

DEBUNKING THE OBJECTIONS

ARTICLE 24: BREWSTER FIELD PURCHASE

The purchase of the Brewster Fields on Stearns Road is an important acquisition for the Town of Amherst for recreation space and conservation. Over the past several weeks there has been a flurry of letters to the editor and emails circulation that voice strong objections to the purchase, based, ostensibly, on the purchase price. Unfortunately, there is a well-orchestrated opposition to the use of these fields for sports activities, and it has existed since Ben Brewster first filed his sports field development proposal in 1995.

Today, the opponents to the purchase are using the same objections, and the same arguments, to stop the sports uses of the fields as they voiced during the original Planning Board hearings. The only difference is that now the purchase price has been added to the list of objections.

A BIT OF HISTORY

In April 1994 Ben Brewster filed an application with the Amherst Planning Board to develop a sports facility on 57 acres of property he owns on Stearns Road. After more than 15 hearings with the applicant and neighbors, the Planning Board approved a scaled-down version of the plan in April 1995.

During the approval process, the Planning Board required the applicant to study the following areas of impact:

- Off-site traffic and site access and circulation
- Noise
- Surface water quality
- Fire and emergency response
- Visual impacts
- Storage and release of hazardous substances
- Wetlands
- Flood plain and flood way
- Sewage disposal

The traffic and noise studies were conducted by a consultant for the Planning Board, at the expense of the applicant.

Throughout the approval process, neighbors and other interveners exercised their right to express objections to the project. A central position that they presented was that they were not opposed to a few fields but did not want to see a larger sports facility. The Planning Board agreed that the proposed use was too intensive for the site and reduced the project size by approximately ½. Despite meeting most of the positions presented by the neighbors and placing significant restrictions into the approval, the neighbors sued the Town in Superior Court to overturn the Planning Board decision and prohibit any

field development. The court ruled that the Town had acted properly in granting the approval and threw out the law suit.

After losing the lawsuit, the neighbors filed a petition article to change the zoning to effectively prohibit any sports or recreation uses in residential areas of the town. After significant promotion by the petitioners, the zoning article passed. The zoning change did not apply to the Brewster property as it was a prior approval.

WHAT ARE THE STATED OBJECTIONS TO THE PURCHASE?

1. THE \$625,000 PRICE IS UNREASONABLY HIGH AND NOT SUPPORTED BY THE TAX ASSESSMENT.

Is \$625,000 a high price for four existing playing fields and a 2.6 acre building lot with extensive river frontage on 57 acres, most of which is in the flood plain?

Yes and no.

Flood plain land is not especially valuable. But some of the most valuable open land in New Hampshire is the agricultural flood plains in the Connecticut River valley. The Brewster land has a long history of agricultural use because of the soil quality. When you combine the values of the 4 playing fields and house lot, with the fact that there is no comparable parcel of land in Amherst and very few in southern New Hampshire, the price reflects the reality of scarce land in the real estate market.

Several of the neighbors have objected because the selling price is higher than the Town's assessment. So why is the price so much higher than the tax assessment? This is the precise question being asked by two neighbors in recent letters to the editor. The answer is quite simple: current use.

'Current use' is a property tax break for owners of larger parcels of land. The property tax is based on the 'current use' as undeveloped land, rather than the fair market value.

Current use provides an incentive to keep land out of development. Developed land requires town services and taxes to pay for the services. If we really wish to preserve farms that produce local foods and to maintain open space, it makes no sense to tax landowners at rates that force them to develop their property.

If you own a single family home on less than 10 acres,

you pay property taxes on the fair market value of all your property. If you own a home on a 15 acre parcel, you pay taxes on the fair market value of the house and about one acre that it is on AND can get a significant break on your property taxes on the balance of the land by claiming the current use exemption. You pay taxes on approximately 10% of the market value of the land in 'current use'.

