the conditions in the Certificate of Compliance at a future date and if there is a new owner.

WFO asked if the Applicant has looked at alternatives for snow management. Mr. Kelly stated that there is a detailed snow management plan that has been submitted to the Con Com and the Planning Board. WFO suggested two products that can be used instead of sand.

PCP questioned how the dry conditions affect the system. Mr. Matthews explained that the system must be adequate to handle the storm water and snow runoff properly. Mr. Kelly explained the snow storage and removal plan.

JSK suggested that the Board discuss storm water erosion control and the storm water pollution prevention plan. Mr. Kelly explained both plans. Mr. Matthews and JSK explained that prior to construction, the erosion controls will be inspected by them.

## Public Comments and Questions concerning storm water management:

Jim Dunlea of 57 High Street had concerns about safety, denigration of a scenic road, traffic issues, and the scale and magnitude of the plan. Mr. Dunlea reiterated his belief of the inappropriate nature of this project for this neighborhood. BWL explained that the Board has been reviewing this project for one year and has reviewed all items Mr. Dunlea listed and is taking all information into consideration. This is an industrial project in an industrial zone and the Board is trying to make this project as safe as possible for all parties.

Eric Vanderwal 60 Fox Run Road questioned what the difference is between 100-year storm and 25-year storm. He stated that he has seen the Charles River almost crest the road and is concerned that the soil for the storm water management system will not work. Mr. Vanderwal told the example of Pierce Estates and the engineering not working for that project for stormwater. Mr. Vanderwal stated that given the size of this project, the entire town should have been notified. BTS explained that the public hearing has been held for over one year and the abutters that were required by law to be notified were notified. The meetings are broadcast on cable TV and are streaming online. There has been no secret and this meeting occurs almost every other Thursday. There has been considerable effort to make sure that there has been public involvement and that Mr. Vahdrewal's comments were offensive. The Board welcomes neighbors and abutters and wants to know your concerns. The Board is very concerned about the impacts of this site and understands the concerns and is trying to make the best decision for everyone involved and affected.

Mr. Matthews explained that the current runoff from the site will be less in the post construction process. The storm water management system will assist with the flooding problem. The Con Com is trying to recharge the site with as much volume on the site as occurs now and provide enough water to provide minimum stream flow and drought conditions. Mr. Vanderwal apologized for his outburst but is concerned about negative impacts and suggested an annual inspection of the system. BTS is concerned about the enforcement mechanism and asked Mr. Matthews about the issue. Mr. Matthews suggested that the monitoring reports that are provided twice a year could possibly trigger an inspection. Mr. Kelly explained that it is not difficult to inspect the site and that the system is designed to catch pollutants. PCP is concerned about storm water maintenance if all buildings are sold and the Applicant no longer has control. Mr. Kelly responded that during any sale, the conditions of that property are clearly explained to the buyer.

Attorney Fitzpatrick stated that the conditions in a Special Permit or Order of Conditions are recorded and run with the land and would bind any successor owner of the property. If an owner failed to comply, the Board would have enforcement tools to rectify the non-compliance. A cross-easement would define the responsibilities of each owner of the properties and it does not dilute the Board's authority. The Conservation Agent does not have unfettered access to walk on private property. Campanelli is willing to work with the Planning Board and Con Com to find tools to address compliance issues. BWL would like to see highly detailed decisions with clear and comprehensive decisions. BTS would like JSK and Mr. Matthews to discuss this further.

Gus Bakas of 6 Cliff Road stated that he assumed that the property is subject to a NPDES permit that is subject to monthly and quarterly inspection criteria. Mr. Backus asked if the Board has any input to that permit. The property owner would have to comply with the permit and, if the owner is not in compliance, the Board and DEP can hold them accountable. Mr. Bakus is concerned about the use of sodium chloride on snow and asked if the Board considered the process of melting the snow. Mr. Matthews explained that the Con Com gets the NPDES reports and reviews them. If there are inadequacies, Mr. Matthews contacts the property owner and the process of melting the snow has not been used in the past.

Don Martinis of 334 Maple Street and the Board of Selectmen is concerned about the sale of the properties on these lots. Mr. Martinis asked if the Board can add language for fines into the decisions if the property owner fails to meet all the conditions such as storm water management. BTS explained that the Board does not have the authority to include fines in the decision. Mr. Matthews does not believe he can write this into a permit but stated that inspection reports may trigger action. BWL stated that the Con Com can shut a business down if the storm water management plan is being violated.

