

APPROVED / REVISED  
MINUTES  
INLAND WETLANDS BOARD MEETING

January 13, 2009

Present: Michael Autuori  
Peter Chipouras  
Joseph Fossi  
Nelson Gelfman  
John Katz  
Phil Mische  
Rebecca Mucchetti, Chairman  
Patrick Walsh, Vice Chairman  
Lillian Willis

Also Present: Betty Brosius, Inland Wetlands Agent  
Linda Caponetti, Recording Secretary

*Planning and Zoning Commission public hearings were held prior to the meeting.*

At 9:06 p.m. Chairman Mucchetti called the meeting to order. The Board discussed item #1 and then temporarily adjourned at 10:36 p.m. to convene the Planning and Zoning Commission meeting. The Inland Wetlands Board resumed its meeting at 11:03 p.m.

**PENDING ITEMS**

1. **#2008-119-PR:** Plenary Ruling application pursuant to Section 7.6 of the IWWR to conduct regulated activities within wetlands and upland review areas in conjunction with construction of a two (2) bedroom single family residence on .936 acres of property located on **Wilton Road East** (Assessor's map #F18-0039) in the RA zone. Owner/Appl.: Earl A. Burchard. Auth. Agent: Gregory and Adams, P.C. *Received 10/7/2008. Public hearing commenced 11/12/2008. Walk scheduled for 11/16/2008. Intervention under 22a-19 of the CGS acknowledged 11/18/2008, further study to move proposed driveway to the north of its current location requested 11/18/2008 and additional information requested under 7.6(i) of the IWWR re stream water quality. Public hearing continuation date set for 12/9/2008. 12/9/2008 extension granted to continue public hearing 1/6/2009. (20 days of 65-day extension period used) Public hearing closed 1/6/2009. 35-day action period ends 2/10/2009. For action.*

**Chairman Mucchetti** noted that the hearing was closed on 1/6/09, and asked the Board for discussion on the application.

She also noted that Mr. Fossi and Mr. Mische, who had both missed the public hearing, listened to the tapes and testified that they were prepared to take part in the discussion.

A lengthy discussion took place re the appropriateness of the application. Members of the Board were complimentary of the job done by consultant Richard Kent and others, and recognized the skillful and thorough handling of the problems inherent with the lot, but, there were varying opinions as to whether or not the quality of their work and creativeness of their plan were enough to warrant approval of the application

It was recognized that the lot was extremely laden with problems, and did not provide many good options for development. But, the consensus of the Board was that the consultants had understood and mitigated the wetlands consequences to such an extent that they would vote to approve the construction.

**Agent Brosius** said she'd received word from the intervener, Mr. Charles (Sandy) Campbell, that he would be unable to attend the meeting due to the fact that he was out of town with other obligations.

The Agent explained how the Board must respond to this application. She said it would be important, should they decide to approve, to provide comments on the record indicating how the present application is different from the previous one that was denied. Also, with regard to the intervention, she instructed the Board to acknowledge the claims that were made by the intervener and present the responses as Findings of Fact that she would prepare for the Board's review and action.

**Dr. Autuori** motioned to ask the Agent to draft an approval of the application, "subject to conditions that we can discuss." The motion was seconded by Mr. Chipouras

Dr. Autuori believed the application was "substantially and materially different and superior to the previous application." He stressed the fact that, in his opinion, it is the function of the IWB to act as a regulatory agency, not a prohibitive agency. Its job is to balance the rights of applicants or property owners to use their property in as reasonable and benevolent a way as possible against the stringent position of no development whatsoever in a wetland. The applicant in this case has gone to great lengths to minimize any impact on the wetlands system, Dr. Autuori said.

He cited the following evidence: the substitution of the narrower gabion foundation driveway and the bottomless box culverts, which will allow a significant amount of percolation, as opposed to the fill system previously submitted; the relocation of the house further from the wetland than in the previous application. The septic system has been redesigned and moved further as far as possible from the wetlands.

**The Chairman** noted the location of the driveway had been modified, as well.

Any activity in a wetland or watercourse will have an effect on the wetland, Dr. Autuori said. As to whether or not that activity must be denied, he proposed the following: 1) with regard to the claims of the intervener re the quantity and quality of

the flow of water, the peak runoff will not change, 2) the design of the crossing does not appear to affect the flow of the stream, 3) the gabion baskets will create minimal disturbance to any groundwater or overland flow, 4) once the intermittent stream was discovered, the septic system was moved further away. The portion of the total wetlands system that encompasses this development is a very, very minor portion of the total wetlands system involved, he said.

