

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD

February 20, 2007

Present: Michael Autuori
Joseph Fossi
Nelson Gelfman
John Katz, Vice Chair
James McChesney
Rebecca Mucchetti, Chairman
Walter Slavin
Patrick Walsh
Lillian Willis

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

A public hearing was held prior to the meeting.

At 7:37 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2006-129-REV-SR:** Revision to previously approved Summary Ruling, modification to accessway for single-family lot development. Property located on **Lot 33, Dogwood Drive** in the RAA zone. Owner/Appl.: Thomas Dwyer. Auth. Agent: Donnelly, McNamara & Gustafson, P.C. *Received 12/19/06. Public hearing commenced 2/6/2007, continued 2/20/2007. 35- day action period ends 3/27/07.*For action.

Chairman Mucchetti noted that the Agent had prepared a Draft resolution of approval, based on suggestion by Mr. McChesney at the last public hearing, in anticipation that the few remaining revision details would be worked out by the applicant. The draft was distributed for review by the Board.

The Agent explained the various proposed conditions in the resolution. She explained that Item #1 referred to the new map that had been submitted, and identified as #1a.

Chairman Mucchetti referred to the Agent's drafted resolution, and said that Items #2, (dealing with the seven 12" pipes), and #3, (dealing with the installation of filter fabric), had both been agreed to at the public hearing prior to the meeting. Item #4, (dealing with the use of natural stone), was corrected to refer to the outlets of the pipes only, as opposed to both the inlets and the outlets. The Chairman asked the Agent to explain Item #5.

The Agent said that all other conditions and restrictions of the original permit, (which was attached), needed to be referenced, including those related to the construction sequencing and the AT&T fiber optic easement, as well as several others. All were to remain in full force and effect. The Agent further explained that, in Item #6, she was suggesting that the Board re-approve the prior permit along with the revision, so that the effective date for both would be the same. Mr. Walsh challenged the assumption that this was a new approval and not simply a revision. The Agent explained why she felt that it was essentially a new approval. Because this application had been tied up in the appeals process, she felt that there had been, in effect, a stay of the approval of the permit. The application was in limbo for a year during the appeals process. She felt that it would be fair to the applicant to give the same date of approval for the original permit as that of the newly approved revision. There was some discussion as to what would be the effective date of the permit.

Items # 7 and #8 were accepted, with some small changes.

Mr. McChesney motioned, seconded by Mr. Walsh, to adopt the resolution as proposed. The motion passed, 8-1, with Dr. Gelfman voting against.

NEW ITEMS

2. **#2007-011-SR:** Summary Ruling application for driveway and fill in wetlands and fill, grading and house construction in upland review area on 2.152 acres of land located on **Lot 100R, Sleepy Hollow Road** in the RAA zone. Owner: Katharine W. Fizer. Appls.: Charles and Katharine Fizer. *65- day action period ends 4/19/2007. (Pursuant to Sec. 22a-42a. (c)(1) of the C.G.S., the application is considered received 2/13/2007.) Schedule walk.*

Chairman Mucchetti noted that the application was received according to statutes on 2/13/07, and suggested a site walk date for 2/25/07, where the Board should determine significance of the proposed wetlands action. She noted that she and the Agent both felt that this application may possibly be raised to a plenary, requiring a public hearing. By consensus, the Board agreed to the site walk date as proposed.

3. **#2007-014-Misc.: Raised Bill No. 1164** (An Act Concerning Notice of Zoning applications to Adjoining Municipalities and Designation of Municipal Inland Wetland Agencies) c/o Agent and Chairman. *For discussion.*

The Agent explained that this Raised Bill is broken into two parts. The first part she described as being a “benign” suggestion to change the language relating to when an application needs to be referred to a municipality within 500’ of a project. However, she reported that the second half of the bill proposes a radical change to the make-up of local inland wetlands agencies, mandating that these agencies be separate from any other board or commission within the municipality. This bill would mandate the separation of combined planning and zoning and inland wetlands boards, as well as the separation of conservation and wetlands boards. The Agent noted that in the State

of Connecticut there are currently 5 communities which, like Ridgefield, have combined planning and zoning and wetlands boards. There are 52 communities that have combined wetlands and conservation commissions. This bill would affect all of these towns. There was supposition as to where this bill had actually originated. The Agent expressed her belief that this should not be a decision in the state statutes, but rather one to be decided in each community according to their charter. There are 169 communities in the state, all very different from one another, she said, and it should be within their authority to set up their own boards and commissions. She also mentioned that the homebuilders of the State of Connecticut have brought forth again a bill advocating one board for all land use decisions.

