

**JANUARY 18, 2018 6:30 pm
TOWN OF BEVERLY SHORES
BOARD OF ZONING APPEALS
MEETING MINUTES**

Call to order Pledge of Allegiance and Roll Call of Board members. Present Vytas Kasniunas, Mary Fulghum, John Daraska. Absent Richard Saul and John Janssen, Attorney Connor Nolan was also present.

First Order of Business: Bagnall 413 Lake Front Drive.

Second Order of Business: Veselica 426 E. Bellevue Wetlands Permit.

Disclosure of potential conflict of interest. Member Fulghum disclosed her potential conflict due to her home being within 300 feet of the subject property and also potential bias because she had learned that her husband, Geof Benson, sent a letter opposing the request. She learned about his letter until the date of this BZA meeting. She had not read his letter. She also explained that she had received a widely disseminated email opposing the permit but as soon as she recognized the topic, she did not read its contents. She further stated she has no financial interest in the petition, and that believes she has no bias that will affect her ability to make an impartial decision. At her request, Attorney Connor Nolan explained that an Indiana statute prohibits communication with any BZA member before the hearing to influence the member's action on a pending matter.

Building Commissioner Hans Lagoni explained Petitioner Velselica's building permit application was denied due to noncompliance with Zoning Ordinance § 155.223(A)(1), the proposed construction was within a delineated wetland and also within 25 feet of the wetland. President Kasniunas noted that this hearing the BZA would address only the Petitioner's wetland permit and not any steep slope issue that also may be associated with the property. The board reviewed the proofs of publication and posting as well as notices to property owners within 300 feet and determined those requirements were completed properly, and the hearing could proceed.

On behalf of Applicant Nancy Veselica, her spouse, Gregory Veselica, provided the following information and assertions:

In 1976, he initially purchased (the subject parcels or other parcels or a combination?) property and previously donated six parcels to the Great Marsh. He previously had donated 6 parcels to be in Great Marsh, although he had sold two **?adjoining?** parcels. He retained lots 17 and 18, because of the high dune with great views.

In 1979, when he purchased the subject parcels there were no Beverly Shores building restrictions on property regarding wetlands and the property appeared dry. Also, a 1983 Army Corp of Engineers wetlands map provided by Paul Bruska showed the property was not wet and nor was the property across street. Later, in 2002, he returned from extended work in Europe and he observed water and wetland on the property. He observed this was at the same time the Great

Marsh restoration project was completed. He believed that a right was taken away by the wetland creation. Further he noted that gravel added to the road may have kept water on property.

He explained that to cause minimal impact to the wetland property they proposed to use a box culvert to support the driveway access that would minimize the wetland fill to approximately 350 square feet (sq. ft.). They will also use a gabion-style retaining walls for the driveway to reduce damage to the dune. He also offered that he and his wife currently live on 18 acres with 13 acres of wetlands and they will be good stewards of the wetlands on this property.

He further explained that the footprint of the proposed house is small and to reduce damage to dune they will use 12 helical pylons with concrete caps so that the structure will “move with the dune.” The septic was placed at the top of the dune to reduce potential contamination of the wetland below. All excavation will be conducted by compressed air trenching which will help protect root systems. He claimed that they had done everything to design the home to meet their needs, the Town’s needs, and minimally impact flora and fauna.

He further opined that because of the unique aspects of their situation that granting the wetlands permit will not open up housing boom in Beverly Shores wetlands. He then pointed to the fill that was allowed for a driveway of another property on Bellevue (Ganz property) that the Town allowed and should similarly be allowed for his property. He also claimed that the Beverly Shores 25 foot wetland setback requirement existed only in Beverly Shores and that the National Park Service allowed building within 25 feet of a wetland.

He noted that IDEM allow this proposed fill, as evidenced by certification submitted with the materials and that the USACE has told him it cannot deny access to property. The Town of Beverly Shores rules and regulations may need to be examined and the attorney (for/on?) the Building Committee state the Town’s wetland rules may be too restrictive.

Comments:

President Kasniunas stated that precedents do not occur in zoning cases as each case has different circumstances. He noted that the Ganz driveway fill on Bellevue was pre-existing from a previous access road to that property.

Members Fulghum and Daraska asked questions about the helical pylons that Petitioner Veselica described. He explained that this type of pylon “corkscrewed” into the sand dune and when a level of torque was achieved that would support the proposed structure the pylon was capped with concrete. The house will be built on the pylons and different levels of the home will be built at different elevations on the slope, without cutting into the dune. [It was unclear whether the pylons would be visible after the house was built.]

President Kasniunas asked how deep would the fill be in the wetland? Petitioner Veselica explained it would only be two feet deep.

