

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD

February 21, 2006

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

A public hearing was held prior to the meeting.

At 7:50 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2005-142-SP-SR:** Summary Ruling application to permit regulated activities in the upland review area in conjunction with Special Permit application to construct a 20-unit multi-family development on 5.16 acres of land located at **66 Grove Street** adjacent to existing commercial building in the B-2 zone. Owner/App.: 66 Grove Ridgefield, LLC. Auth. Agent: Artel Engineering Group, LLC. *Received 10/11/05, walked 10/16/05, 11/6/05 and 1/22/06, public hearing commenced 12/6/05, continued 1/17/06, 1/31/06, 2/7/06 and 2/14/06. Public hearing closed and tabled 2/14/06. 35-day action period ends 3/21/06. For action.*

The Chairman opened the discussion, noting that the public hearing was closed on 2/14/06. Mr. Katz motioned for the Agent to draft a favorable resolution, seconded by Mr. McChesney.

Mr. Katz referred to the standards for making a decision found in Sec. 10.2 of the Inland Wetlands and Watercourse Regulations. He finds no criterion that seems to be abrogated by the plan put forth by the applicant. There is an administrative procedure in the judgment pertaining to 10.2, and he believes that this application fulfills the intent of the standards in that regulation.

Mr. McChesney added that the engineering consultant for the Board did a thorough job of reviewing the application, and nothing that she brought up would lead him to believe that there will be a wetland problem.

Dr. Gelfman disagrees and says that it violates the following in 10.2:

- (a) Pertaining to the environmental impact of the proposed regulated activity, by virtue of removing an established old sloping upland forest it fails to protect the stream from erosion and runoff. The expert for the Board testified that the stream is a “viable watercourse.”
- (b) An alternative to the proposed action is to build fewer units.
- (c) The relationship between the short-term and long-term impacts – cutting down the forest as a short-term impact will forever change the nature and protection of that watercourse, and
- (d) Will thereby produce irreversible and irretrievable loss of watercourse resources.
- (e) Relative to “The Character and degree of injury to, or interference with, safety, health, or the reasonable use of the property, including the abutting and downstream property,” this has to do with the fact that property is contaminated. Increasing the flow off that property may increase the risk of releasing contaminants more swiftly into the environment.

For all of these reasons, he is opposed to the motion.

Dr. Autuori refers to item (d) in 10.2, regarding irreversible and irretrievable loss of wetland or watercourse resources. He says an established upland forest is most certainly a wetland resource, insofar as it is necessary for protecting the quality of the wetland below it. He cites many instances nationally and globally, including western Canada and the Philippines, where damaged forests on slopes, deforestation and excessive logging on slopes can cause severe problems later on. He is concerned about the partial loss of the forest on this property, and agrees with Dr. Gelfman.

Mrs. Willis agrees with Dr. Gelfman and Dr. Autuori.

Mr. Katz would like to agree with all these comments, but he did not hear testimony from our consultant and no indication from the applicant’s consultant that any of these things would happen with the revisions made to the plan. He doesn’t like the plan, but is trying not to judge it through personal opinion but through the evidence that was presented at the public hearing. He did not hear anything that sounded as negative as the comments previously expressed by others.

Dr. Autuori says it is correct for a Board member, after having weighed the evidence presented, to still come up with his own opinion and disagree. Paragraph (d) of 10.2 has to do with what he sees in national and global problems of deforestation and the devastating effects on wetlands, rivers and streams. He cannot look at things only on the evidence presented. He feels that the applicant could still accomplish what they want to achieve on this property by doing less damage to the forest. He wants to stick to his opinion to deny the application.

Mrs. Willis says the problem is that all of the engineered components of the drainage system are too close to the stream. There is little natural buffer left, and this is not a good idea in this situation.

