

APPROVED / REVISED
MINUTES OF THE
SPECIAL MEETING
PLANNING AND ZONING COMMISSION

January 29, 2008

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

Absent: Peter Chipouras

Also Present: Betty Brosius, Director of Planning
Linda Caponetti, Recording Secretary
Francis J. Collins, Esq., Commission Counsel

At 7:30 p.m., Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **Ridgefield Center Study:** Discussion to select consultant.

The Chairman opened the discussion saying that two of the four applicants had been interviewed, and the Commission would need to select one of them.

Dr. Autuori motioned to approve Planimetrics, based on the fact that their work is a known commodity, and he has been comfortable with the work that they have done. The motion was seconded by Dr. Gelfman.

There was agreement among the members of the Commission that Glenn Chalder, of Planimetrics LLC, was well qualified and had served the Town very well in many projects in the past, however, most members felt that, based on the two presentations, the team from Milone & MacBroom had seemed better prepared and better qualified for the job.

Mr. Mische wanted to hear the Planner's thoughts on this.

Planner Brosius felt that Milone & MacBroom appeared to have better engineering expertise and technical ability. She specifically cited their ability to do the proposed traffic/parking study. While the Planner liked Mr. Chalder and respected his work, she preferred Milone & MacBroom for this job. Their timeline and schedule for work

were “a little more aggressive,” she said, and noted that they have a bigger team of people, and a bigger variety of expertise. They are also currently doing work for the Town, developing the plan for improvements to the Bailey Avenue parking lot, and plans for the Route 35 streetscape improvements from Grove Street to Copps Hill.

Mrs. Willis also was impressed by the compressed time frame. The Chairman agreed with the Planner’s choice, and felt that Milone & MacBroom could look at the project with “fresh eyes,” a real benefit.

The Planner specifically noted, however, that she would like to see Mr. Chalder involved in the update of the Plan of Conservation and Development.

Mr. Katz was also very complimentary of Mr. Chalder’s credentials and past work in Ridgefield, however, he also agreed that it seemed like Milone & MacBroom had an engineering and technical expertise that would make them the better choice. He reluctantly cast his vote in their favor after reminding the Commission of the loyalty and cooperation that has been shown to the Town by Mr. Chalder. He echoed the Planner’s desire for Planimetrics to be the choice for the upcoming work on the POCD.

Mr. Mische was uncomfortable with parts of Mr. Chalder’s presentation and felt that Milone & MacBroom would be the better choice.

Dr. Gelfman felt that Milone & MacBroom were simply “polished presenters,” which may not represent any real advantage to the Town in this particular job.

Mr. Fossi agreed that Milone & MacBroom were good presenters, but, he also felt that they seemed to have “a pulse on what Ridgefield’s issues might be,” and they were able to do the entire job in house, which swayed him in their favor.

Mr. Mische suggested that those who were “on the fence” vote in favor of the Planner’s preference, since it would be she who would be working closely with consultant.

The Planner said that she could (and would) work comfortably with either firm, but, reiterated her preference for Milone & MacBroom, based on their technical expertise and their in house capability. She also noted that Mr. Chalder’s choice of BL Companies as a partner with him in this project was of concern to her.

Dr. Autuori changed his mind based on the Planner’s observations, but left his motion on the table. The motion failed 7 – 1, with everyone but Dr. Gelfman opposed.

Mr. Mische made a motion, seconded by Mr. Katz, to hire Milone & MacBroom as consultants for the Ridgefield Center Study. The motion passed, with Dr. Gelfman opposed.

2. **#2007-042-REZ-A:** Pursuant to Sec.8-30g(h) of the Connecticut General Statutes (Affordable Housing Land Use Appeals Procedure), (1) Application for modification to Commission-approved amendment to the zoning regulations for a Housing Opportunity Development (HOD) overlay zone, (2) amendment to the zoning map to show HOD overlay zone and (3) modification of conceptual site plan, to permit residential development on 153± acres of land located at **616 Bennett's Farm Road** in the CDD zone. Owner: Eureka V, LLC. Appl./Auth. Agent: Matthew Ranelli, Esq. *Received 12/11/2007. Public hearing commenced 1/8/2008 and continued to 1/22/2008. P.H. Closed 1/22/08. 65-day action period (from date of receipt) to hold public hearing and make a decision ends 2/14/2008. For discussion/ action.*

Chairman Mucchetti said that Francis Collins, Esq., attorney for the Town, would offer his responses to comments from the Public Hearing, and would guide the Commission through their discussion that evening. The Chairman noted the absence of Commissioner Chipouras, who had recused himself from the discussion.