The Agent feels that combined boards are efficient and work well when members remember to separate the planning statutes from the wetlands statutes and make decisions accordingly. She went on to say that combined boards make it cheaper for the applicant and quicker for the applicant, but also more efficient because the board members have a more intensive review of the entire application as a whole. "The right hand knows what the left is doing."

The Agent suggested the Board might want to write a letter to the Committee on Planning and Development, (perhaps to each committee member individually), expressing their feeling that the right to create boards should come from their own charter and not from state statute.

The Chairman reminded that Board that when she served on the Charter Revision Commission this issue had come up. Everyone who came out spoke about the advantages of having the combined boards and why they serve the community well. This issue was never sent forth by the commission because only one person spoke in favor of separating the boards.

Mr. Walsh asked if those minutes were still available. The Chairman said they were, at Town Hall, and offered to get a copy of them.

Dr. Autuori asked if it would be appropriate for the Agent to draft a letter and include the Charter Revision discussion. It was decided that the letter would be written.

The Chairman added that she felt this was a decision that a community should make on its own land use decisions. When there are only 5 combined boards in the state, she felt that "clearly this is not a prevailing threat".

Mr. Katz said that the legislature probably is not recognizing how difficult it is for towns to get "good, qualified people to apply for" this kind of position. This is asking these towns to find at least ten additional people, and, as the Chairman added, additional staff.

Mr. Katz added that he could not think of any negative to having the boards combined.

Mr. McChesney asked Mr. Fossi if he had ever, as a developer, experienced problems in other towns where boards are combined, or had he heard any complaints about it. He had not. Mr. Fossi said that the Agent had summed it up well, saying that “one hand knows what the other is doing” when you come to one board. He said he personally feels it works very well.

Mr. Walsh said that these are local issues that need to be decided at the local level, not issues to be addressed by individuals who are sitting on the boards. He said that these issues should be decided by the electorate of the Town of Ridgefield. He wasn't convinced that a letter from the Board was appropriate.

The Chairman responded, saying that if the Board doesn't respond to this and “its buried in this legislature,” then it will be assumed that nobody has a problem with it. She insisted that the Board had to respond in some way. She also felt that Congressman John Frey needed to be notified of this.

Mr. Katz asked if it would be appropriate for the Board to enlist the support of some of the builders in town, asking that they express their satisfaction with Ridgefield's combined boards. The Agent felt that would be appropriate and a good idea.

Attorney Robert Jewell said that he would voice his opposition to this proposed change.

He also mentioned that the First Selectman might want to comment as well, discussing the additional office space and staffing that would be necessary, making this fiscally negative. The Agent said that when these boards adopt these bills they are supposed to consider the fiscal impact on the communities involved.

The Chairman asked the Board members if they had read the Agent's “wonderful comments,” related to this topic which she had attached to her Memo. She mentioned a comment on the Agent's remarks sent in by the Town Planner of Ellington: “I just had to say, a very insightful and articulated response. I'm saving this one.” The Chairman said that the Agent had eloquently laid out the pluses and the minuses to having combined boards. One of the minuses would be the heavy workload and burden on the staff, but the efficiency to the public and to the applicant is significant, she said. The Chairman then offered to get the minutes from the Charter Revision Committee meeting so that the Agent could reference them in the letter she would be drafting.

Dr. Autuori said he agreed with Mr. Walsh's comments as to the need for the public to be involved, and expressed concern over how quickly this could be brought to a public hearing. He said that expediency demands that the Board make its response, and if the community wants to factor in they can do that. The minutes will make it clear that this has been aired publicly before.

Mr. McChesney said that it should be noted that the most recent Charter Revision Committee didn't even discuss it.