Dr. Gelfman says he was influenced by discussion at the last session, and description of drainage from the buildings and piping down the slope. There will be few trees left in the area of the proposed disturbance, and there will be little of the slope's natural resistance if the trees are removed. The Board's expert did comment on the viability of the stream. Just downstream is the Great Swamp, and this stream is a main source of water into it. The swamp has slowly been repaired from prior activity, and this will reverse that repair process. There are alternatives to this plan, namely less density.

Mr. Katz points out that the plan is already at ten units fewer than our less-than-perfect regulation permits. They have eliminated the most offensive of the buildings that would have done what Dr. Gelfman is pointing out. They scaled back the proposal according to what is allowed by zoning, and then scaled back the disturbance by eliminating the most offensive of buildings. He says the change was persuasive – there is a diminution of damage to the hillside, and they have met the intent of the regulatory process.

Dr. Gelfman asked if the plans took into account the new drainage piping. Mr. Katz pointed out on Sheet 6 where the proposed area of clearing is shown. Chairman Mucchetti noted that the question was asked during the public hearing, and the applicant noted that many trees would be saved under the new plan.

Mr. Fossi agrees with Mr. Katz and states that, although it is not a development that he particularly likes, it meets the spirit and intent of the regulations as they are now. He supports the motion to approve the summary ruling application.

Mr. Walsh refers to the plans and asks the Agent to clarify – there is no activity in the wetlands, only in the buffer. The Agent confirms, and notes that there is only discharge into the stream. Mr. Walsh also confirms that the back slope is to remain forested, except for piping. The permit could require that the area cleared for piping is replanted, and the Agent confirms that it could be replanted to the extent that the location of the pipe would allow.

Dr. Autuori refers to 10.2 and the fact that the Board “shall” consider the items, and notes paragraph (e) in 10.2, regarding the “character and degree of injury to, or interference with safety, health, or the reasonable use of property.” One of things to consider is the reasonable use of the property and what this activity will do to the reasonable use of the property, or what denying this activity will do to the reasonable use of the property. It seems to Dr. Autuori that if this activity is denied, it will in no way interfere with the reasonable use of the property, the property being the whole piece.

Dr. Gelfman refers to (f), and the impacts of the proposed regulated activity on wetlands or watercourses outside of the area for which the activity is proposed, and future activities associated with or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses.” He feels that the activity will have an irrevocable effect on the stream that discharges into the Great Swamp.

Mr. Walsh says that the testimony of the applicant’s engineer and our consultant was that there would be 0 increase in runoff. Dr. Gelfman says he knows what they said, he knows what he saw, and he knows what will happen.

Mr. Katz asks the Chair to move the question. The Chairman asks for a second; Dr. Autuori seconds the motion to move the question. The motion passed 8-1. Dr. Gelfman is opposed.

The Chairman refers to the motion to draft a favorable resolution made by Mr. Katz, and seconded by Mr. McChesney. The motion to prepare the draft passes by a vote of 5-4, with Mr. Katz, Mr. McChesney, Mr. Fossi, Mr. Walsh, and Chairman Mucchetti in favor, and Dr. Autuori, Dr. Gelfman, Mrs. Willis and Mr. Slavin opposed.

The Agent notes that the draft should come back to the table in about two weeks.

2. **#2005-153-SR:** Summary Ruling Application for disturbance in wetlands and upland review area in conjunction with construction of accessway and bridge spanning wetlands. Property located on **Dogwood Drive, Lot 33** in the RAA zone. Owner/App.: Thomas Dwyer, individually and as trustee. Auth. Agent: Donnelly, McNamara and Gustafson, P.C. *Received 11/9/05. Walked 11/20/05. Extension granted to commence hearing, hearing commenced 1/24/06, continued 2/21/06.*

The public hearing on this item is still open, and the applicant requested a continuation to 3/14/06. Dr. Autuori motioned to table the item, seconded by Mr. Fossi. The motion passed, 9-0.

