

**TOWN OF HENNIKER
ZONING BOARD OF ADJUSTMENT
MAY 20, 2009**

Draft Minutes

Members Present: Doreen Connor, Chairwoman; Joan Oliveira, Vice-Chairwoman; Bob Stamps; Gigi Laberge; Roni Hardy, Alternate

Members Excused: Jeff Connor

Others Present: Mark Fougere, Town Planner; Rocky Bostrom; Jennifer McCourt; Ralph Peterson; Luke Webster; Brad Brown; James Seymour; Jim O'Rourke; Gary Harper; Paula Amato; Peter Flynn, Jennifer Astholz, Recording Secretary

Chairwoman Connor called the meeting to order at 7:00 pm. She introduced the Board members that would be hearing tonight's cases as Joan Oliveira, Gigi Laberge, Bob Stamps and Roni Hardy. Ms. Connor recused herself from the proceedings as the applicant is being represented by a colleague of hers at the law firm of Wiggin & Nourie. Ms. Connor gave the applicant the option to continue the hearing to a later date when a five-member Board is present or to move forward with the present panel. The applicant chose to proceed with the four-member Board.

Case 2009-105: A request has been made for a Special Exception from Article VIII Section 133-33 of the Zoning Ordinance, which requires a Special Exception for Sport Arenas and Buildings. The applicant, Sebago Technics & McCourt Engineering, on behalf of New England College, is proposing to construct a 76,000 sqft (footprint) multi-purpose artificial turf sports field with night lighting and portable bleachers. The property is located at Grove Street/Map 2 Lot 391-A in the Educational Zoning district (ED). This application was tabled from the April 15, 2009 meeting.

Chairwoman Connor instructed the Board to first determine if the applicant is presenting an application that is materially different that what has been heard before or to determine if there is a material change in circumstances that warrants a re-hearing per the Fisher v. Dover case. She then turned the meeting over to Vice-Chairwoman Oliveira.

Vice-Chairwoman Oliveira asked the Board members for their opinions concerning the application.

Bob Stamps stated that he believes that this application is materially different than what had previously been heard since the parking lot is not included.

Roni Hardy did not give an opinion as this is the first time that she has served on the ZBA.

Gigi Laberge stated that while she was not present for the first meeting that was held in March, she believes that parking is going to be an issue. She stated that if the applicant does not have plans for parking, they may want to reconsider moving forward with their application. Ms. Oliveira stated that the Board cannot make determinations on those issues. Ms. Laberge stated that she does believe that this application is materially different than what had been presented in the past.

Ms. Oliveira also stated that she believes that the application is different based on what she has read and the comments of the other Board members. She stated that since three members of the Board agree that this application is materially different, this will be considered a continued hearing; therefore, the applicant did not need to send new abutters' notices.

Luke Webster, Esq., presented the application for the Special Exception for the construction of the artificial turf multi-purpose field. He stated that the Special Exception is requested from Article VIII, Section 133-33 and is a permitted use of a sports field in the Educational District. He stated that the proposed field would be a state-of-the-art facility for the community and the college students, and will allow New England College to stay competitive in attracting students. He stated that the construction of this field will allow the college to develop better and increased relationships with the community of Henniker. Atty. Webster stated that the applicant envisions the field to be used for sports camps, high school regional tournaments and additional events. Atty. Webster stated that the Conservation Commission has been contacted about this application. Also, Atty. Webster stated that, at the ZBA's request, the request for Special Exception was split between the need for use and wetlands impact.

Atty. Webster stated that on May 5, 2009, the Board of Selectmen determined that New England College owns Grove Street, and the Town has an access easement over Grove Street. At that meeting, the Board of Selectmen approved that the applicant will 1) upgrade Grove Street; and 2) place light poles and bleachers within the easement.

Jim Seymour, from Sebago Technics, stated that the field will be constructed 350'x215' in size which is the minimum size for a NCAA regulation soccer field. This field will support soccer, lacrosse and field hockey sports. He stated that the proposed location of the field was determined after two years of research and for the proximity to the existing field house arena. He stated that this field is placed a good distance from any abutters and provides for the best screening and noise buffering. The proposed field is to be lit by four 70' tall poles that hold 10 lights on two banks (40 total lights). He stated that the lighting system uses a green technology which focuses the light directly onto the playing field while greatly reducing "sky glow." He stated that the construction of this field causes an environmental benefit to the Town as it replaces an existing parking lot. Mr. Seymour stated that a proposal for another 100-space student parking lot is in Site Plan Review with the Henniker Planning Board.