The Chairman added that it hadn't even been brought forward by the Conservation Commission to the most recent Charter Revision meeting. Dr. Autuori recapped, saying that it had be considered, discussed, and not brought forward. The Chairman said that was correct.

The Agent said the American Planning Associations of Connecticut have a legislative committee. They will respond based on comments they receive from the members of that committee. She added that she will forward the Board's comments to them.

Mr. Walsh said that he actually sat in the audience at the most recent Charter Revision Committee meeting and that this issue had been brought up, but that it had be summarily dismissed. The Chairman apologized for not knowing that, and said that when she is at Town Hall she will look at those minutes.

By consensus, the Board agreed that the Agent should draft a letter to be sent to the Committee on Planning and Development, stating strong objection to this proposed legislation. **The Chairman** said that the office will try to have something ready for the meeting of March 6.

BOARD WALKS

The following site walk was scheduled for 2/25/07, as noted above:

- **#2007-011-SR: Summary Ruling Lot 100R, Sleepy Hollow Road, Fizer**

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

MINUTES

Mrs. Willis motioned, seconded by Mr. Slavin, to adopt the minutes of 2/6/07. The motion passed, 9-0.

Hearing no further discussion, the Chairman adjourned the meeting at 8:00 p.m.

Respectfully submitted,

Linda Caponetti
Recording Secretary

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION

February 20, 2007

Present: Michael Autuori
Joseph Fossi
Nelson Gelfman
John Katz, Vice Chair
James McChesney
Rebecca Mucchetti, Chairman
Walter Slavin
Patrick Walsh
Lillian Willis

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

A public hearing was held prior to the meeting.

At 8:01 p.m., Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2007-009-REV:** Revision to Special Permit under Section 312.02.E. as required by Section 411.0 of the Ridgefield Zoning Regulations to permit the operation of a ski and sport retail establishment in the main building located at **32-34 Danbury Road** (formerly Pamby Motors) in the B-1 zone. Appl.: Ridgefield Ski & Sport, LLC. Owner: JMF Realty, LLC. Auth. Agent: Donnelly, McNamara and Gustafson, P.C. (*Pursuant to Sec. 8-7d.(c) of the C.G.S., the application is considered received 2/13/2007.*) *65-day action period ends 4/19/2007. Schedule walk.*

Mr. Walsh recused himself from discussion and participation on this item, because a member of his law firm represents the applicant.

The Chairman noted that this is an interesting issue because there are actually four parcels on this site, which is usually thought of as the Pamby location. She explained that the Planner is suggesting the Commission walk this site with maps (provided) so that it will be clear what is being discussed. The applicant was present to explain.

Attorney Robert Jewell said that what is really at issue is the fact that the tenant is changing. The car dealership has been consolidated on Ethan Allen Highway (Route 7), and the only Pamby remnant is the body shop in the rear. When Pamby consolidated their dealership, they vacated the building and the parking lot at this site. He pointed out the four parcels that the Chairman referred to: the Getty station, the

former car dealership building which is slated to become Ridgefield Ski & Sport with the body shop on the same lot, a large parking lot, and a single family dwelling.

The parking allowed by existing lot lines for the dealership and the body shop is very little. The vast parking area adjacent is actually a separate lot. Part of this plan is to eliminate the property lines around this lot and give a little more than half of the parking area to the lot which housed the dealership and the body shop, and what's left to the house. He also explained that three of the lots, (the dealership/body shop, the large parking area, and the house), are all owned by the applicant, JMF Realty, LLC. The Getty Station is a separate property. Nothing is happening with the Getty station, except that the owners of these properties own a corporation which is a lessee of the gas station.

Mr. Katz asked if the body shop would still have rights to park there. Mr. Jewell said that they have a lease that is renewed every three years which allows them not only to operate the gas station, but to park their vehicles and the wrecks on this property. He explained that the new revised plan would allow for much more parking on their own lot.

Mr. Jewell said that what they are really showing is enough parking to justify the change in tenant to Ridgefield Ski & Sport using the existing curb cut, with an agreement that, if there is a development on the new larger house parcel, they would have their access plans combined to comply with the Rte. 35 curb cut plan that was adopted.