Mr. Collins stressed that there should be no motions. This would simply be a discussion which would allow the Planner to draw up some type of resolution. What was being considered, he said, were the applicant's modifications to their 8-30g application, specifically, their response to the restrictions and objections put forth by the Commission in their decision of 11/13/07. Under the Statute, the re-submission would be considered an amendment to the original application.

Mr. Collins reminded the Commission that there was no site plan. What they were dealing with was merely a conceptual site plan. He summarized the applicant's responses and asked the Commission to use the following format in their discussion: comments should cover four major issues, (paragraphs E, I, M and N in the HOD regulation), and six issues where partial modifications were made, (paragraphs C, F, G, K, P, and Q). There were two additional issues, only one of which Mr. Collins felt was worthy of discussion, that being the viability issue. The second, the sewer issue raised by ROSA, was already a requirement of the regulation, and the responsibility lay with the applicant to deal with obtaining sewer service, as noted by Mr. Walsh. He noted that the Planner had provided a document showing both the original language and the proposed modifications.

In answer to comments made by ROSA with regard to a subdivision map of the property with notes about open space requirements, the Planner explained that the property had previously been approved as a 3-lot subdivision, requiring that open space be dedicated if and when any of the lots were developed. When the present owner, Eureka, filed a map in 1998, they showed the property as one lot, which effectively merged the three lots and nullified the subdivision map and the requirements attached to it. This was, therefore, a non issue.

Dr. Autuori asked if the open space requirement for the property was attached to the deed.

The Planner said it was “in conjunction with a subdivision approval.” At the time, she explained, subdivision regulations required a 4% donation of land.

The Chairman directed the Commission to respond to the issues in turn, as they were recognized. She began with Commissioner Walsh.

Mr. Walsh felt the key point would be for the Commission to remind themselves that this is an 8-30g application, and all comments should be held to the scrutiny of the balancing test. Specifically, he felt the Commission would need to show that the public health impact would outweigh the need for the amount of affordable housing being applied for in the re-submission, which amounted to 389 units. He believes that, without the Commission’s modifications in the approval, there will be a detrimental impact on the public health and safety.

LOT DENSITY (E)

Mr. Walsh said that everything the Commission has heard from the experts supports the guideline: one unit per two acres in the watershed. He feels strongly that there should be no development in the Saugatuck Watershed. With that said, Mr. Walsh suggested that the Commission may need to consider additional development elsewhere on the site, and suggested they come up with a number.

Mr. Fossi agreed with Mr. Walsh that it could be difficult to defend the position of no development in the watershed. He said that balancing the following criteria is very difficult: 1) not allowing any building at all in the watershed, 2) acknowledging the need for affordable housing, and 3) trying to keep a ratable property in Ridgefield. Mr. Fossi said the record was clear that the recommendation was for one unit per two acres in the watershed, allowing about 32 more units. He would allow the additional units, but not in the watershed.

Mr. Mische said that the 1.9 units per acre recommended by the Commission was arrived at with no building in the watershed. It also considered steep slopes. Mr. Mische cited the Aquarion letter of 1/7/08, which states that the current application remains unacceptable, saying that the development numbers are inappropriate for a public drinking water supply watershed. Considering the gross land area and the buildable area in the watershed, Aquarion states, “no more than 10 residential units could be sited within the Saugatuck Watershed portions of the property.” Mr. Mische said, “I’ll stand by that.”

Mrs. Willis said that the applicant has said that he will not accept the precept of no building whatsoever in the watershed. She feels it will be very hard to defend not building at the far end of this watershed when other Towns have allowed building closer to reservoirs. She said she would not support any number of units greater than

one per two acres, and they would have to have septic systems and not sewers. Mrs. Willis said that, if sewers were allowed, it would go against all the recommendations of the experts, and also open the door to even further development. However, she was concerned about putting potential State funding for sewer plants or upgrades in jeopardy, which would affect public health, by not adhering to the State's POCD guidelines.

