

Town of Lakeville  
Conservation Commission  
May 23, 2023 at 7pm

Members present: Chairman Robert Bouchard, Josh Faherty, John LeBlanc, Mark Knox, Joseph Chamberlain, and Nancy Yeatts. Chairman Bouchard called the meeting to order at 7pm. LakeCam was present to record.

**Residences at LeBaron Hills** - Notice of Intent SE192-885- Phase 5 modifications - Outback Engineering. Continued from 5/9/23. Jason Youngquist from Outback and Zoe Krouner from Goddard Consulting were present for discussion. Mr. Youngquist said that Ms. Krouner had done the wetland flagging and some reports on the wetlands. The peer reviewer, Beals & Thomas had submitted a letter dated May 17<sup>th</sup> where everything was addressed. The modifications have been approved by the Zoning Board. Member Yeatts said she had one problem. In the past, at LeBaron, when the Commission has asked for the Stormwater Pollution Prevention Plan (SWPPP) it was never received. She would like to make the motion that the Order of Conditions (OOC) wouldn't be released until the SWPPP is received. Mr. Youngquist said the problem with that is they need to know who the contractor is, that's why it usually isn't done in advance. Member Yeatts suggested that it be sent prior to any work. Mr. Youngquist agreed to get the SWPPP to the Commission prior to work starting. Stacy Menahan from Beals & Thomas said she would concur that their comments were adequately addressed. The only comment that doesn't have a concrete answer is the wetland change information. Back in the 90's and early 2000's it's hard to determine whether there was a wetland change or not. Beals & Thomas felt the provided information was acceptable. They also asked for percentage of riverfront area impacted across the whole project. Since it's a multi-phase project, they provided that information. An alternatives analysis was provided for the riverfront area, which they found to be adequate. The latest letter provided by Beals & Thomas had nothing outstanding from their perspective. Member Knox asked if more explanation of the wetland change could be given. Ms. Menahan said the wetland change mapping that the state has put forth is not something that they necessarily look at independently as peer reviewers. The reason they don't look at it is that the changes represented on these maps are determined solely through photo-interpretation. They should not be used as wetland delineation under the Wetlands Protection Act and to implement regulations. It is a good starting point, but additional research would be needed. Beals & Thomas felt that the analysis that the applicant did was reasonable in terms of addressing the historic use of the property. Member Yeatts said she thought the Commission's concern was how much fill was in that area. Member Knox said one of the things discussed at a previous hearing was that the amount of fill was equivalent to the distance down to the watermark. Member Chamberlain said he thought the test pits went down to 25. Mr. Youngquist said in some of the test pits there was about 17-feet of fill. But, that whole area where this is going has been disturbed since the 60's and 70's, so it's been pushed and moved. Ms. Menahan referenced the Goddard Consulting letter dated February 24<sup>th</sup> that shows the aerial analysis of the site in 1961, then in 1971 it was cleared. There's an aerial with an overlay of the wetland change area. The areas where they pushed the earth around was getting compacted and they would have shown up as dark areas on the photo, which DEP flags as a potential wetland, and when it disappears in the later aerials they flag it as a wetland change. Member Knox asked about a statute of limitations. How far back jurisdictionally this should be addressed. Ms. Menahan said there was no straightforward answer. There is a statute of

limitations on some types of wetland violations, but not fill. Everyday the fill remains in place, it's considered the start of a new violation, it renews that violation. Over the years, however, with various regulatory revision and court cases, there are different time frames within which the self-renewing violation was made clear. She explained that if it's post '91, then there's potential to take enforcement action. Chairman Bouchard asked about some wetland flags that needed to be replaced. Ms. Menahan said there were some flags that were missing. There was also a revision to the wetland delineation that Beals & Thomas had commented made the area a little larger based on the wetland features. They had asked that the notes be updated on the plans to reflect the revised delineation. There is a standard condition in the Order of Conditions that all flagging be in place for construction. There was enough in place for them to do their review, but if the flagging needs refreshing or isn't present prior to construction, it will need to be reset in its approved location as shown on the plans. Chairman Bouchard asked about the alternatives analysis. Ms. Menahan said the alternatives analysis they looked at was essentially a no build. It's not really an alternative because they want to do the project. They did look at moving the project outside the riverfront area buffer zone, but they would lose a building, which was stated as an unacceptable economic equivalent. Ms. Krouner said they looked at three: no change to existing conditions, relocating the limit of work, and current proposed design. Member Yeatts asked if this was the last phase of development. Mr. Youngquist said they were well below the permitted use which was 385. They are at 275, but they're running out of land. They went before the Zoning Board of Appeals for something off Fern Ave, farther away from this, but that was withdrawn. This was pretty much the last big area that they had to work with. It was supposed to be two more of the 54-unit buildings. Member Yeatts said she thought there was going to be a phase-6, and if there was enough room for a phase-6 that would be an alternative. Mr. Youngquist said they're looking at the land on Fern Ave, and they've bought a couple of pieces. Chairman Bouchard asked if they would run into the same problem with fill over in that area. Mr. Youngquist said not so much over there, they would also be out of the riverfront area. Chairman Bouchard asked if Beals & Thomas was satisfied with the responses. Ms. Menahan said they were. The stormwater was addressed, and the documentation was provided.