Chairman Mucchetti asked how much of the three story building is being taken up by Ridgefield Ski & Sport. The attorney for Ridgefield Ski & Sport, Randy Lovallo, answered, "The whole building. We're taking the entire building."

Attorney Jewell added that, to his knowledge, the zoning table on the plan shows that only the delineated spaces are sufficient to satisfy the zoning regulation with regard to this changed use. None of the spaces that are there on the center parking parcel seem to be lined. "This is just a vast area of open tarmac," he said, adding that he's not sure how to determine what sufficient parking will be.

The Chairman asked the Planner if this helped to address some of the questions the office had.

The Planner said that it did help, but what she needed is numbers. She said they need to know the breakdown of the uses within the building in order to compute the number of parking spaces needed. She assumed the upstairs of the building would be offices, the main floor - retail and the bottom floor - storage. This was not correct, per the applicant's attorney.

Mr. Lovallo said that they did not anticipate any office space, and the basement would be used for repairs and storage of skis and rentals. They are not interested in leasing any sub-tenants and have no plans for offices upstairs.

Mr. Katz asked if “up and down will be retail and the basement will be repairs?” Mr. Lovallo said they didn’t know if all of the second level area would be retail. Mr. Katz pressed the fact that the Commission needs to know that.

The Chairman explained that the amount of parking required is calculated by the amount of square feet being used for each use.

Mr. Jewell provided the numbers: the parking calculations show a 2200 sq. ft. building with first and second floor retail (usable floor area 1870 sq. ft./floor), specifying first floor 11 spaces, upstairs 8 spaces for a total of 19 spaces provided. He said “the wildcard” is the basement. Chairman Muchetti asked the applicant to clarify that the building is actually 2200 s.f. per floor, for a total of 6600 s.f.

Mr. Fossi said that the applicant is saying that the second floor from ground level is not going to be office space, so the whole thing needs to be calculated as retail.

There was ongoing discussion.

Finally, Mr. Katz interjected that it seemed to him that this had been prematurely presented to the Commission by the applicant. He mentioned that the office had not signed off on all these calculations, and until they have had the opportunity to do so, he does not feel this should be before the Commission.

Mr. Fossi proposed this be scheduled for the walk and, when it comes back, he would like to see noted on the map what parking is required for the body shop and also a statement specifying the proposed use for the basement of the building, whether it be storage or repairs or whatever.

Attorney Lovallo asked if the term “non retail” would be sufficient.

The Planner said that she would need to confer with the zoning enforcement officer before answering, to clarify parking requirements for the combined uses.

Mr. Fossi commented that it certainly looks at first glance like there is enough area for parking for everything. But, he added, it should all be shown clearly, so that when it comes before the Commission, they will have all the information needed to make the decision.

There was discussion as to how long it would take the applicant to have all this information ready.

The Chairman said that this wouldn't come back to the table before March 6th. Mr. Jewell said that it would not be a problem for them to be ready with all the information needed by then.

Ms. Willis asked if the new lot lines were marked on the site. Mr. Jewell said they were not.

The Chairman said that the line could simply be marked with stakes, "one in the front, one in the back". Mr. Jewell said that it shouldn't be a problem.

Mr. Katz said that this didn't appear to be complicated, and he felt it was a great use of the space. However, his major concern is simply that the office be informed as to what the applicant has in mind in terms of amount of square feet being allocated to each individual purpose, and the parking that attends to those purposes.

The Chairman agreed, saying, "I think that that's what we're all striving towards." She noted that the application was received according to State statutes on 2/13/07. She suggested a site walk for 2/25/07, because of the changes to lot lines and parking for the site. By unanimous consent, the Commission agreed to the proposed walk date. The Chairman reiterated that the applicant was to be ready with all the information needed by the Commission by the March 6th meeting.