The purity of the water is being protected by the way the stream has been crossed, the fact that the applicant has agreed not to use pesticides or herbicides, the fact that the septic system has been redesigned and moved further away into the upland area once the stream was discovered. All of these accommodations “would certainly appear to minimize any potential pollution of that stream from this development,” Dr. Autuori said. All in all, he felt comfortable making the motion to approve.

**Mr. Katz** spoke against the approval, but received no support from others. He called the presentation by Mr. Kent “singularly impressive,” and said that the application was “approached with an integrity and a candor that is really uncommon.” He agreed with Dr. Autuori that the portion of the wetland involved was quite minor. But, Mr. Katz felt that it was the duty of the Board to take “an extra hard look at just such portions” of wetland, in that there are not many left. When the affect of all the small offenses to the wetlands are looked at in combination, the aggregate offense is a large one. He said that Ridgefield is being pressured to look at more and more properties which heretofore would have been deemed unsuitable for development.

Mr. Katz addressed each part of Sec. 10.2 of the wetlands regulations:

- a) There are going to be negative impacts. This application warrants review because it is different and it is presented as a feasible and prudent alternative. But, Mr. Katz questioned, “Why take a small piece of well functioning wetland in a larger system and diminish its function...”
- b) The alternatives to the proposed plan don’t alter the overall negative impact on the wetlands or the watercourses. He agreed that the impact would be minimal, however, it would be permanent, he said.
- c) The short term impact is the most severe, but massive site alterations (all within the wetlands themselves or within the buffer area) produce long term potential for negative impact. Mr. Katz stated his opinion that so much of the wetlands in the system has already been negatively impacted, the little that is left has to “do a greater share of the work.”
- d) There is likely to be irreversible and irretrievable loss of wetlands, with “no maintenance and no enhancement of the long term wetland or watercourse productivity.”

**Mr. Katz** asked the Board not to look at the small size of this particular piece of wetland, but to view it as part of the aggregate, which he felt was “something we can no longer afford to offend.” He would not support the motion to approve.

**Dr. Autuori** said that Sec.10.2 can be used to deny virtually any plenary application. If the function of the IWB is to prohibit any impact on a wetland or a watercourse, its function could be handled by “skilled, scientifically tutored enforcement officers.” However, the decisions before the Board require judgment and discretion. It is a regulatory agency, not an enforcement agency.

The actual physical impact on the immediate wetland from this application is the gabion driveway being placed in the wetland, Dr. Autuori said. The runoff from the house should be minimal. The fact that chemicals will not be used is significant. There is also ongoing and unregulated runoff coming from the existing houses above on Split Level Road.

Dr. Autuori suggested that a balance needs to be struck between the protection of the wetland and the rights of the property owners. This application represents “an acceptable impact on the wetland,” he felt, and the applicant has done an extraordinary job and gone to extensive lengths to give us “the least [impactive] resonance on this area.”

**Mr. Walsh** argued that Sec. 10.3 (re feasible and prudent alternatives) has nothing to do with what anybody thinks. The regulations state that the Board cannot issue a permit unless it finds that a prudent and feasible alternative does not exist. He did not believe there was such an alternative. Mr. Walsh said that the application represents, essentially, a crossing over wetlands. As compared to the '06 application, 7% less of the wetland is being disturbed in this application. He felt that each application needs to be reviewed individually. “I don’t think that this lot can be burdened by the sins of other lots and other applications which have come before the Board, which were not subjected to the same degree of review.”

Mr. Walsh felt that Sec 10.2 would give the Board “the path to approve this application.” He said that there was no evidence to suggest that development of this property will have any downstream affect on either the intervener’s property or the watercourses further downstream. Aside from the initial impact and the destruction of 1,800+/- s.f., there is minimal impact, “if any,” to the rest of the site and to the rest of the wetlands.

As it pertains to Sec. 10.2a, Mr. Walsh continued, the impact on the lot itself is diminimus when one considers that 91% of the lot is either in a regulated area or in the wetlands itself. Alternatives were looked at with the Conservation Commission (section 10.2b). The changes they suggested would disturb even more of the wetland, Mr. Walsh said, citing the northern driveway plan. There would be no benefit to cutting the wetlands off at that point as opposed to crossing it to the upland review area and then crossing it again to get to the house. He agreed totally with Dr.