The Chairman clarified that Mrs. Willis' position was for one unit per two acre density in the watershed on septic.

Dr. Gelfman said that this is a concept plan, not a site plan. He agreed with Mr. Walsh that this was not the time to negotiate details. He said that Aquarion's letter not only addressed the watershed issue, but, also stated that a project of this overall density is inappropriate anywhere near a watershed. Dr. Gelfman thought it would be disadvantageous to compromise at this point. He felt the Commission had arrived at the 1.9 density by "careful consideration of the limitations of this overall site." Therefore, he wanted to stick by that number, and felt that, if the applicant wanted to take the Town to court, that would be where they could negotiate.

Dr. Autuori said that one of the "main driving presumptions" that the Commission used to arrive at the 1.9 density was that there could be sewers on the Norwalk River Watershed portion of the property. It is now known that there is no Phase II sewer district, he said. Dr. Autuori felt that Attorney Ranelli's comments indicating that it would be reasonable to assume that these permits will be approved or acquired later on is unfounded, noting that this is outside the purview of the Commission and therefore out of the "club range" of 8-30g. Dr. Autuori did not feel that these permits would be granted. He said further that, based on Statute 8-30g(h), he did not feel the applicant had the right to come back with this application, because the modifications imposed by the Commission had not been shown to negatively impact either the viability or the affordability of the project.

Dr. Autuori also made the point that, even though this is just a concept plan, a Planning Commission should *plan*, and take the concept plan seriously. Given that the Commission now knows there is no sewer district, it would be foolish to still go forward and "blandly" assume that, when the applicant comes back with a site plan, a Special Permit, and specifics, that would be the time to negotiate, he said. He also said that he would like to go back and see if it were possible to rescind the original approval, based on this new information. "Right now," Dr. Autuori stressed, "is when we have to look at this concept, and say it's absurd for the site, absent any sewer on that site."

Mr. Katz concurred with Dr. Autuori's assessment, saying that there was no indication that anything the Commission had done negatively affected the viability or affordability of the project. He noted that Attorney Ranelli was asked several times to present proof of a negative impact on either. He was unable or unwilling to do so.

Therefore, Mr. Katz also felt that the applicant had not proven their right to come back with a re-submission.

As for the density issue, he found no reason to change the Commission's original proposal. "The diminution of the watershed area's capacity to serve the public drinking water... is affected by incremental assaults to it," he said. "Lots of small ones," that represent "irresponsibility on the part of the people who, under 8-2 and the Connecticut POCD are charged with protecting that area. That's us, folks."

The concept of putting anything in the watershed area is very dangerous, Mr. Katz said. He noted that the applicant had shown a clear intention to "dance around the Department of Environmental Protection," which, Mr. Katz said, "has the only serious water protection regulatory authority." Citing section 3 of the applicant's resubmission application, Mr. Katz said the intent to subdivide is clear. "They are going to subdivide the 67 acres in order to have individual septic systems. Although they accrued 27,900 gallons of septage, they will be thought of as individual septic systems, achieving less than the 5,000 gallon threshold of DEP and only Ed Briggs [the town Director of Health] will be policing those septic systems."

While admitting that ten units in the watershed probably wouldn't have a real impact, Mr. Katz said, "Why do it?" Nothing the Commission has done infringes on the intent or specificity of Section 8 of 8-30g, Mr. Katz said, and he asked, "If they can hold our feet to that dreadful fire, so can we hold theirs to the same code."

Chairman Mucchetti agreed, saying that, whether it's 2% or 20%, the portion of the property that is within the Commission's ability to review is going "to get all the protection [her] vote can give it." She voted for no development in the watershed, but, cautioned that there may be vulnerability in defending that position, because of density guidelines. She supported Mr. Walsh's suggestion that the Commission find a way to allow the density without building in the watershed.

Dr. Gelfman said he sees no reason to increase the density at this point. The 1.9 density was based not just on the watershed, but, on steep slopes and other restrictions. He felt that it would be impossible to debate without a real site plan.