For example, you might purchase a 46 acre parcel of land with a house and tennis courts in Amherst for \$600,000. By claiming the current use exemption, your property taxes are based on \$404,900: the \$247,200 value of the structures and \$157,000 value of the 46 acres. That is a very nice property tax break on a \$600,000 home.

Assume that 24 acres of the 46 acre lot are developable and would support a 10 lot subdivision. The true market value of the parcel is at least \$700,000 higher than the purchase price. The inherent value of the property is about \$900,000 higher than the tax assessment.

Like the example above, the Brewster land is priced higher than the assessment. The assessed value reflects the value of the land in current use, not the fair market value. The prior assessment of the land that is referenced by opponents is the value of the raw land - there was NO assessment of the value of the playing fields as there are no comparable properties.

The two neighbors to the Brewster land who have written letters to the editor to object to the purchase on the basis of the assessed value of the property, both have large parcels that are in 'current use'. They receive significant property tax breaks by claiming current use, which is perfectly legal, and know the difference between assessed value and fair market value. They obviously hope that you do not know the difference and accept their argument that the fair market price is too high.

2. THE PROPERTY FLOODS AND IS NOT USABLE MOST OF THE YEAR.

On its face, this argument is outright false. Most of the land is in the flood plain, it floods and is perfectly usable. Amherst Country Club, Ponemah Green and Buckmeadow Golf Course all have areas in the flood plain. They all flood in a 100 year flood event. Golf is a sports and recreation activity - the same as the uses proposed by the Recreation Department. The golf courses lose very few business days per year to flooding.

3. THE PURCHASE REQUIRES MORE STUDY TO DETERMINE IF IT CAN BE USED FOR RECREATION.

All of the relevant and necessary studies were performed during the original field approval process. Attached is a copy of the Amherst Planning Board's Summary of Findings for the 1995 Brewster field approval. No stone

was left unturned. All of the studies performed and deliberations during more than 15 hearings, over a year plus in time, are part of the public record. The Wal-Mart Super Center was approved in 3 hearings.

4. WE NEED TO LOOK FOR ALTERNATIVE SITES THAT CAN BE PURCHASED FOR LESS MONEY.

Purchasing a site for less money in Amherst would be an enormously expensive mistake. There is one parcel of land off County Road where it may be possible to build 4 full size playing fields. It is not for sale. If it was for sale, you could not purchase it for anything close to \$625,000. Assuming you could, you would then spend close to \$100,000 to prepare the land to begin to build the playing fields; which would cost \$500,000+ to build. An irrigation system would require a well or wells to produce 25 to 40 gpm - at a cost of up to \$100,000. Any developer will tell you that the less expensive the land, the more expensive it is to develop and maintain.

The next time someone claims that the site is too expensive, ask them to identify one flat, 15 acre parcel in Amherst that you can purchase and then develop 4 full size playing fields for less than \$625,000.

5. ENGINEERING STUDIES ARE NEEDED TO DETERMINE IF THERE ARE FLOOD IMPACTS.

The opponents to using the land for playing fields claim that engineering studies will be needed to allow sports uses in the flood plain. All necessary engineering studies were performed during the original field approval process, reviewed by the Planning Board and consulting engineers, and approved. The full summary of the approval is attached.

SUMMARY

The key to assessing the cost of the Brewster land purchase is to think like someone planning to build a house. Add together all of the costs of the project to get to the end point - the costs of the land, site development, construction, operation and maintenance.

The arguments and claims of the opponents are inaccurate and misleading. Every claim they have made to convince voters that the site is unusable for athletic fields has been refuted by numerous studies and confirmed by state courts.

There is no alternative site in Amherst that you can purchase and develop into 4 full size playing fields for \$625,000. And there is no site - including existing fields - where you can operate and maintain high quality playing fields for less money.