Mr. Seymour stated that the field is constructed of an artificial turf surface with a concrete curb around the perimeter. He stated that a processed sand and cryogenic crumb

rubber mixture holds “the carpet” turf in place. He stated that the elevation of the field is approximately six inches below the Army Corps of Engineer’s floodway of 420. He stated that with about one inch of stone under the field, they are providing more flood plain capacity than what is already there. He stated that the water will flow back into the ground due to the type of field construction. Mr. Seymour showed the discharge flow on the plans. He stated that there is 6,948sqft of wetlands impact; however, there is consensus that this is environmentally neutral and actually improves drainage capacity. Mr. Seymour showed on the plans where fencing will be placed around the perimeter of the field. He stated that there will be a stone wall with a 6’ fence on top of the wall. He showed points of access on the plans and two additional turn-arounds have been planned. A 5’ walkway is an amenity to the field. Mr. Seymour stated that there is currently a trail in the area, and the applicant will put in another section of trail mulched with wood chips.

Atty. Webster reviewed the criteria used for determining the Special Exception. 1) He stated that the site is in the ED district, and the purpose is to support uses associated with the institution; this field falls into that use. He stated that the field is to be constructed in the place of an existing parking lot. This area creates a natural buffer around the field and is closer to the field house amenities, restrooms, etc. 2) Under the circumstances, the only abutter is the college which owns the surrounding land, so the field use is compatible with neighboring land uses. He stated that this proposal allows the land to be used for both passive and active recreation. New England College’s master plan calls for these activities. Also, he stated that a better lighting plan has been created, and the poles are shorter than the natural tree buffer. There are also no residences within 800’ of the field. 3) Mr. Webster stated that the location of the field is compatible with the college’s internal traffic patterns. He stated that the athletic field is now closer to the center of campus which decreases traffic from the field currently on Western Avenue. Grove Street will be widened to 20’ and improved with two turn-arounds. There will be access on to the field for emergency vehicles. Additional parking is proposed and is going directly to the Planning Board for review as no zoning relief is required for that plan. 4) Mr. Webster stated that this plan will benefit college students, athletes and the community. Having this field will allow the college to host Division III seasonal tournaments, offer summer camps and additional uses. He stated that there is anticipated economic benefit to the Town as well. The installation of this field will make NEC more attractive to prospective students. A design that is harmonious to the surrounding neighborhood has been planned; the field will be enclosed by a fence, and other environmental activities can be promoted. 5) Mr. Webster stated that the construction of this field would be an enhancement to the college campus. The concern about lighting has been avoided due to the site-specific technology that is being used. He stated that no fertilizers are needed and gas-powered maintenance equipment is not necessary.

Jennifer McCourt stated that she wanted to make it clear that the area currently being used as a parking lot is a much more intense land use than what it would be as an athletic field. She stated that the lighting would only be used seasonally when there is a need for it. She stated that the lights are expensive to use, so the college would only be turning them on as needed in the fall and for a short time in the spring. Ms. McCourt stated that

the college took successful proactive measures in mitigating traffic during a hockey tournament with four other colleges. She stated that traffic will be about the same as what has been seen in the area; however, she anticipates less traffic on Western Avenue since most of the games will be played on the new field. She stated that this is a win/win situation for both the college and for the Town.

Ms. McCourt stated that the lighting will be within the tree canopy (70'-90'). She stated that using this technology allows the light to be focused downwards, thereby minimizing glare.

Gigi Laberge asked how late the lights will be on in the evenings. Ms. McCourt stated that overtime games may run to 8:30 – 9:00 pm. The college is not looking to start games any later than they play now, but the lighting would facilitate the fall season. Ms. Laberge asked if it would be appropriate to limit the hours of lighting. Mr. Webster stated that they will not be used on a regular basis, and it would be difficult to regulate operating hours in the case of an overtime game.

Roni Hardy asked if the field will still be built if the parking lot proposal does not get approved by the Planning Board. Ms. Laberge stated that zoning ordinance states specific parking regulations. She stated that she did an informal survey and found approximately 65 cars in the existing parking lot. She asked for details about the alternative parking plan for these cars.

Mr. Seymour stated that with Mr. Harper's assistance, they were able to find 64 alternate parking spaces within campus parking. They have planned a 100-space general parking lot on the other side of Grove Street. Also, the college has been able to host several large events with no parking problems.

Ms. McCourt stated that they will work with the Planning Board to meet their requirements.

Mr. Stamps stated that the proposed 100-space lot is more than adequate per the requirement in the ordinance. The Board can attach a condition that approval of the plan is contingent on the Planning Board approving the associated parking lot.

Mr. Seymour stated that the 20'x20' turn-arounds are adequate for fire trucks and ambulance access, and the field is rated to allow emergency vehicles on the field if necessary. A letter dated April 15, 2009 was received from the Fire Department stating that they had no issues.

Vice-Chairwoman Oliveira opened the meeting to any member of the public who wanted to speak in favor of the application.