Upon a motion made by Member Yeatts, seconded by Member LeBlanc, it was:

Voted: to close the hearing and issue an Order of Conditions for LeBaron Hills, SE192-885 with our conditions for before, during, and after construction. Additionally, the Commission wants to see the SWPPP before start of work.

Unanimous approval.

**310 Kenneth Welch Drive** - Notice of Intent - SE192-891. Continued from 5/9/23. Chairman Bouchard said at the request of the applicant, there will be a continuation.

Upon a motion made by Member Knox, seconded by Member LeBlanc, it was:

Voted: to continue the 310 Kenneth Welch Drive Notice of Intent until June 13<sup>th</sup> at 7pm.

Unanimous approval.

**160 Bedford St.** - Violation. Chairman Bouchard said everyone is probably aware of the parking situation on the corner of Bedford Street and Route 79. A violation has been issued. Member Knox explained that the occupants of 310 Kenneth Welch Drive are looking for a temporary parking overflow space. Chairman Bouchard stated a temporary 30-day permit has been issued. This will need to go to the Planning Board because that use is by special permit. Member Yeatts asked for clarification.

Member Knox explained that the Bedford Street issues are caused by 310 Kenneth Welch Drive's desired use of Bedford Street for parking, rather than parking on Town property. Member Yeatts asked who issued the 30-day permit to park. Member Knox explained that the Building Department issued a temporary emergency use until Planning Board and Conservation can work out what needs to be fixed there. Chairman Bouchard said a joint cease and desist was issued and there was to be no filling, no asphalt spreading, or excavation. Member Knox added that a lot of work had been done at 160 Bedford Street without a permit. They originally had a problem about two years ago, when they were warned no more work in the wetlands without filing, and a cease and desist was issued. Member Yeatts said she had done a site visit and had taken pictures of all the asphalt. She distributed pictures of the site showing wetland flags. Chairman Bouchard said he had spoken to Prime Engineering and they will be doing a Notice of Intent after-the-fact. That will be the Commission's chance to add conditions for restoration of the property. Member Yeatts noted that it looks like it's right on the line where the property drops off. They will need some kind of drainage. Member Knox thought the Planning Board and Conservation Commission should work in conjunction on this. He thought they would be asking for a special permit for a commercial parking facility. It could be conditional to have a finite term for parking until they finish the parking lot at 310 Kenneth Welch Drive, and would they require them to pave it or just pitch it away from the wetlands so the water doesn't shed the wrong way. Member Yeatts voiced a concern that to alleviate one problem where the wetland was disturbed, we're now going to another place where the wetland is going to be disturbed, or already has been. She also asked if there was a berm. Chairman Bouchard said all the way around the property there's a 2 ½ foot berm that's covered with wood chips. There is also an old silt fence in some of the wetlands, but they have not added a new one. Member Knox said they have been told they can't do anything else, and Prime Engineering will come in with a plan to proceed. Chairman Bouchard added that they can park there for 30 days. Member Knox said they were looking into using a different property for the parking that is a paved lot at the other end of Kenneth Welch Drive. TAC Vega has offered to put up a guardrail along the side of the road to keep the cars from parking there on town property. Member Knox believed the highway superintendent was going to review that due to snow removal and mowing issues. There was some continued discussion. Member Knox said he would hate to see this parking temporarily allowed and then it becomes in perpetuity. The Planning Board does not want to see a permanent commercial parking facility. Member Yeatts said once there's a violation, the property owners need to come to Conservation with a plan on how they're going to rectify it, before they begin work again. Member LeBlanc asked if the violation needed a vote. Chairman Bouchard said he signed the violation, there can be one signature under emergency conditions, but the Commission still needs to vote.