Building Commissioner Lagoni asked if the retaining walls could be moved out of wetland and the Petitioner responded that moving the retaining walls out of the wetlands would cause more disruption to the dune.

John Daraska asked about documentation from the USACE to which the Petitioner responded that he had filed an application, had an email from Paul Leffler and the Commissioner Lagoni had several conversations with them. He said that the USACE indicated they would have issued permit if there had been no Town restrictions. He then presented an email dated [REDACTED] from Paul Leffler, USACE Chicago District to the Duneland Group.

Petitioner stated that a right was taken away from his property and that his request should be granted so he could can build as he would have been able to in 1979.

Public Comment:

Bob Stanley, 23 E. Stillwater, described himself as a supporter the Environmental Restoration Group (ERG) and had come to the meeting to oppose the Petition with the concern that it would set a precedent. He said that the he had heard that no precedence will be set, so that there was no longer that concern. He also stated he had experience with groups in Chicago Parks projects to protect wetlands and prairies and had experience with these types of issues. He felt that the approximate 350 sq. ft. fill was minimal and water would flow through the box culvert. His environmental concerns were addressed by the Petitioner's planning.

Scott Vlieck, 21 S. Beach, asked if he had applied for building permit in 1979 and the Petitioner replied he had but never built. In response to a follow up question s to when the Beverly Shores wetland ordinance went into effect Commisisoner Lagoni stated it was 1984.

Larry Jensen, 81 Alyce stated he was involved in the wetland ordinance when people wanted to add wetlands to the National Lakeshore in early 90's. He explained that the Town decided that it could handle protections through Town ordinances without giving the land to the National Park. Wetlands map at the time became basis for when the ordinance applies.

Jensen expressed concern that a septic put at top of a steep dune with slopes to 60% might have rapid flow through the high permeability sand and also run off which could run downhill and into the wetland. He also explained that a mosquito study was performed that determined when septic systems overflow the surface of the wetland becomes a breeding ground for mosquitos particularly mosquitos that carry West Nile Virus. According to Mr. Jensen, the state expert in the study stated that wet ground or muck is worse than open water in supporting mosquitos. Mr. Jensen believes that the run off would create more muck and mosquitos and West Nile Virus.

Gregory Veselica said he probably agreed with the study but asked "[h]ow many existing septic systems in Town are 40 feet from water table?" Mr. Jensen noted the study was run on septic waste in Town and found that septic waste got into drinking water. President Kasmiunas asked if sand was a natural filter and Mr. Jensen agreed it was depending on the flow rate and distance the bacteria will be taken out as the waste moves through the ground.

Larry Stanton, 515 Myrtle, stated that the Beverly Shores Comprehensive Plan uniquely values its dunes and its wetlands and also noted that section 155.220(B) ties protection of the wetlands to the general welfare. He asked that the Board pay attention to and enforce the law and quoted Indiana State law regarding variance criteria from lawyers Greg Lymon and Margaret Williford. Mr. Stanton then noted that the Board had to initially make a determination that the variance will not affect general welfare, but the ordinance recognizes that diminished wetlands will affect the general welfare. Secondly, Mr. Stanton noted that the variance should not have a substantially adverse effect on value of surrounding properties. Mr. Stanton stated that people move to Beverly Shores because they can rely on people not building in wetlands. He felt it was necessary for this Board to be consistent so that people can rely on the Town enforcing its ordinances. A third variance requirement was the need for variance due to the peculiar circumstances of property. Mr. Stanton noted that this property is not unique in Beverly Shores. Mr. Stanton further noted that denying the variance would not result in an unnecessary hardship because the property was assessed at \$68,000, and given that it must have cost much less when it was purchased and if it were maintained as vacant it would keep that value. Finally, Mr. Stanton noted that approval would substantially interfere with the Town's Comprehensive Plan that repeatedly discusses the need to protect and preserve the wetlands.

Carol Dickerman, 505 Myrtle, stated she owned seven lots on Charing/Myrtle and was threatened by this permit. She had bought multiple lots with no intention to build on them and had turned down builders who had offered to buy the lots. She explained she counted on the Town to stop anyone from building near her. She did not want to see anybody building on the wetland property.

Barry Webber, [REDACTED], asked if there is a conflict in Town ordinance re: wetland protection vs. right to access the property.

There was then a brief discussion as to the location of Dickerman's property and if it was on the wetlands map. Commissioner Lagoni pointed to Ordinance 208 – 11-18-83 and explained that the wetlands map was used as a guide and property owners must get soil borings and the borings that indicate whether there wetlands are present.

Rosemary Gemperle, 81 Alyce, stated that if standing water is not present that does not mean there can be no wetland there. She supported Larry Stanton's position that disrupting the wetland disrupts the entire ecosystem and asked the Board to reject the permit application.