3. **#2005-154-SR:** Summary Ruling Application for drainage improvements to control erosion on property located at **214 Wilton Road West**. Owner: Cesca Construction Inc. Appl.: L. Thomas Cesca. *Received 11/9/05. 65- day action period ends 1/13/06. Walked 11/20/05. Tabled 11/22/05 and 12/13/05. 65-day extension granted 1/4/06. Extension action period ends 3/18/06. For action.*

The applicant was present to discuss the item with the Board. The Chairman asked the Agent to give a brief history of the application and changes that have been made since the previous discussion.

The Agent pointed to the map submitted the previous week and distributed to the Board, showing the proposed drainage channel improvements in the Town-

owned right-of-way on Old Spectacle Lane and crossing the back yard of the applicant's property through the existing wetlands. The previous application had by-passed the wetlands. The planting plan is shown on the maps. The Agent says she spoke to Claire Lavoie, drainage engineer for the Connecticut Department of Transportation, who reports that the State will be doing drainage improvements at the edge of Wilton Road West (State Route 33) in the spring. A plunge pool will be built at the edge of the road where a pipe dumps drainage, salt and sand from the State highway. The plunge pool and the State's ability to clean it is intended to decrease the amount of road sand and salt that is deposited on the applicant's property.

Chairman Mucchetti asks if the sediment trap shown on the plan, at the top of the swale, is being done by the State. The Agent says that sediment basin was proposed by the applicant, but it may not be necessary if the State intercepts the road sand farther up the hill.

The Agent also notes that there is a letter from the Conservation Commission indicating that they want to walk the site again. They had been waiting for a better planting plan, and since the map was only presented the week before the meeting, they have not walked the site. Mrs. Willis states that she would like to walk it again as well.

Mr. Cesca stated that Ms. Lavoie visited the site with him during a rainstorm, and she agrees that channel improvements are warranted. The State will make improvements 25 feet in from the road. The runoff is an intermittent stream, and is dry except during storm events. Mr. Cesca says Ms. Lavoie agrees with the idea of restoring the flow of water through the back yard. The Town property has not been maintained for years. He points out the areas of flow on the map for the benefit of the Board, and says that he will put stones in the channel (but not riprap) to make a more natural streambed. He does not want to do extensive grading, but to establish one flow channel for the water.

Mr. Cesca says the plants were recommended by his landscaper, Steve Lavatore, and the plan and the site were reviewed by Mr. Pinchbeck, the Town Tree Warden. He says they agree that more than enough plants are shown, and he is willing to add more if the Board requests. He submits photos to show the water flowing through the back yard. His desire is to clean up the property and to straighten out the channel.

Chairman Mucchetti wants to know what Mr. Cesca means by "straightening" the watercourse, and says a more natural channel would be appropriate. Mr. Cesca says the material removed was scrub brush and twisted tree trunks and vines. He just wants to clean up the yard and direct the flow of water in a defined channel.

Mrs. Willis points out that Old Spectacle Lane was never a watercourse, it was an old road, and through compaction and other changes by the State, the water now flows to the lowest point. It is now a town trail in open space, and not a streambed. She is concerned about the location of the existing trail in relation to the channel, and protecting it. Mr. Cesca says there are fallen tree trunks on the Town property and they create dams and diversions that direct water onto his property, creating a flow problem. He says he started the whole idea of improving the channel after talking to Pete Hill, Director of Public Works, who gave him permission to make improvements on the Town property. The Agent met the property owner on the site to discuss improvements that might be made.

Chairman Mucchetti notes that she was on the site walk with the Agent, and that earlier discussions were about clearing out the garbage and the debris, not clear-cutting the wetland, which is what has happened. She is concerned when she hears that there is going to be straightening of the watercourse, that the result will be a landscaped channel and not a natural flow of the water in what used to be a wetland system.

Dr. Autuori is concerned about the trail on the old road, and also wants to know why the channel has to be improved so far into the backyard. He feels it should flow naturally after it enters the existing wetlands. Mr. Cesca agrees that the length of the proposed channel improvements can be scaled back, and shows the proposed end of the improvements on the map. He shows photos of the water in the back yard and on Old Spectacle Lane.