2. **#2007-010-SP:** Special Permit under Section 312.0 as required by Section 318.0 of the Ridgefield Zoning Regulations to permit an accessory apartment on property located at **244 Old Branchville Road** in the RAA zone. Owner/App.: Edward & Mary Hickey. *(Pursuant to Sec. 8-7d.(c) of the C.G.S., the following is considered received 2/13/2007.) 65 days to commence public hearing ends 4/19/2007. Schedule walk (if necessary) and public hearing.*

Mr. Katz asked why it was necessary to walk this property. The Chairman explained that, since the owners want to have the age restriction removed, there will need to be a public hearing and the Commission needs to know how to answer any questions that may come up.

Chairman Mucchetti noted that the application was received according to State statutes on 2/13/07. She suggested a site walk for 2/25/07 and a public hearing for 3/13/07. Although this is an existing apartment, the application is for a Special Permit requiring Commission approval and a public hearing. After some discussion about the need for a walk, the Commission agreed by consensus to the proposed walk date and public hearing date.

3. **#2007-013-SP:** Special Permit under Sec. 312.0 as required by Sec. 411.0.B and C to (1) construct a 5,927 s.f. office and retail building and (2) request for waiver of Sec. 312.02.A(7) Traffic Study for property located at **9 Ethan Allen Highway** in the B-1 Zone. Owner/App.: Erin Properties, LLC. Auth. Agents: John F. McCoy VII, P.E.

and Douglas MacMillan. *65-days to commence public hearing ends 4/26/2007. For receipt, schedule walk and public hearing.*

Commissioner Fossi recused himself from discussion and participation on this item, because he is a partner in ownership of the property.

Chairman Mucchetti noted that part (2) in the agenda item (the request for waiver of a traffic study) had been resolved by staff; there can be no waiver of the zoning regulations, and the applicant will provide a traffic study for the public hearing. The Chairman suggested a site walk for 2/25/07 and a public hearing for 3/13/07. By consensus, the Commission agreed to the proposed walk date and public hearing date.

COMMISSION WALKS

The Commission scheduled the following site walks for 2/25/07, as noted above:

- **#2007-009-REV**: revision to Special Permit, **32-34 Danbury Road**, JMF Realty, LLC
- **#2007-010-SP**: Special Permit **244 Old Branchville Road**, Hickey
- **#2007-013-SP**: Special Permit, **9 Ethan Allen Highway**, Erin Properties, LLC

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

Chairman Mucchetti pointed out the following correspondence:

- **Memorandum dated 2/20/07 from Wetlands Agent Aimee Pardee**, describing encroachments into conservation easements at Stone Ridge Estates in northern Ridgefield.

The Chairman mentioned that Ms. Pardee is also an inspector for the Conservation Commission. She noted that regarding the Turner Hill development, the encroachments into the easements occurred because there were large houses on small lots with very narrow lot lines. In the above mentioned case, these are good sized lots of an acre or more and 50' conservation easements, and there is still encroachment. She also noted that Ms. Pardee noticed work being done which was intruding into the easement and notified the homeowner. Although the homeowner owns the property, the easement portion is deed restricted and can not be intruded upon without the Conservation Commission's agreement. The homeowner continued their project, (a patio), and then fenced well into the 50' easement. The commission has begun enforcement action. Ms. Pardee has since discovered two other homes in the development which are involved in projects which intrude into the easements.

There was discussion as to a prevailing attitude of homeowners who abut conservation land that it's alright to "push the envelope" and ignore the easement

boundaries. Since enforcement ability is limited, the Chairman wished to bring this to the attention of the Commission by having a letter from Ms. Pardee. She reminded them of the Turner Hill problems, where some feel that poor planning was responsible. She stressed that this was certainly not the case here, where there are generous lots and generous easements, and they are still being intruded upon. She added that Conservation is trying to address this.

Mr. McChesney said that this raises the question as to whether or not the Planning & Zoning Commission should ever grant conservation easements instead of just taking the land for open space.

The Chairman asked what the difference would be - would Planning & Zoning be allowed to charge trespass if they intruded onto open space?

The Planner liked the suggestion, saying that, in looking at the way the subdivision is laid out, there probably would have been one or two fewer lots. She felt it would be an advantage to have that 50' as open space so that the open spaces could be connected.

Mr. Katz said that the problem at Turner Hill is not easements, it's open space.