Mackenzie Leahy of 9 Pleasant Hill commended the Con Com for addressing storm water issues. Ms. Leahy questioned if there has been any mitigation provided for High Street and if the Board put language in their decision that the applicant has to comply with the Con Com's Order of Conditions. Ms. Leahy stated that she was uncomfortable because she perceived that the Con Com was providing testimony on behalf of the Applicant. Mr. Matthews responded that he could understand that his presence may have appeared that he is giving support to the Applicant. However, Mr. Matthew then stated that the Con Com has not reached a decision and he was asked here by the Planning Board to provide comments regarding the Con Com's review of the project to date. High Street acts as a dam and holds water back. The Army Corps of Engineers has purchased all of the property and it is a hold back structure for the Charles River. The Con Com issues a permit and then before the property can be sold there is a final inspection. If it passes inspection then the Certificate of Compliance is issued. Ms. Leahy did not understand why the Con Com cannot inspect if the maintenance reports are not provided. BTS responded that enforcement will be researched.

Peter Gabrielle of 6 Stonehedge Road is concerned is that tenants are unknown and wanted to know if new tenants have to come before the Board. PCP explained that it has been written into prior decisions if the property is sold the new owner must come before the Board. Mr. Gabrielle asked where the historic site is on the plan. PCP explained that the Applicant has made a concerted effort to preserve the historic site.

Laly Viera of 60 High Street stated that she has spoken to many people about this project and many people in Bellingham are not aware of this project and many are discouraged by the Planning Board because they feel their concerns were not heard during previous situations. Ms. Viera further stated that her job is to bring more people to these meetings. Ms. Viera has seen water near her driveway in the past and asked if her home would be flooded. Ms. Viera stated that she is highly insulted by some of the comments made to the public tonight by one of the Board members. Mr. Matthews explained that Ms. Viera's house is in a flood plain and that based upon calculations it will not get any worse. The calculations are not based upon current conditions but on historical rainfall data and the Cornell method.

Attorney Fitzpatrick explained that Mass Zoning Law is to focus on the uses and the impacts of those uses. The identity of the tenant is irrelevant for the purpose of zoning law. If an owner has a different use for the property, the owner would have to come back before the Board to get permission for that use. The change of a property owner is not something that typically requires a formal public hearing.

Ms. Chang at 57 High Street asked if the agenda for the next meeting will include more general discussion. JSK responded that at the next meeting, the Board will define the determinations and conditions and begin to make definitive decisions about outstanding issues. BTS explained that the Board welcomes the input of all neighbors. Ms. Chang was concerned that there was no sign in the town about this project and the abutting gymnastics business said they never received notice. BTS explained the abutter notice process, public hearing notice process, and publishing of the notice on the Town's website. Ms. Chang stated that the neighbors feel very strongly about this project and that it is a residential zone near an industrial zone.

BTS instructed the Board and public that the discussion about parking will begin. Mr. Kelly gave an overview of the reduction in parking waiver request. If all the required parking were built, it would fit on this property as there is a lot of land available. Mr. Kelly referred to his letter dated November 14, 2016 that the Board received previously. The Applicant looked at similar facilities in the area and the amount of parking needed for those types of facilities. These types of facilities, distribution, warehouse, etc. do not require the number of parking spaces that the bylaw requires. There are many downsides to building all the required parking. The Applicant is trying to provide an adequate number of parking spaces to accommodate different future tenants. JSK explained that the Board could condition that any reserved parking constructed would be deemed a substantial alternation if they added ten or more spaces in the future, which is the threshold for development plan review.

Attorney Fitzpatrick stated that it is important to segregate responsibilities between the different lots should one of the owners wants to come in and modify the permit that affect one property and not all. The sharing of the common areas is very conventional. It is a recorded cross easement document that provides for the rights and obligations of the various lot owners relative to the shared areas.

BTS questioned if more parking were added to one of the lots, would the entire storm water system be affected or only the portion of the system near that lot. Mr. Kelly responded that the storm water management system for the particular property would be modified and they would apply to both Planning Board and the Con Com for this modification.

WFO asked what the benefit is to the stormwater management system to allow a reduction in parking. Mr. Kelly responded that the size of the system would be minimized and the amount of impervious surface would be minimized. WFO asked the Applicant that the intended use for these buildings is warehousing and not manufacturing and if the use changed the Applicant would have to come back before the Board.

PCP questioned why the parking ratio for this project is higher than the examples Mr. Kelly described. Mr. Kelly responded that not all parking shown will be constructed and will just be reserve. There is no benefit to building spaces that may not be needed.

DJT questioned if all buildings will be built at once. Mr. DeMarco responded that they are permitting the entire project and then will build when a tenant is identified. The storm water management system will not be changed based upon constructing one building at a time.

#### Public Comments and Questions concerning parking:

Don Martinis of 334 Maple Street and the BOS asked if the storm water is being constructed to the maximum parking require or the parking requested. Mr. Kelly responded that they are proposing approximately 700 spaces with 470 being constructed and the storm water basins are constructed for the 470 spaces. Mr. Martinis responded that if a future tenant needs additional parking then that tenant must come back before the Board and the Con Com to modify the parking and the storm water management system.