Mr. Fossi suggests that the applicant stake the proposed location of improvements in the field. Mr. Cesca agrees, and will also stake the location of improvements proposed by the State, extending about 25 feet off Route 33. Chairman Mucchetti suggests a walk of the site for 3/12/06. Written permission for improvements on the Town right-of-way should be obtained from Pete Hill. Dr. Autuori says Pete Hill should be aware that there is an open space trail on the town road right-of-way. Mr. Katz notes that if the applicant does work on the Town's property, it would be the same as if the Board were approving improvements to be made by the Town, but in this case the property owner is proposing to do the work.

There was discussion about whether the maps presented on 2/10/06 are adequate, because they do not reflect what is being proposed. Chairman Mucchetti points out that what is being proposed is much less than what is shown, and Mr. Walsh asks if revised maps are necessary. The Agent suggests that plans should not be changed until after the Board walks the property again. The work is not complex, and the existing maps may be sufficient with proper conditions in the permit.

Mr. Walsh asked if the applicant owns the Old Spectacle Lane. The Agent states that the property is owned by the Town, and the Board reviewed the maps

to understand the location of the property line. Mr. Hill met with the applicant because of the drainage issues, and suggested that improvements could be made on Old Spectacle Lane. The Board agreed that written permission from the Town should be obtained to do the work on town-owned land. Mrs. Willis asked that a copy of the Walk Book with the trail location be sent to Mr. Hill.

Mr. Walsh motioned to schedule the walk for 3/12/06, seconded by Mr. Fossi. The motion passed 9-0.

4. **#2006-002-SR:** Summary Ruling application for installation of driveway crossing intermittent watercourse in two places, property located on the south side of **Old Sib Road** in an RAA zone. Owner: Crosby R. Smith et al. Appl.: Sturges Brothers, Inc., Auth. Agent: Donnelly, McNamara and Gustafson. *Received 1/10/06. Walked 1/22/06. Tabled 2/7/06. 65-day action period ends 3/16/06. For action.*

Attorney Jewell introduced the application, for a driveway serving two lots that have the required frontage on the town road, crossing an intermittent watercourse in two locations. The property is 23 acres and is being proposed for a First Division with a large open space parcel purchased by the Conservation Commission. The grades require crossing the watercourse twice with the driveway for the two building lots.

Frank Fowler, engineer for the project, described the steep grades on the site and the difficulty with accessing the two home sites. There is only one way to access two attractive home sites, with the driveway over the stream. The stream is intermittent and is dry for substantial portions of the year. Work would be done during low-flow periods.

Mr. Fowler shows a de-watering stilling basin that would be used to pump water down to the stream at the bottom of the hill, if needed during construction. If work is done under dry conditions, this may not be necessary. He describes the sequence of construction for installing footings and placing the bottomless culverts over the stream, and replacement of the 12" pipe under Old Sib with a 12" culvert, 8 feet wide. The first crossing of the stream for the driveway would be done after the work is completed in the town road, working up to the second driveway crossing. Each culvert would take about two days to install. Mr. Fowler shows the wetlands and watercourse on the map, and proposed infiltrators on the lots for footing drains.

Mr. McChesney asks about the proposed work on the road. Mr. Fowler describes the stilling basin at the side of the road by the pipe outfall, to trap sediments. Chairman Mucchetti notes the existing house on the property where the water is being discharged, and asks about the impact to that house. The house sits on a hill, and there is a large wetland in front of the house that currently accepts the discharge, and Mr. Fowler says there should be no impact because the increase in cubic feet per second is slight (37 to 39 cufs). The stilling basin is within the Town road right-of-way.

Mrs. Willis asks if the homeowner was asked for an opinion on the plans. Mr. Sturges, the applicant, states that he talked to the homeowner and showed him the plans. There was no objection by the homeowner. Chairman Mucchetti asked if the homeowner realizes there will be an increase in runoff. He does not, but Mr. Katz points out that the westerly pull-back of the stilling basin into the road right-of-way will decrease the velocity of the water flowing onto the neighbor's land.