**SUMMARY OF FINDINGS OF THE AMHERST PLANNING BOARD
ON THE APPLICATION OF BENJAMIN AND ROSEMARY BREWSTER
FOR A NON-PROFIT AMATEUR SPORTS AND RECREATION USE
ON STEARNS ROAD, MAP 4, LOT 65-1**

I. PROJECT DESCRIPTION

The applicant has proposed an amateur non-profit sports and recreation use on Stearns Road, Map 4, Lot 65-1 on a 57.2 acre parcel of land, mostly within the flood plain along the Souhegan River. The use as proposed consists of eight playing fields, a 24,200 square foot field house and on-site parking.

To comply with the non-profit requirement of the ordinance, the site is to be leased to and operated by a non-profit organization as approved by the Internal Revenue Service under 501.C-3, with ownership of the property retained by the applicant.

II. APPLICATION AND HEARINGS

After several preliminary discussions with the applicant during public sessions, the Board received a formal application during a public hearing on April 6, 1994. The Board voted to accept the application for review as a permitted use under Section 4-3 (A) (8) of the Town of Amherst Zoning Ordinance and for compliance with the Non-Residential Site Plan Review Regulations in Chapter C of the Ordinance. The Board voted that the plan had no significant regional impact. The hearing was opened for public comment on April 6, 1994. Additional public hearings were conducted on April 20, May 4, July 6, September 7, September 21, October 5, October 19, and November 18, 1994, and further on January 4, February 15, March 22, April 12, April 26, May 10 and May 24, 1995.

The application consists of: a site plan and revisions; a project summary dated October 5, 1994; traffic, noise, wetland, turf management, surface water monitoring and other environmental impact studies or plans; landscaping, phasing and building plans; lease agreement and other legal documents; and other documentation and correspondence submitted to the Board and contained in the hearing file.

External plan review was requested by the Board and review comments were received orally and/or in writing from the Amherst Police Department, Amherst Fire Department, Amherst Conservation Commission, Department of Public Works, Amherst Road Commission, the consulting engineer to the Town, abutters and interested parties.

The Zoning Administrator, at the request of the Board, authorized the applicant to conduct a soccer tournament on August 13-14, 1994 for the purposed of allowing the Board to observe operations characteristic of the proposal and to view potential impacts. The Board contracted for a noise impact study to be conducted during this event, which included site noise measurements and measurements on abutting/neighborng properties.

The Board formed a working group consisting of three members, the applicant and abutters/interested parties in an effort to reach a compromise on hours of operation and intensity or use. This effort to reach a compromise was terminated after three meetings due to lack of substantive progress.

A further effort at consensus on hours of operation and intensity of use was initiated by an interested party and the effort was unsuccessful in producing an agreement.

The Board voted to close the hearing on April 26, 1995 after no party presented new testimony to the Board.

III. FINDINGS OF THE BOARD

A. General

Allowable use - The Board found, by virtue of its acceptance of the plan on April 6, 1994, that the proposal was an allowable use under the Ordinance.

No regional impact - The Board determined on April 6, 1994 that the project had no significant regional impacts.

Other Required Permits - The Board determined that permits and certificates, including but not limited to the following, were required: Amherst Board of Health septic plan approval, NHDES septic plan approval, wetlands dredge and fill approval, shoreland protection certification, alteration of terrain and FEMA hydraulic analysis.

Lease of the entire site so as not to constitute subdivision - The property and facilities are to be leased to and operated by a non-profit organization, with ownership of the property retained by the applicant. Project required 501.C-3 approval. - The applicant/use must obtain designation from the IRS under 501.C-3. in order for the use to qualify as non-profit under the Ordinance and to ensure that the use remains non-profit. Annual documentation of non-profit status shall be provided to the Town. Any future change in operating bodies requires approval by the Planning Board of the new organization's non-profit status, based on IRS 501.C-3 documentation. These restrictions are to be recorded at the Registry of Deeds or other restriction developed to the satisfaction of the Board and Town Counsel.

Lease documents have been reviewed and approved by Town Counsel.

The applicant is required to obtain all state and federal approvals or negative declarations including wetlands, alteration of terrain, shoreland protection, septic, and flood plain.

