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## No waiver on wetlands for Fields at Sherborn

ZBA Chairman Alan Rubenstein said this issue came before the Conservation Commission on Nov. 17, when they submitted “an extensive memorandum” in which they recommended not waiving Section 3.4 of Sherborn’s local wetlands regulations.

**The Fields at Sherborn development, a 40B proposal from Trask Development, was front and center at the Nov.23 Sherborn Zoning Board of Appeals meeting.**

**In the continuation of the hearing for a comprehensive permit under Chapter 40B in Massachusetts General Law, the issue was the impact of the project on wetlands adjacent to the property.**

ZBA Chairman Alan Rubenstein said this issue came before the Conservation Commission on Nov. 17, when they submitted “an extensive memorandum” in which they recommended not waiving Section 3.4 of Sherborn’s local wetlands regulations.

This section prohibits the disturbance of nature, including permanent construction within the buffer zone extending 50 feet horizontally from the wetlands.

Steve Gaskin, Conservation Commission chairman, and Michael Lesser, Conservation Commission member, explained the opinion and findings of the board.

Rubenstein inquired whether an order of conditions has been denied in writing by the commission, to which Gaskin replied affirmatively.

Rubenstein said, “As I understand it correctly, this was a denial as a result of incomplete information as opposed to a denial on the merit. Is that a fair characterization?”

Gaskin clarified that the denial was due to “extensive alterations to the buffer zone” and the effect that would have on the wetlands.

Lesser added the information gap in not having final septic system plans was also a factor.

He said, “It’s a combination of the two factors.”

According to Rubenstein, the Conservation Commission has denied the applicant’s order of conditions under both the state wetlands act and recommended not waiving the local regulations for the same issue, the latter of which falls under the ZBA’s authority to waive.

Lesser said the reason for the commission’s recommendation was due to the fact the project “only takes place in the buffer zone.”

He explained that the activity during and post construction will change well over half of the buffer zone, and there will be significant changes in terms of building construction and the cutting of trees.

Although there is some mitigation, he said, “In comparison to what is there now, the buffer zone is viewed as fundamental to the functioning of the resource itself.”

He cited the magnitude of these changes as what would likely impact the wetlands area. Lesser also spoke of uncertainty about the septic system and its impact on the area, in terms of the nitrate levels.

Why the wetlands are important, he said, relates to water quality, i.e. providing a cleansing function to ground and surface water.

Lesser said, “The ability of the wetlands to do that depends on the [nitrogen] loading that goes into the wetland itself, and the buffer zones moderate that significantly.”

This relates to the well water that residents of the Fields at Sherborn and abutters would use as they rely on the quality of the ground and surface water to a degree, he said. Lesser believed the extra protection would help their case that the project goes too far in terms of the wetlands impact.

He noted they believe that the water quality will diminish without the protection of the local regulations.

Gaskin spoke of the wildlife impact and compared the Fields at Sherborn to another 40B project, Whitney Farms, which they allowed under state law. He said Whitney Farms had “far less buffer zone impact,” adding they try not to deny projects in a “kneejerk way.”

Gaskin added, “This one we thought was much worse in terms of its buffer zone impacts.”

Lesser noted there are certified vernal pools in the area adjacent to the property and is part of a bio-map core habitat area, which is included in the bio-diversity interests of the state law.

Rubenstein asked if waiving the local wetlands regulation could adversely affect drinking water quality, to which Lesser answered they thought they would be less able to protect the groundwater from contaminants.



When asked about the need for affordable housing, Gaskin said he did not know what the state would think about the balance of this need versus protecting wildlife habitats.

Noting the importance of the adjacent wildlife habitat, he said, "To us, we're recommending that you not make the waiver."

Gaskin noted the difference in Sherborn that they rely on wells, not a public water system, like many of the communities in which Trask has built developments.

The peer reviewer for the BETA group, wetlands scientist Lenore White, acknowledged the commission had done "an excellent job deliberating on this project." She said the buffer zone needs to be protected and is protected under the state act.

White said, "To the extent that this project will alter the buffer zone, is exactly what the commission is concerned about."

She supported their conclusion because of "the amount of alterations that are proposed" and the value of the wetlands in the area.

### **What Trask says**

The team at Trask Development, developer Ben Stevens and attorney Mark Kablack, commented on their view of the commission's findings.

Kablack said they "fully intend to appeal that for a superseding order to MassDEP" in regard to the commission's denial of the order of conditions.

The argument, he said, they will continue to use is they have legitimate grounds to waive the local bylaw for the wetlands, in that a comprehensive permit places all of the local permitting procedures before the ZBA.

On the topic of the commission and their concerns about buffer zones, Kablack said, "I didn't hear any quantifiable or objective analysis as to what it was other than the degree."

He believed the need for regional housing outweighed the concerns about the "unique areas" for private wells.

Stevens noted he had not received the written denial yet, and that furthermore the buffer zone and wildlife habitat information was received after the hearing.

He added, "Every request that was made for description, for plans, specs, questions were answered accordingly at public meetings."

Kablack said it "remains to be determined" how the commission's view of the issue being about both a lack of information and buffer zone alteration will affect the process.

In regard to the buffer zone, Stevens responded that protection can vary according to town from very limited to extensive. He said they tried to accommodate the local regulations, but were limited by the presence of rare species habitats.

He said, "We don't feel that it is a very invasive project. We don't feel that there's any chance of degradation of the wetland area with proper construction techniques."

Kablack said they have proposed a buffer zone on the "order of 20 to 25 feet" in most site locations.

### **Community response**

Members of the community spoke on the issue.

Sherborn resident and Board of Health member Rebecca Hunnewell emphasized the importance of the wetlands in a community with individual wells and septic systems.

She said, "In this affordable housing, which we all agree is important and valuable, the residents of the development, in addition to those residents of the town, also need water. And they will also have to have clean water."

Carol McGarry of the Conservation Commission elaborated on the importance of the buffer zone to the lifecycle of the wildlife and its connection to the plants in the wetlands.

She added, "They're part of the entire balance."

She said the whole wetlands system protects the drinking water, and if a part of this system is disrupted, the system stops functioning as it should.

McGarry said, "By protecting the buffer, we are protecting the wetlands."

Dan Hill, attorney for the Sherborn Citizens Action Committee, said there would be a follow-up letter to the Nov. 18 one about the nitrogen loading impact of the project, which they would submit to the Conservation Commission and ZBA.

Hill said it would focus on the wetlands area. Important dates in the hearing process for the Fields at Sherborn project includes the Board of Health meeting on Dec. 2 and in possibly the first and third weeks of January.

In the discussion of meeting dates, the topic of the town-funded hydrology study was addressed.

Board of Health Chairwoman Darryl Beardsley previously contacted Stevens about a date for the expert to do a walkthrough, and he stated at the ZBA meeting, "I am not permitting that."

Beardsley asked for the reason, and Stevens said they have four different engineers reviewing the project.

He said, "I just don't see a reason to have one more opinion that we may need to react to. I didn't think it was a good idea when the selectmen did it. I don't think it's appropriate for the process."

The timeline for the review process, as discussed by the ZBA and Stevens, could potentially extend to January or February.

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