Paula Amato, representing NEC, stated that the athletic department has no intention of changing the start times of the games that would be played on this field (most begin at

4:00 pm). She stated that practices may run a little bit later. She also stated that there are no plans for any additional sports to use this field.

Peter Flynn, speaking as a private resident of Western Avenue in Henniker and not in his professional capacity, stated that he believes that the addition of this athletic field is a great idea for the Town. He stated that a Town community profile has recently been completed, and there were many comments about the lack of recreational facilities. Mr. Flynn stated that this will be an avenue to restore relationships between the Town and the college, and this is a way of reaching out to the community. He stated that the Board of Selectmen have already heard this proposal and have commended the applicant for taking this initiative. Mr. Flynn also stated that he believes that this plan will have little, if any, negative effect on the Town and would love to see this become a reality.

Ralph Peterson, principal of the Henniker Community School, stated that there was an informal discussion with the college about other fields possibly being used by the Henniker youth if the proposed field is constructed. He stated that this would be a great opportunity. He also stated that he believes that traffic along Western Avenue would be reduced. Mr. Peterson stated that he sees the addition of this field as being a positive action for the youth of Henniker.

Jim O'Rourke, member of the Town Athletics Committee, stated that there are currently not enough fields in Town to accommodate the needs of the community. He stated that another field would be very positive for the Town.

Brad Brown, resident of Western Avenue in Henniker, stated that he likes this plan. He stated that if a team has a good season, seating capacity for 100 people may not be enough; he asked how they would accommodate more people, if necessary. Jim Seymour stated that there is more room along a section of Grove Street, if it is needed. He stated that the Board may want to make a condition that the applicant must get permission from the Town manager for more temporary bleachers. He also stated that it is common for many people to gather along the fence rather than sitting down to watch an event.

Jennifer McCourt asked Gary Harper to explain the parking plan for large events. Mr. Harper stated that for the college's commencement exercises, "no parking" signs were posted along Grove Street and Circle Street, and alternative parking lots were arranged at the Simon Center, campus operations and the commuter lot. He stated that he did not notice any negative impact to the Town that day. Charter service was provided as graduation day coincided with Town Little League games in the same area. He stated that it was well managed, and no complaints were heard on a very busy day.

Brad Brown stated that basketball camps were held several years ago, and he asked if anything was planned for the future. It was explained that the college evaluated the cost/benefit factors of the program. As preventative maintenance items were unable to be done, the basketball program was phased out over time. Mr. Harper stated that it can be re-evaluated if it can be managed with the other campus needs.

Vice-Chairwoman called for any member of the public who wished to speak against the proposal. Hearing no comments, the public hearing was closed at 7:50 pm. The Board members went into deliberations.

Mr. Stamps stated that he believes that this is an excellent project, and the college has done a great job in responding to the concerns that the Board previously expressed.

Ms. Oliveira agreed that this proposal is much different, and better, than what was originally proposed.

Ms. Laberge stated that she thinks the plan looks great, and she is excited that Grove Street will be upgraded and paved.

Ms. Hardy expressed her agreement with the opinions already expressed.

Vice-Chairwoman Oliveira called for a vote on the individual criteria used in granting the Special Exception. The vote was recorded as follows:

1) The specific site is an appropriate location for the requested use or structure.

Vote: 4 – Yes 0 – No

2) The requested use will be compatible with neighboring land uses.

Vote: 4 – Yes 0 – No

3) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

Vote: 4 – Yes 0 – No

4) Granting the permit would be in the public interest.

Vote: 4 – Yes 0 – No

5) The proposed use would not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.

Vote: 4 – Yes 0 – No

6) The proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odor, heat, glare, or unsightliness.

Vote: 4 – Yes 0 – No

Bob Stamps **MOVED TO APPROVE** the request for Special Exception in Case 2009-105 with the condition that a parking lot with at least 100 spaces is approved by the Planning Board. Gigi Laberge **SECONDED** the motion. Motion **PASSED, 4 – 0.**

There was discussion about imposing time limits for the completion of the parking lot. Mr. Stamps stated that the Planning Board will see the condition of approval and will cooperate with the necessary construction schedule, etc.

Case 2009-104: A request has been made for a Special Exception from Article XXII Section 133-113 of the Zoning Ordinance, which requires a Special Exception for wetlands impacts. The applicant, Sebago Technics, on behalf of New England College, is proposing to construct a 76,000 sqft (footprint) multi-purpose artificial turf sports field that will require the filling of approximately 5,000 sqft of wetlands. The property is located at Grove Stree/Map 2 Lot 391-A in the Educational Zoning District (ED). This application was tabled from the April 15, 2009 meeting.

Vice-Chairwoman Oliveira stated that the Board needs to address the request for Special Exception for wetlands impact utilizing the same criteria that was used in the last case.