Autuori's assessment of the short term/long term impact. He also agreed with Dr. Autuori with regard to the irreversible, irretrievable loss of wetland or watercourse resources. There would indeed be a loss of 1800+ s.f. of wetland, but, that should be viewed within the context of all the constraints on the lot and the "great extremes" gone to by the applicant to minimize impact. He questioned the applicability of Sec. 10.2e but, again, stated that the applicant was taking extreme steps to diminish injury to the property. He also cited the box culvert, the choice of entrance pt. into the wetland, and the cutting back on fill by using the gabion style driveway. He agreed with Dr. Autuori that there is no evidence that there will be negative downstream effects, and felt that the applicant had met the requirements of 10.2f by lessening the possible impact to 1800 s.f. Mr. Walsh believed that Sec. 10.2 provides the Board the ability to approve the application as presented.

**Mrs. Willis** expressed her original preference for the northern driveway. Dr. Autuori agreed, but, said that he felt it would present problems when the location of the well is considered.

**Mr. Fossi** noted that the applicant had agreed to a buffer area that would remain in perpetuity. The Chairman clarified that it was a construction envelope. Mr. Fossi asked that this be a condition of approval.

**Mr. Mische** felt that the project was a "maximized project." He would leave the location of the driveway open so as to balance the location of the well. He also complimented the applicant on the handling of the application. The approval, however, "should be heavily weighed down with oversight," he felt. Mr. Mische was optimistic that the project could satisfy all of the aspects of Sec. 10.2.

**Dr. Gelfman** regretted that the lot itself had ever been approved, saying that it never would be approved under current zoning. That said, he agreed with his colleagues that the application represented an improvement and he would support the application.

**Mrs. Willis** noted the revised septic system location and grading to control runoff from an intermittent watercourse that runs between this property and the neighbor to the north.

**The Chairman** recognized that this had been modified even though it was determined that it did not meet the definition and standards of an intermittent watercourse.

**Dr. Gelfman** agreed that the original access, not the northern one, is preferable.

**The Chairman** detailed all the highlights of the discussion.

The motion to draft a resolution of approval passed, 8-1, with Mr. Katz opposed.

Conditions of approval will reference at least the following:

- Approval of the original driveway location, not the alternate that was discussed during the hearing;
- Establishment of a “development envelope” for limits of disturbance on the site;
- Prohibition against the use of herbicides and pesticides;
- A mandate for construction oversight and monitoring;
- Adoption of the newest plans for retention of runoff from the driveway.

**The Agent** pointed out that the Board needs to address the claims made by the Intervener, and she will prepare a draft “Findings of Fact,” based on comments in the lengthy discussion supporting approval of the application. Of note was the fact that the Intervener was speaking for himself, without support from experts. The Agent felt the discussion had been quite thorough and answered the claims of the Intervener.

2. **#2006-103-SR:** Discussion c/o Inland Wetlands Agent, re compliance with permit issued for Summary Ruling approval to conduct regulated activities in conjunction with single family lot development at **20 Peaceable Street**. Permit issued 10/24/2006 to Owner/Applicant: AMD Homes, LLC. *Discussed 11/18/2008 and 12/2/2008. 12/16/2008 per applicant’s request, continue discussion on 1/6/2009. Request from Attorney Campbell to move item to January 13, 2009 agenda. For discussion.*

**Chairman Mucchetti** noted that the attorney for the owners of the property was not prepared to discuss the item, and the matter was tabled.

## **NEW ITEMS**

3. **#2009-005-REF:** Referral by the Town of Wilton, under Section 8-7.(f) of the Connecticut General Statutes for a septic repair within 500’ of the Ridgefield border located at **26 Scarlet Oak Drive, Wilton**. Appl.: Brian Andronaco, Anderson’s Septic Service.

Based on review of the materials submitted, Mr. Katz motioned, seconded by Dr. Autuori, to offer no comment on the proposed activity. The motion passed, 9-0.

## **BOARD WALKS**

There were no site walks to be scheduled.

## **REQUESTS FOR BOND RELEASES/REDUCTION**

There were no requests for bond release or reduction.

## **CORRESPONDENCE**

**Chairman Mucchetti** pointed out the following correspondence:

- Information from Kate Throckmorton of Environmental Land Solutions, re **11 Old Stagecoach Road**
- Copy of letter prepared by the Agent to the Board of Selectmen, re the proposal by CL&P (Northeast Utilities) for chemical control of vegetation on the rail trail.
- Winter issue of the “Habitat,” CACIWC newsletter.

## **MINUTES**

**Mrs. Willis** motioned, seconded by Mr. Mische, to approve the minutes of December 16, 2008. The motion passed, 8-0-1, with Mr. Fossi abstained.