Dr. Autuori asked if the easements are granted to a particular entity. The Planner said that they are under the jurisdiction of the Conservation Commission. Dr. Autuori said that if there was language in these agreements specifying that, in the event of a dispute, the prevailing party shall be entitled to all fees and costs, including attorney's fees, this may help to curtail the problem.

The Chairman said that there would be no penalty to the taxpayer.

Some discussion ensued related to how the land had been owned by the Town and then sold and subdivided.

Dr. Gelfman said that he thought Mr. McChesney's suggestion was the appropriate one. **Mr. Slavin** echoed those sentiments, saying, "It's a good suggestion." Several commission members agreed that easements shouldn't be granted if they are going to be violated and there is going to be difficulty with enforcement.

Ms. Willis remarked that a stone wall or some other marker delineating the easement is an effective way of preventing encroachment.

Dr. Autuori felt that the easements should still be granted, but that the Town's attorney should write the agreements in such a way that they are ironclad, and there is no doubt that, if the homeowner chooses to violate the agreement, they are going to pay all the costs. He said he did not think the commission should abandon the idea of granting easements, and that it is a good negotiating tool.

Mr. McChesney asked if Dr. Autuori was suggesting that this agreement be put directly in the deed. Dr. Autuori said that he thinks it can be in the deed, “in the land record,” he said. Mr. McChesney felt that was too open to interpretation and was like saying... “ you can violate if you want to, but this is what your penalty is going to be if you violate”... when you can just eliminate the problem in the first place. He said this was like challenging the homeowner to violate.

Dr. Autuori rebutted, saying that anything has to have an enforcement provision if it’s going to have any teeth at all.

Chairman Mucchetti said that the commission has it as part of their subdivision regulations and as part of many of their zones. “We often negotiate delicately but firmly with some of the applicants,” she said.

Dr. Autuori noted that the statement “forever wild in perpetuity” is a very important principal and it needs to be enforced. If the agreement itself is weighted heavily in favor of maintaining it, you have all the more reason to enforce it, and also, the homeowner may think twice before violating it.

The Chairman felt that the “greatest frustration” in the Stoneridge Estates case, is that Ms. Pardee sent a letter ahead of time informing the owners of the encroachment, and they proceeded anyway, and then fenced it.

Mr. Katz said that the commission needs to bear in mind that any such clause would be the result of the Conservation Commission’s action in concert with the owner of the easement.

Ms. Willis felt that something needed to be written in the resolution of approval that speaks to this.

The Planner said she didn’t know if you could put anything about attorney’s fees into the resolution of approval. Dr. Autuori said it can be put in the deed.

Ms. Willis stressed her feeling that something needed to be in the resolution. She felt that it shouldn’t be left up to the Conservation Commission because they have less manpower.

Mr. Katz said the commission can put into the resolution that said open space shall be deeded to the Town, or under the supervision of the Conservation Commission, or shall be an easement in favor of the Conservation Commission, but it can’t stipulate anything to do with attorney’s fees.

Dr. Autuori said that Mr. Katz was correct and that he was not suggesting that the commission put that clause into any contract or any deed, but that, if the applicant decides to grant the easement, perhaps there should be some policy that

this is the kind of language that is wanted. However, this has to be part of the agreement between the grantor of the easement and the grantee, he said, and must be recorded in the land record.

The Planner said that she would ask the Conservation Commission's attorney and the land use attorney, with regard to conservation easements, how can there be language which will act as more of a deterrent to potential violators.

- **Letter from the Commission to the Transportation Committee re Super 7 (Route 7)**, stating opposition to Proposed Bill No. 423, introduced into the State Senate.
- **Article about the Georgetown Development Project**, from the Hartford Courant.
- **Article from the Westchester Journal News, re regulating commercial vehicles** in residential zones.
- **Article re the increasing popularity of roundabouts in New York State**, from AAA Magazine.

MINUTES

Mrs. Willis motioned, seconded by Mr. Slavin, to adopt the minutes of 2/6/07. The motion passed, 9-0.

Hearing no further discussion, the Chairman adjourned the meeting at 8:37 p.m.

Respectfully submitted,

Linda Caponetti
Recording Secretary