Doug Porter of 3 Stonehedge Road asked if the Applicant has to build more parking then the storm water management system would have to be changed. Mr. Kelly responded that is exactly what he stated previously. Mr. Porter was concerned about a marijuana distribution facility from going into that location. JSK responded that the use (medical marijuana) is not allowed in an industrial district. The use is only allowed in a particular district which is Williams Way. The Board of Selectmen will have to discuss the new referendum that was passed legalizing marijuana. Mr. Martinis confirmed what JSK stated and as the current law stands.

Mackenzie Leahy of 9 Pleasant Hill asked: 1) what the requirement for the amount of parking that they would need under the bylaw; 2) does the Board have a peer review consultant to review if the methods used by the Applicant were accurate; 3) has the Applicant anticipated a future tenant having different uses and needing additional parking and what the impact would be.

JSK responded that the bylaw states that two parking spaces per square foot is required. No peer review was completed as it is a private facility and good planning practice to reduce the amount of impervious surface and parking. If the tenant is able to use less parking then it is preferable. Ms. Leahy stated that she is less concerned with the reduction request but more concerned with the methods that were used. BTS responded that the Applicant is taking the risk with reducing the parking and from the Board's perspective they would like to see less parking. Mr. Kelly responded that the method used to determine the parking was to look at other permits granted by the Planning Board for distribution centers in Bellingham.

WFO asked JSK to clarify Bylaw Section 240-60 (b)5 and 240-59. JSK explained both.

Jim Dunlea of 57 High Street asked for clarification that there is space on the property to build the full number of parking spaces and the storm water system to accommodate all the parking. Mr. Kelly responded that there is adequate space available but that additional vegetation and trees would have to be removed. They are at the outer edges of the buffer zone to try and maintain as much buffer as possible. The ponds would have to be readjusted if more storm water was getting to them, then more vegetation would be removed. Mr. Dunlea stated that he asked the same question to the Con Com.

Mr. Dunlea stated that if the 1400 spaces were built then the buildings would have to be reduced and would have to be validated by the Con Com. Mr. Kelly clarified that the Applicant is not asking to build the full number of spaces but is asking for a reduction. The bylaw allows for that and actually encourages it. Mr. Kelly further stated that he has done many, many projects and has not been asked to build an extra parking space that they don't need by a Planning Board in 20 years. Mr. Dunlea challenged that statement that some distribution facilities need more parking based upon the use.

Attorney Fitzpatrick stated that the uses authorized by the permit will be conducted in the buildings. Those uses are conducted by tenants or successor owners.

Ms. Chang of 57 High Street asked if the Applicant is not building the 1400 parking spaces and is only building approximately 700 spaces, can the land that is not being used for additional 700 parking spaces be set aside. BWL responded is that if the Applicant does not have enough spaces for a tenant, the cost to the Applicant to redesign the storm water system is very high. It would be a large mistake to put in too few spaces as the cost would be very high. PCP explained the Special Parking permitting process and that any change in use would be required to come before the Board. The Board is reviewing the plan before it which is for 700 parking spaces. BTS responded that the Applicant has tried to minimize the impacts and maximize what can be built on the property. BWL explained that the bylaw is established for maximum use but the use the Applicant has chosen requires less parking. So the Board is allowed to have flexibility and allow a reduction in the amount of parking that is in line with the use.

Keith Dalzell of 350 Maple Street wanted to be sure the exits are adequately sized for trucks to exit safely. BTS explained that there will be enough space for the turns out of the property.

**WFO: Motion to continue the public hearing for the 160 High Street Lot 1 & Lot 2 Development Plan Review, Stormwater Management Permit, Major Business Complex Special Permit, Flexible Parking Special Permit, and Scenic Road Special Permit, 160 High Street to December 8, 2016 at 7:00 p.m.**

BTS: Second.

Discussion: None.

Vote: 5-0 Carried. (BTS, WFO, PCP, DJT, BWL)

**General Business:**

- ☐ **ANR's**
- ☐ **As-Built Certifications**

**BTS: Motion to adjourn.**

WFO: Second.

Discussion: None.

Vote: 5-0 Carried. (BTS, WFO, PCP, DJT, BWL)

Meeting Adjourned at 10:20 p.m.

**Meeting Documents & Exhibits:**

160 High Street Development Plan, Stormwater Management Permit, and Multiple Special Permits Review

1. Kupfer Staff Memo Update 11.14.16
2. Kelly – Letter RE Flexible Parking Special Permit 11.14.16
3. Conservation - Grading Plan 11.14.16
4. Conservation – Test Pit Logs
5. Supplemental Drainage Calculations 11.14.16
6. Conservation - PSC Comments RE Stormwater Management 11.8.16

Minutes Accepted on: 12/8/16  
(Date)

Jean Keyes  
(Prepared by: Jean Keyes)

Brian Salisbury  
Brian T. Salisbury

William F. O'Connell Jr.  
William F. O'Connell Jr.

Peter C. Pappas  
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Dennis J. Trebino  
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