James Seymour from Sebago Technics stated that the greatest impact to the wetlands for the creation of the athletic field is due to widening Grove Street. He stated that 6,948sqft of wetlands will be impacted, and he showed the proposed area on the plans. He stated that they met with representatives of the EPA and the Army Corps of Engineers today. He explained that they can construct four vernal pools and explained the necessity of such. He stated that they can create vernal pools that are deeper and more sustainable for the habitat that require them. He stated that the vernal pools could only be mapped in the spring, and the stream resource was more important than the small impacts. He stated that there is already an existing parking lot where the turf field will be, and the water runoff affects those areas already.

Mr. Seymour responded to the six criteria used for granting the Special Exception.

1) He stated that the other environmental agencies felt that this is a relatively small impact to the wetlands, and believed that it is a sustainable area. He stated that the field is a more productive use of this area and replaces an existing impervious surface.

2) The athletic field is in the Educational District. The purpose of that district is to promote college uses, and NEC is the only abutter. There are no residences within 800 feet.

3) Mr. Seymour stated that there has already been lengthy discussion about traffic congestion and pedestrian safety with this project. He stated that the college has taken numerous steps to ensure safe access to the athletic field. He stated that there is also adequate access for emergency vehicles.

4) Mr. Seymour stated that the land is currently used as a parking lot with an impervious surface. The filtration system used in the field construction is an environmental improvement and will increase flood plain capacity while decreasing impact to the Contoocook River. He stated that retaining walls will be built to reduce any further impact.

5) He stated that the field is environmentally friendly, and there are no detrimental factors in maintaining the field. No pesticides, fertilizers or gas-powered maintenance equipment will be needed.

6) Mr. Seymour explained that the lighting used on the field is focused onto the site in order to reduce glare. There is a natural buffer around the area, and no residences are within 800 feet.

Ms. Oliveira asked for the actual square footage of wetlands that will be impacted. Mr. Seymour stated that 6948sqft will be filled.

Roni Hardy stated that the nature of vernal pools is that they dry up, and creating artificial vernal pools is difficult to do. Mr. Seymour stated that the habitat has to be timed right for amphibian use. He stated that the pools are currently drying up before the salamanders have hatched. He stated that the EPA (out of Boston) and the Army Corps of Engineers will make recommendations. The applicant hopes to get involvement from local high school and college classes to monitor activity. Ms. Hardy stated that vernal pools are not yet protected by the State but are important to the environment. Mr. Seymour stated that they are not yet directly protected by the State; however, they are protected by the EPA.

Ms. McCourt stated that they previously went to the Conservation Commission, and they stated that they would like to work with the applicant throughout the process.

Vice-Chairwoman Oliveira asked for any public comments for or against the application. Hearing no comments, the public hearing was closed at 8:15 pm, and the Board began deliberations.

Mr. Stamps stated that he thinks it is a good plan. He stated that he has been at the Conservation Committee meetings when this was discussed, and he feels comfortable with the plan.

Vice-Chairwoman Oliveira called for a vote on the individual criteria used in granting the Special Exception. The vote was recorded as follows:

1) The specific site is an appropriate location for the requested use or structure.

Vote: 4 – Yes 0 – No

2) The requested use will be compatible with neighboring land uses.

Vote: 4 – Yes 0 – No

3) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

Vote: 4 – Yes 0 – No

4) Granting the permit would be in the public interest.

Vote: 4 – Yes 0 – No

5) The proposed use would not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.

Vote: 4 – Yes 0 – No

6) The proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odor, heat, glare, or unsightliness.

Vote: 4 – Yes 0 – No

Bob Stamps **MOVED TO APPROVE** the request for special exception in Case 2009-104 for the filling of approximately 7,000 square feet of wetlands in creation of the sports field. Gigi Laberge **SECONDED** the motion. Motion **PASSED, 4 – 0.**

Doreen Connor re-joined the Board in the capacity of Chairwoman.

The minutes of the April 15, 2009 meeting were reviewed. Ms. Connor explained revisions that she made and gave them to the minute-taker for recording. She stated that she wanted to make sure that the wording was clear that the Board cannot reject undisputed expert testimony unless the Board has reason to question the testimony or if a Board member also has expert status on the topic.

Ms. Connor **MOVED** to accept the minutes as amended. Mr. Stamps **SECONDED** the motion. Motion **PASSED, 3 in favor** (Mr. Stamps, Ms. Connor and Ms. Laberge) – **0 – 2 abstentions** (Ms. Oliveira and Ms. Hardy were not present at that meeting).

Mr. Stamps **MOVED** to adjourn the meeting at 8:24 pm. Ms. Oliveira **SECONDED** the motion. Motion **PASSED UNANIMOUSLY.**

Respectfully submitted,

Jennifer Astholz
Recording Secretary