Dr. Autuori agreed with the Chairman that there is vulnerability with regard to defending the watershed prohibition, however, he felt that the lack of a sewer district puts the applicant in a more vulnerable position with regard to development in the Norwalk River portion of the property.

The Chairman said that the record does not support Dr. Autuori's opinion regarding the sewer issue. "Counsel disagrees, the Planner disagrees, those of us who have studied the record disagree," she said. There is an approval granted by the Commission on 11/13/07 that is now being considered for further modification.

There was continuing disagreement between Dr. Autuori and the Chairman as to whether or not the record supported the opinion that a future sewer district is not a viable possibility.

Mr. Katz agreed with Dr. Gelfman that it is not up to the Commission to concern themselves with the sewerage. The Water Pollution Control Authority is in charge of this. The applicant can't build without disposing of effluent, and the disposal of effluent is out of the Commission's hands, Mr. Katz said.

As far as the incremental density is concerned, Mr. Katz agreed again with Dr. Gelfman, saying that a site plan is necessary to review this issue. He noted that Attorney Ranelli contradicted his previous testimony when asked about this, saying that he "misspoke." Essentially, Mr. Katz said, he would or could not provide any evidence of how the Commission's changes would affect either the viability or the affordability of the project.

Mr. Katz agreed that the Commission had done due diligence, and the resubmission should probably not have been brought back, since there was nothing to warrant it. He said he will stand by the density number of 291, unless a concretized site plan can show that greater density is do-able outside the watershed.

Mr. Mische asked Mr. Collins for clarification on the binding character of the density numbers pre-site plan.

Mr. Collins explained the judicial process as being based on what's in the record and the reasons the Commission provides for their decisions. He said that, if the applicant appeals, Mr. Katz's comments are on the record to support the Commission's decisions. But, he stressed that the Commission should not take a position of exercising jurisdiction by saying that the applicant didn't comply with 8-30g(h) so we're just turning down the application.

Mr. Collins said that the Commission had made an excellent record up to this point.

The Chairman reviewed the reasons the Planner had provided in the 11/13/07 approval, regarding how the Commission arrived at the 1.9 density. They included the calculations used, and showed that the watershed property was not included in the calculation.

The Planner said that the bulleted statements in the reasons preceding the justification for density calculation read by the Chairman are also important because they show that there is substantial evidence in the record supporting the Commission's decision not to count the watershed land and not to allow development in the watershed area.

The Planner said it also shows that development would be allowed in the area that was shown in the Town records as intended to be sewerage as the IBM land.

Mr. Walsh said he agreed with Dr. Gelfman and Mr. Katz that a site plan was needed, and that no evidence was presented to prove the Commission's decision of 11/13/07 impacted the viability or affordability of the project. However, he felt that the Commission needed to have their regulation focus on the number of units it's going to allow and where it's going to allow them. He supported no development in the watershed, but felt the Commission needed to come up with reasonable alternatives. He felt that putting units elsewhere on the property would satisfy the burden imposed by 8-30g.

Mr. Katz cited testimony from Attorney Ranelli, which used the Connecticut State POCD as a defense for one unit per acre in the watershed. This is not supported, he said. Also, he said, the Connecticut POCD is only an advisory plan. Mr. Ranelli also referenced the letter from Aquarion, which he concluded offered a maximum of ten units in the watershed. Mr. Katz felt that any additional housing requests would simply be profit based, and suggested the applicant go from there and come back with a suggestion as to where that additional housing could be built. There was general agreement that Mr. Ranelli had not provided proof of any other reason, and, the Chairman added, he essentially refused to provide it to the Commission.

Dr. Autuori asked Mr. Collins if the Commission would need to go through the same process with the resubmission that they had with the original application. Mr. Collins said, "Absolutely. It's part of the original application."

The Chairman read Section (g) of Statute 8-30g to clarify the balancing tests.

Mr. Katz said that, if the applicant had come back with expert engineering testimony and drawings for septic systems which had been shown to be sufficient to protect the public's health and safety, the Commission probably could not have turned them down. However, all they have provided is the probability that they will subdivide in order to avoid DEP oversight and inspection, Mr. Katz said. His opinion was that the Commission has done due diligence to meet "the spirit and intent of 8-30g" by approving the application with appropriate modifications. He will support no further changes.

Dr. Autuori defended his position on the sewer district issue.