Applicant has stated that no hazardous chemicals will be stored on site. Any change will require revision of site plan for construction of an approved storage area.

Applicant has agreed to keep the site, riverbank and immediately adjacent roadsides clear of litter.

As with any use in town, applicant may be required to hire police officers for traffic or crowd control.

At the request of an abutter, the Board determined, with advice of the Amherst Conservation Commission, that the site is not composed of natural wetlands and that the use can be conducted consistent with other uses in the Wetlands Conservation District, provided appropriate safeguards are incorporated in the plan. The Board further determined, with respect to this project specifically, that for the purpose of assessing project impacts and defining appropriate mitigation, that there is no distinction between sports and

recreation.

B. Scope of the Project

The Board adopted the applicants submission, "Project Summary - Brewster Site Plan Review", dated October 5, 1994, as the proposed scope of the project. The 'project summary' contained certain reductions in scope relative to the original April 6, 1994 proposal to the Board.

C. Potential Impacts of the Project

The Board determined that the project, as proposed, has the potential to create impacts in the following areas and required that the applicant define the level of impact and appropriate mitigation during the site plan review process:

- Off-site traffic and site access and circulation
- Noise
- Surface water quality
- Fire and emergency response
- Visual
- Storage and release of hazardous substances
- Wetlands
- Flood plain and flood way
- Sewage disposal

Following submission and review, the Board accepted the traffic and noise studies. The scope of the project and the studies required by the Board show that the proposed use will change the levels of impact on public health, safety and the environment but not increase the impacts to levels that can not be adequately managed through appropriate mitigation measures.

IV. DETERMINATIONS OF THE BOARD

A. General

The determinations of the Board with respect to allowable uses under the ordinance, project scope, impacts and limitations, supersede the applicants proposed Project Summary.

The Applicant is required to pay a proportionate share of the cost of elevating Stearns Rd. in the event that the Town allocates funds and receives necessary permits for the project.

The use and scope restrictions imposed by the Board are necessary and adequate to protect public health, safety and the environment.

The applicant shall prepare and submit to the Town an estimate of the cost to complete the landscaping plan and shall provide financial assurance for completion of the plan in the form of a bond or other acceptable financial instrument.

B. Allowable Uses Under the Ordinance

The Board determined that the proposed sports complex was allowable within the scope of Section 4-3 (A) (8) of the Zoning Ordinance.

The Board found that a field house, as proposed, was allowable within the scope of Section 4-3 A.8 .

The Board approved the following as accessory uses to a non-profit sports and recreation use:

- snack bar for 15 people
- showers and bathrooms
- meeting room
- training room
- catered banquets/meals for up to 50 participants

The Board determined that the following uses are beyond the scope of the ordinance or not an allowable accessory use and prohibited:

- overnight accommodations
- restaurant, specialty sports sales, souvenir shop
- banquet facilities for rental/use by people not involved in the activities at the complex.

The Board determined that the proposed lighting of fields did not comply with the set-back requirements of the Ordinance and the proposal for lighting was removed from the plan.

Turf management plan must be submitted to and approved by the Board, and the Board must be notified of any significant changes to the plan.

C. Scope of the Project

Parking will be designed to allow for rotation of some parking spaces, with a maximum of 553 parking spaces.

Field use for non-profit sports and recreational uses is limited to the period from April 1 to November 30 each year.

Except as specified under "Tournaments" below, the outdoor fields may be used from 8am to 9pm Tuesday through Saturday, and 9am to 4pm Sundays, with a maximum 350 people on-site at any one time. No use is permitted on Mondays or during "off hours".

The field house may be used from 8am to 10pm Tuesday through Saturday and Sunday 9am to 4pm. The facility will be closed Mondays.