Upon a motion made by Member Knox, seconded by Member Faherty, it was:

Voted: to affirm the stop work order already provided for 160 Bedford Street for any work within the buffer zone with the condition that the applicant come back with a plan to rectify and proceed with whatever the plan is.

*Discussion:* Member Faherty wanted to make sure he was understanding everything correctly. He said 310 Kenneth Welch Drive had a parking violation, so it was addressed through Planning and Conservation. Their alternative was to find a new place to park, 160 Bedford Street. At their alternative place to park, the owner of 160 Bedford Street already had a violation before they came with the plan. So, now the Planning Board has the ability to issue a special permit to allow this type of use. He asked if there was a time frame on special permits. Member Knox answered that they have the ability to put a sunset or shelf life on this, which would be their intent if this is only temporary. They are currently still

looking for other potential places to park. Member Yeatts asked if they now have permission from the Building Inspector to park there for 30 days. Chairman Bouchard stated that they have permission for 30 days while they come up with a mitigation plan. Member Knox said they were hoping to see a plan from Prime Engineering on 160 Bedford Street, to improve that site to make it a more viable parking spot for these cars. They still need to apply to the Planning Board for a special permit, which can be conditioned. At this point, the parking appears temporary, so they would put a shelf life on the special permit. Member LeBlanc asked if the Commission should get a peer review. Member Yeatts agreed that once they get a plan, they should get a peer review. Member Faherty said 160 Bedford is a pretty deep lot, and it looks like their current grading is right on the wetland line. Would it be possible for them to get out of the 100' buffer while maintaining enough parking spots. Member Knox said he thought they put up some concrete barriers and ropes to at least stay out of the buffer zone by a certain distance. Member Yeatts added that the material is down, right up to the edge. It was up to the wetland flags. Member Faherty stated that they were now voting to ratify the violation that Chairman Bouchard issued.

Unanimous approval.

Member LeBlanc asked if this would go through the Planning Board first. Member Knox said it should, but they won't approve it until ConCom approves it because the plan could be changed. Planning Board doesn't like to sign a plan unless its final.

**Notice of Intent for septic systems** - Member Yeatts said they had discussed this before, but had never come to a conclusion about whether an NOI would be required for a septic. Member Knox said he knew they had two filings on the same night, one was an RDA, one was an NOI. Could there be standards they could use. Member Yeatts said she was thinking the 50' buffer, but then they come right up to the 50' and they're not accounting for the over dig. She thought anything that was on one of the ponds should have a NOI. Member Chamberlain brought up the fact that the RDA does not require abutter notification. Member Faherty said in Wareham, a NOI is required for any septic system within 150' of a wetland. That is written into their by-law. Member Yeatts said she doesn't like for people to come in with an RDA and then send them away to do an NOI. People putting in a septic system need to do an NOI so they don't waste their time. Member Chamberlain said he thought there was a big difference whether they're constructing a new system, or replacing an existing failed system. The failed system may be on a small lot. Member Yeatts said they can set a policy. All they need to do is vote a policy. Member LeBlanc wanted to run it by town council, if it was legal for this Board to create a policy. Chairman Bouchard said they were allowed, it was at their discretion. Member Faherty said the RDA is basically a tool to say the Commission is adequately satisfied that this would not do any damage to a jurisdictional area. The Board could deem that every septic replacement or new construction could be a potential hazard. If it's not in the 100' buffer, it doesn't have to come to Conservation. Member Knox asked if there would be a criteria for a system that would be so low impact, that everybody could agree could allow an RDA for a septic. There was more discussion.

**Meeting Minutes** - March 28, 2023.

Upon a motion made by Member Yeatts, seconded by Member LeBlanc, it was:

Voted: to approve with the one typo changed, and the five buildings changed to four.

Unanimous approval.

**Adjournment** - (8:11pm)

Upon a motion made by Member Knox, seconded by Member LeBlanc, it was:

Voted: to adjourn.

Unanimous approval.