Toots Foy, 424 E. Myrtle noted that there was a house built in the early 2000's near her that was built in a wetland and since then the property undergoes wet-dry-wet cycles. She stated wetlands are not a place to build and also opposed the application.

Ed Cleese, 704 Rogers, also opposed the request to build in the wetlands and asked that we not change the law. He also stated that granting the request would create precedence and open the door to will open door to other people doing the same thing.

Carol Dickerman asked if the wetland in the Town ROW be filled in?

Susan Zucker, 6 Merrivale also supported Larry Stanton's position. The beginning of the wetlands section of the ordinance is filled with statements regarding protecting our wetlands. The zoning doesn't allow it, so it shouldn't be allowed. We came here because of the uniqueness of the Town. Once we start – we wake up and live in Chesterton. Can you avoid wetlands/steep dune and still build on the property?

Bob Stanley expressed concern by the lack of science in the people who opposed the permit. He stated that the damage to the wetland would be "immeasurable" and would not harm the general welfare. He stated there is no expert testimony that this project will adversely impact the wetland or the dune.

Tim Griffin, 8 Beach stated he was moved by the predicament of the owners, but precedent will be set if the BZA grant a permit in this case. He described his own predicament that when he bought his property he had 95 feet of frontage and we needed 100 feet, so he wined and dined a neighbor to try and get another 5 feet and they said no, and we were crushed. Then we learned that we did not need the 100 feet because we had more than an acre.

Susan Vance, 8 Beech, stated that distinguishing features present with this case will not set precedent. In particular she noted the lengths the property owners have gone to discern appropriate measures to minimize impact on the property and also that the petitioner had a building permit 1979 and the Town should allow it now, to be fair,

Toots Foy stated that we do not know what will happen to the wetland across across the street from this property if this permit is granted.

Geof Benson, 116 S. Wells noted that Gregory Veselica purchased the property in 1979. He did not understand if it was already a conforming parcel why was in 2013 the parcel was combined and switched to Nancy Veselica's name. Gregory Veselica responded that it was for "portfolio management" reasons. He explained he was still traveling to Europe for work and Nancy was here to sign papers.

Larry Stanton asked how then was it buildable in 1979?

Paul Zucker, 6 Merrivale, stated that we are not scientists but we understand the science and reports. If we fill all wetlands and level all of the dunes we will lose the unique character of the Town.

End Public Comment

President Kasniunas the closed the public comment period. Attorney Nolan then explained the difference between a permit application and a variance request and the different criteria for each.

Member Daraska noted that in his service on other boards of the Town, the discussions always were to increase lot size the Town would not become like any other "curb & gutter" community. Also, he noted the public comments reflected Beverly Shores is the only community where the

woods prevail and not the homes. He stated that timing, especially when property was purchased, was effected by changing attitudes and changing laws. He pointed to the 20,000 minimum sq. ft. buildable lot requirement as a example. He bought buildable lots to protect them from development. He also felt that in Beverly Shores, the ordinance support the woods and not the homes. He noted that the town officials who were elected were elected for their support of the Town ordinances and that the Board should support the wants and needs of the Town.

President Kasniunas inquired if there were alternatives to the wetland predicament such as a bridge.

Gregory Veselica explained that filling in the wetland would be necessary to lower the grade of the bridge to be level with the road.

President Kasniunas suggested we could do a trade and request that Petitioner create an equivalent-sized wetland for the cost of \$15,000-\$20,000. Attorney Nolan agreed that the ordinance allows the Board to condition the permit on the creation or restoration of an equivalent-sized wetland.

Member Fulghum stated that everyone was present at this meeting due to of their love for the area. She expressed that petitioner gave an outstanding presentation, especially regarding the efforts to minimize the adverse impact their project would have. She remained concerned about giving a permit in this case due to its potential precedence and inadvertently create an argument for people to fill more wetlands.

Vytas Kasniunas stated there is a concern that denial of a permit could be render this property useless.

Member Fulghum stated that she did not believe the value was useless even if a permit was not granted.

Gregory Veselica stated that this was least intensive method to construct on this property. It would be more expensive and intensive on the dune to build in another location, or to try and access the property from another direction.

President Kasiunas asked for a motion to grant or deny the permit. Member Fulghum made a Motion to Deny permit which Member Daraska seconded.

Vote: 2 to 1

Aye:

Mary Fulghum

John Daraska

Nay:

Vytas Kasniunas

Board discussion of procedural matters followed. Any votes on a petition require a majority of the full Board (at least three votes) in order to pass, which includes a motion to continue.

Mary Fulghum moved to continue the public hearing until the next regular meeting on 2/15/18a= and John Daraska seconded that motion which passed 3-0.