The Chairman summarized the comments of the Commission members on the density issue as follows: 3 in favor of one unit per 2 acres outside the watershed; 1 in favor of 10 units in the watershed; 1 for 32 units on septic in the watershed; and 2 completely opposed to any building in the watershed.

There was some ongoing discussion. In response to questioning from Mr. Mische, Mr. Collins explained the various possible scenarios, and commented that there appears to be a certain amount of agreement on the part of the applicant to abide by regulations.

The Chairman noted that there didn't appear to be anything close to a consensus on this issue, and said that there are many more issues to tackle.

Mr. Katz asked if the Commission could reach a consensus to stick with 291 units.

Mr. Walsh felt that the consensus might be that there can be no building in the watershed. The Chairman agreed. Mr. Walsh said that it would be the Commission's burden of proof to defend keeping the number of units at 291.

The Chairman stressed the need to arrive at a consensus and move past this issue. It was clear, she said, that everyone was in agreement that there should be no building in the watershed. Where there is disagreement is whether or not to allow an increase in density -- based on watershed acreage, but built elsewhere on the site. Discussion continued.

Mr. Walsh felt that Mr. Katz was "getting ahead of himself." He said, "The burden isn't on [the applicant] to show that they can or they can't build someplace. The burden is on us," the Commission, to show that they can't put any more units in and why. The Commission can't say to the applicant that they didn't show us proof of why they can. "They don't have to show us, under 8-30g," where and how they can do it, Mr. Walsh said.

After he somewhat discounted Aquarion's numbers by saying that they are not going by the same standards, Mr. Walsh said that this is a conceptual site plan. If the applicant comes back with a real site plan with a number of units that can not be supported by the land they are putting them on, then they will be forced to reduce that number, but, in the meantime, the Commission has satisfied its burden by saying that, in order to protect the public health, safety and welfare, the applicant can only build up to X number of units and where.

The Chairman again tried to bring closure to the density issue. The Planner recalculated the numbers for adding 10 units to the 291, and came up with a 1.967 units per acre density.

Mr. Fossi felt that going to 2 units per acre on the 153 acres with no building in the watershed would get the applicant 10 or 11 units more, and would protect the Commission.

Mr. Katz said it was important to recognize whether the Commission is acting in a planning or a zoning capacity. Discussion continued.

Mr. Walsh suggested that the Commission move on to the next issue, with the understanding that a consensus on the Density issue had not been reached.

The Chairman was concerned that the Planner would not have the information she needed to draft a response. Mr. Collins said that many good points were made and there were two proposed increases and one undetermined increase. It was agreed to move on.

SETBACKS (I)

The Chairman clarified that this was a request for modification to the interior setbacks, for the conceptual subdivided lots.

Mr. Walsh said that the applicant has presented one lot, and these setbacks have no relation to the application, which is one parcel.

The Commission reached a consensus on the 100' which is as approved in the earlier version, with no perimeter setback.

UTILITIES (M)

The Chairman described the applicant's request to modify the regulation to allow sewer or septic.

Mrs. Willis was opposed to the change.

Dr. Gelfman wanted the sewers to come from Ridgefield, but, he is not opposed to septic if the site proves it can be accomplished.

Dr. Autuori wanted the previous wording restored.

Mr. Katz agreed.

Mr. Fossi did not support any change in the language.

Mr. Mische said he would go along with that.

Mr. Walsh said that the record was clear why the Commission was requiring Town of Ridgefield municipal sewer systems, and he feels there should be no change. He said that everyone had agreed that it was imperative to public health, safety and welfare that the development be sewerred. "Any development on that land was going to be out of the watershed, and sewerred through Ridgefield," he said.

The Chairman noted the Commission's complete consensus on keeping the language as approved in the original regulation.

AGE RESTRICTION (N)

The Chairman described the changes made by the applicant. She opted to leave the wording as approved. Mr. Katz agreed. Dr. Autuori agreed, saying that it is a very important housing need, and was pointed out by Jim McChesney in the Public Hearing. All the other commissioners were in agreement. Mr. Walsh said that it is important to note that the Age Restriction applies to only 70% of the dwellings.