Tournaments: For tournaments (which may exceed 350 people) the fields may be used from 8am to dusk Saturday, Sunday and Monday. The non-profit sports and recreation use is limited to six tournament events in year one, three (3) of which may be three day events, and eight (8) tournaments in each

succeeding year, four (4) of which may be three day tournaments. The weekend following a tournament the facility will be closed Saturday and Sunday for two day tournaments and Saturday, Sunday and Monday following three day tournaments. A schedule of tournaments and closed weekends will be provided to the Town by April 1 each year.

D. Specific Measures to Mitigate Impacts

Compliance with all general and specific conditions imposed by applicable State and Federal agency approvals is a condition of Amherst Planning Board site-plan approval.

Use of the site for non-profit sports and recreation activities is limited to the hours of operation and number of events defined in IV.C above for the purpose of minimizing traffic and noise impacts on the abutters and neighboring property owners.

The project is to be built in two phases. Phase I to include fields # 1,2,4,5,6 & 7, up to 350 parking spaces, and six tournaments in the first year of operation. Phase II, beginning the second year of operation, is to include the balance of parking up to 553 spaces, fields # 3 & 8, septic, field house, driveway improvements and complete landscaping.

The driveway must be raised to an elevation of 212'6" or 6" above the elevation of Stearns Road at the point of intersection, and be constructed to support a 50,000 lb fire truck to ensure adequate access to the field house by emergency vehicles during periods of high water. Culverts must be placed and maintained in the site driveway to avoid damming of flood waters. Driveway improvements, including the driveway entrance with Stearns Road, are to be installed in accordance with the site plan and inspected and approved by the Director of Public Works.

Wetlands Board Permit 94-00347 includes 17 site-specific conditions to minimize impacts due to wetlands use. Compliance with all general and specific conditions imposed by the state Wetlands Board is a condition of Amherst Planning Board site-plan approval.

The building must be evacuated in the event of flooding and high water alarms must be installed, as proposed by the applicant.

Fields # 1, 2, 5 & 8 may not be used during high water/wet conditions, and no wetland area shall be crossed by automobiles, vehicles or machinery when utilization will result in rutting of wetland soil.

Fields must be visibly posted/flagged after treatment with pesticides for a length of time appropriate to the chemicals used.

Surface water monitoring must be done according to the following schedule:

Sample once a year during August or September within twelve hours of a .5" storm event. Analysis is to be performed by a State of New Hampshire certified laboratory and must consist of EPA Method 624 or equivalent, plus nitrates. If no water quality exceedences for the method test parameters are reported within the first three years, testing may be discontinued, but must be performed in any year in which there has been significant change in the turf management plan.

Landscaping will be completed in accord with the revised plan dated March 31, 1995, updated to show planting of willow trees as well as white pines, for the purpose of establishing visual screens and sound attenuation with growth. The willow and white pine trees used as visual screens and to attenuate noise are to be planted as soon as is practical.

Portable toilets as needed for the number of people on the site will be placed appropriately.

All equipment and materials shall be removed from wetland areas following use. All equipment, materials and toilets will be installed, stored and maintained so as not to pose a hazard during high water periods or be removed from the 100 year flood plain during flood events

No off-site parking will be allowed on Stearns Road per action of the Amherst Board of Selectmen.

On-site traffic control is required for tournament events and must be conducted in accordance with good traffic management practices for the purpose of safe site circulation and pedestrian access and to minimize off-site impacts due to peaking characteristics. Traffic management practices are to include, but not be limited to, appropriate signage, designation of walkways, flow controls and control officers as needed. The applicant shall make provisions for and hire qualified traffic control officers at the direction of the Zoning Administrator and/or the Chief of Police.

Fertilizers and pesticide are to be applied only under the approved Turf Management program.

E. Incorporation of Public Record

This Summary of Findings incorporates by reference the public record of the hearings, in the form of the meeting minutes, as approved by the Planning Board. Any conditions attached to this project by the Planning Board and included in the approved minutes or as notes on the approved site plan, not specifically referenced in this Summary of Findings, are hereby incorporated.