Hearing no further discussion, the Chairman adjourned the meeting at 11:08 p.m.

Respectfully submitted,

Linda Caponetti  
Recording Secretary

APPROVED / REVISED  
MINUTES  
PLANNING AND ZONING COMMISSION MEETING

January 13, 2009

Present: Michael Autuori  
Peter Chipouras  
Joseph Fossi  
Nelson Gelfman  
John Katz  
Phil Mische  
Rebecca Mucchetti, Chairman  
Patrick Walsh, Vice Chairman  
Lillian Willis

Also Present: Betty Brosius, Director of Planning  
Linda Caponetti, Recording Secretary

*Public hearings were held prior to the meeting.*

At 10:37 p.m., Chairman Mucchetti called the meeting to order.

**PENDING ITEMS**

1. **#2008-134-S:** (1) Five-lot Subdivision Application under Section 6-1 of the Subdivision Regulations for the Town of Ridgefield and (2) request for waiver of Section 4-25 of the Ridgefield Subdivision Regulations for payment in lieu of open space on property consisting of 0.9377 acres of land located at **19 and 25 Sunset Lane** in the R-7.5 zone. Owners/Applicants: Gary and Chester Zawacki. Auth. Agent: Matthew Ranelli, Esq. *Received 12/2/2008. Walked 12/14/2008. Public hearing commenced 1/13/2009. 65-day action period ends 3/19/2009. For action.*

**Chairman Mucchetti** noted that the hearing had been continued to 2/10/09, and the item was tabled.

2. **#2008-135-SP:** Special Permit application under Section 9.2 of the Ridgefield Zoning Regulations for construction of an addition to the existing restaurant building (formerly Pizza Hut) to allow first floor retail space and office use on the second floor on property located at **105 Danbury Road** in the B-1 zone. Owner/App.: PST Properties, LLC. Auth. Agent: Donnelly, McNamara and Gustafson, P.C. *Received 12/2/2008. Walked 12/14/2008. Public hearing commenced 1/13/2009. 65-day action period ends 3/19/2009. For action.*

**Chairman Mucchetti** noted that the hearing had been continued to 2/10/09, and the item was tabled.

3. **#2008-141-REV(SP)-VDC:** Revision to Special Permit under Section 9.2.A.7.e. and Village District Application under Section 8.3 of the Ridgefield Zoning Regulations to permit minor exterior façade renovations to the existing building on property located at **467 Main Street (CVS)** in the CBD zone. Owner: EAL Associates. Appl.: CVS Realty Co. Auth. Agent: Cuddy & Feder LLP. 65-day action period for revision ends 3/12/2009, 35 days to receive VDC report ends 2/10/2009. Received 1/6/2009 and referred to VDC. *For discussion.*

**Anthony Gioffre** of Cuddy & Feder was present to represent the applicant.

**The Chairman** described the application, (façade improvements and the removal of a brick wall, to be replaced with two windows). She noted that the Village District Consultant reviewed the proposed changes, and asked Mr. Gioffre to relay these comments to the Commission.

**Mr. Gioffre** said that the VDC requested that the windows be clear to the inside, with no backdrop. That was the intention of the applicant, he said. The VDC also requested that sign regulations be referenced in the discussion. There should be no signs in the windows. That also was the intention of CVS, Mr. Gioffre said.

**Planner Brosius** said that she referred the application to Police Chief, John Roche, because there have been concerns about the darkness of the entrance. Her suggestion was to install at least one light (in conformance with the lighting regulations) close to the corner of the building to light up the long ramp. There were also concerns about the dimly lit parking lot next to the entrance.

**The Chairman** added that many seniors from the adjacent senior complex (Ballard Green) walk to CVS through the dimly lit parking lot and use the ramp and entrance.

**Mr. Gioffre** felt that the addition of the lighting, which would have to meet current lighting standards, would not present a problem.

**Mr. Chipouras** questioned the applicant about the elevations and asked which drawings represented the work being proposed. There are two sets of elevations. The close ups are “not 100% accurate,” he said. He said the correct position of the windows is above the railing, which is consistent with the drawing in Tab. 5 of the application. Mr. Chipouras requested that, for the area that falls beneath the overhang, there should be “down lighting” consisting of recessed lights within the soffit. Mr. Gioffre said he would bring the suggestion to CVS.

There was a short discussion as to whether or not the existing two spot lights were safety lights. Dr. Autuori defined safety lights and explained that flood lights are not exempt from the regulations.