The Planner conferred with counsel about leaving the applicant's wording, "... in accordance with the Federal Fair Housing Act" in the regulation. Attorney Collins agreed. The Chairman also noted that items #1 and #2 in that proposed language will be reinstated, as well.

The Chairman noted that this covered the four major categories specified by Mr. Collins. The minor ones were as follows:

PERMITTED USES (C)

Attorney Collins explained the change suggested by the applicant. The Chairman asked the Planner to explain the reason for the change. The Planner said that she did not see it as a substantive change at all.

Mr. Katz suggested that the applicant wants as much early reference to the fact that this is an overlay zone as possible. It was agreed that there is no harm in this, and the Commission accepted the applicant's proposed modification.

BEDROOMS (F)

This refers to both the maximum number of bedrooms per unit, and the percentage of dwelling units with this maximum number. The Chairman explained where the Commission's original numbers came from. Three bedrooms came from the applicant, and 25% came from the deliberations.

Mr. Katz said that the applicant had said that they did not intend to build any 4-bedroom units, but now included them. The Planner felt this may apply to the dwellings in the potential subdivision.

The Chairman said the original application requested 3-bedroom units, which the Commission approved. No one felt the change to 4-bedroom units should be approved, except for Mr. Katz, who said he felt this might be an area to give in in order to make the modifications more palatable for acceptance rather than appeal. Discussion continued.

The number of bedrooms was left at three, and the percentage of 3-bedroom units was raised to 30% by consensus.

LOT COVERAGE AND OPEN SPACE (G)

The applicant offered to deed restrict 60% of total acreage as open space. There was some discussion in an effort to understand exactly what the applicant was offering. The Planner suggested that use of the open space (passive, or open to the public) should be something that is negotiated at the time of the actual site plan approval. The decision was made to accept the language suggested by the applicant.

OFF STREET PARKING (K)

The Planner had suggested the applicant add a specific number of visitor spaces for every 10 dwelling units. The applicant's answer was one space per 10 units for visitor parking. The applicant also changed the directive "shall require" in the proposed wording to "may require."

Various Commissioner's discussed inadequate parking situations at other facilities, and made suggestions.

It was decided to change the additional number of parking spaces in (C) to two for every 10 dwelling units, but change the applicant's revision in (6) from "may" back to "shall" and incorporate this wording into 2(c).

APPLICATION REQUIREMENTS (P)

The applicant had omitted the Commission's suggested addition wording in (4b) relating to land-based criteria. There was consensus among the Commission members that this wording should be left as per the prior approval.

APPLICATION PROCEDURE (for HOD Site Plan Approval) (Q)

Mr. Katz said that the applicant's use of the word "potential" is the "future possibility of protection to us." He thought (6) was vague and a red flag to any judge who didn't want to defend it.

After a discussion which changed direction many times, the applicant's modifications were ultimately all accepted.

Summarizing the discussion on the various sections of the regulation, **Mr. Collins** said that the additional topic of viability had been covered and sewerage required no further discussion.

It was decided that the Planner would go through all the sections, to confirm that she had all the modifications correctly noted.

The Chairman noted some maps and a cover letter presented by the Planner. She asked the Planner to speak to them.

The Planner said that, when the Commission adopted the new regulations on May 1, 2007, they were required to also adopt certain map changes in conjunction with these new regulations. She pointed out how she indicated the two HOD properties with overlay zones on a mock-up map for 616 Bennett's Farm Road and 619 Danbury Rd. She also changed the wording in the title block at the bottom of the page to read "Adopted Map Modifications" and not "Adopted Zone Modification," because there is no change in the underlying zone.

Mr. Collins was satisfied that everything had been covered thoroughly.

The Planner was asked to compile the Commission's discussion into a draft document, for review and further discussion on 2/5/08.

COMMISSION WALKS

There were no new site walks to be scheduled. The following walk was previously scheduled:

February 10, 2008

- **#2008-003-REV(SP): 35-37 Danbury Road and 16 Roberts Lane, Eppoliti Realty Co., Inc**

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

Correspondence was noted by the Chairman, but not itemized.

MINUTES

There were no minutes to be approved.

Hearing no further discussion, the Chairman adjourned the meeting at 10:20 p.m.

Respectfully submitted,

Linda Caponetti
Recording Secretary