**Mr. Katz** motioned, seconded by Mr. Fossi, to approve the application. In summary Planner Brosius mentioned the concern of the Police Department about inadequate lighting on the entrance ramp and at the corner of the building and asked that proper down-lighting be included in the improvements. It was agreed that recessed lights in the soffit would be appropriate. Mr. Gioffre relayed comments from the earlier review by the VDC, to require that the windows be clear, so that the inside space could be seen. The VDC was also concerned about signage, but the Planner noted that signage was not part of this application. The applicant confirmed that separate sign applications would be submitted at a later date, and that signage would conform to the zoning regulations.

The motion to approve the application, with conditions referencing VDC comments and exterior lighting, was approved by a vote of 9-0.

4. **#2009-003-REV(SP)-VDC:** Revision to Special Permit under Section 9.2.A.7.e and Village District Application under Section 8.3 required by Section 8.4 of the Ridgefield Zoning Regulations to place a dry freight storage container on the Ridgefield Library property located at **25 Prospect Street** in the CBD zone. Owner: Ridgefield Library Association. Appl./Auth. Agent: Friends of the Ridgefield Library. *65-day action period for revision ends 3/12/2009, 35 days to receive VDC report ends 2/10/2009. Received 1/6/2009 and referred to VDC and walk scheduled for 1/11/2009. For discussion.*

There was no one present from the library to discuss the application, and it was tabled. There was short discussion and an explanation of the application by the Planner.

5. Revised **VDC By-laws**, *for discussion.*

**Chairman Mucchetti** asked if the Commission was ready to vote on the revised by-laws. She asked for one addition, that being a reference to the requirement for member attendance at 2/3rds or more of the meetings, as per the Town Charter. The Planner said that this would be added in an appropriate place.

**Mrs. Willis** motioned, seconded by Mr. Mische, to adopt the by-laws, as revised. The motion passed, 9-0.

## **NEW ITEMS**

6. **#2009-004-VDC:** Village District Application under Section 8.3 required by Section 5.1 of the Ridgefield Zoning Regulations for exterior renovations and building sign at **22B Catoonah Street** in the CBD zone. Owner: Benenson Funding Corporation. Appl./Auth. Agent: William M. Sibley. *35 days to receive VDC report ends 2/24/2009. For receipt and refer to VDC.*

**Chairman Mucchetti** explained the location of the property for the application.

**Mr. Walsh** motioned, seconded by Mr. Fossi, to acknowledge receipt of the application and to refer it the VDC. The motion passed, 9-0. The item will return to the agenda for further discussion pending receipt of the VDC comments.

7. **Chairman Mucchetti** asked, and the Commission agreed by unanimous consensus, to add an item to the agenda, to schedule an Executive Session with Commission counsel for 1/20/09, to discuss litigation regarding the Bennetts Farm Road property (Eureka V, LLC). The Executive Session will be held immediately following the continued public hearings on the 1/20/09 agenda.
8. **Mrs. Willis** asked to add an item to the agenda, to announce her resignation from the Commission, and the request received reluctant unanimous consent. Mrs. Willis's letter of resignation was read by Chairman Mucchetti. Mrs. Willis has accepted employment in Vermont, and would be resigning effective 1/14/09. Discussion and words of praise from all for Mrs. Willis followed.

**Mr. Katz** suggested former Commissioner James McChesney (who was in attendance at the meeting ) as a replacement. Chairman Mucchetti noted that the position needed to be advertised, as per Town Charter, and interviews would be conducted on 1/27/09. She also noted that she and Vice Chairman Walsh would be attending the Republican Town Committee meeting on Thursday, 1/15/09, to support Mr. McChesney for the position.

#### **COMMISSION WALKS**

The following site walks, canceled 1/11/09 due to snow, were re-scheduled for 1/25/09:

- **#2008-138-S:** Subdivision **11 Old Stagecoach Road**, Harrison
- **#2008-139-SP-REV(S):** Special Permit, Rev. to Subdivision, **Arnolds Way, Lot #2**, Yanity

#### **REQUESTS FOR BOND RELEASES/REDUCTION**

There were no requests for bond release or reduction.

#### **CORRESPONDENCE**

There was no correspondence.

#### **MINUTES**

**Mrs. Willis** motioned, seconded by Mr. Mische, to approve the minutes of December 16, 2008, with one minor correction on page 12. The motion passed, 8-0-1, with Mr. Fossi abstained.

Hearing no further discussion, the Chairman adjourned the meeting at 11:02 p.m.

Respectfully submitted,

Linda Caponetti  
Recording Secretary