Dr. Autuori has not walked the site, but asks about the watershed for the stream system. Mr. Fowler describes the watershed on the map. The area draining to the design point is about 23 acres, about half from the subject site plus a large area off-site. Dr. Autuori asks about the 12" pipe at the bottom of the hill.

Mr. Fowler points out that the pipe under the road is undersized now, as are many older drainage pipes in town. It will be replaced by the 12" culvert, 8-feet wide. The pipe is sufficient for at least the 25-year storm. Dr. Autuori asks about the two culverts in the driveway, and whether there will be an overflow that will cause erosion on the driveway. Mr. Fowler answers that the culverts are sized over a steep, deep channel, and will be sufficient for the flow.

Mrs. Willis asks about the infiltrators on the lots, and whether swales might not be a better idea in this situation. Mr. Fowler describes a swale system, but it would require more land disturbance. The Board agreed that infiltrators were a better idea.

The Agent referenced memos from the Town Engineer. Mr. Fowler met with Mr. Fisher, and his most recent memo indicates that his questions have been answered. The well at the bottom of the hill was mentioned; Mr. Sturges notes that it dates back to the time when Francis Martin owned the property, and it is within the Town road right-of-way and not on the applicant's property.

The Agent reads Mr. Fisher's earlier memo, and Mr. Fowler addressed each of the Town Engineer's questions. There is an outstanding issue about the Fire Marshal's concern with the steepness of the proposed driveway. The Agent will attempt to clarify his concern before the Board makes a final decision on the application.

The Chairman asked **Carol Stoddard** of the Conservation Commission to read the CC letter of February 7th into the record. Mr. Fowler addressed the Conservation Commission's questions, including the fact that there would be some re-direction of the stream between the two crossings. There was some discussion about the use of riprap in this area. The Board confirmed their understanding and the applicant acknowledged that the bottomless culverts would eliminate the need for extensive rip rapping. The Board made it clear that a natural stream bed was desired, with stones and/or riprap for stabilization only as necessary at bends in the channel. The applicant's engineer stated that some channelization was necessary to direct water flow in heavy storm events.

The Agent asks about the 17% driveway grade and if that is still proposed. The steepness of the driveway is related to the rate of runoff into the stream and downhill. The driveway is steep for about the first 300 feet from the road.

Dr. Gelfman reiterates that he is interested in the least possible impact to the natural stream.

Attorney Jewell summarizes the concerns; (1) the infiltrators on the individual lots will remain, and (2) the applicant will leave untouched and/or re-create the natural stream bed as much as possible, avoiding extensive riprap. The Agent confirms that the driveway should be paved.

The Chairman notes that since there is no public hearing the Board may want to discuss the approval of the permit. Mr. McChesney motions, seconded by Mr. Katz, to have the Agent draft a favorable resolution on the application, incorporating Mr. Jewell's points, the Town Engineer's requests, the need for Town approval and permits for the culvert under Old Sib Road, and comments from the Fire Marshal where the Board responds to recommended grade changes affecting wetlands. The motion passed by a vote of 8-1, with Dr. Autuori abstained because he had not walked the site.

The draft resolution will come back to the table for vote on 3/7/06.

5. **#2006-010-SR-S:** Summary Ruling application in conjunction with 7-lot subdivision for property located on **Bryon Avenue** in the SD R-20 zone. Owner/Appl.: Country Club Development, LLC. Auth. Agent: Donnelly, McNamara & Gustafson, P.C. 65-day action period ends 4/20/06. Received 2/14/06. Determine significance.

Mr. Fossi recused himself from the discussion on this item.

The Chairman noted that the Board was given a week to review the new plans, and to determine significance of the activity relative to the wetlands and watercourse and to discuss the need (or not) for a public hearing, based on the proposed plans.

The Agent also noted that there were unexpended funds deposited for the consultant's engineer's review of the application, and that the applicant might consent to using those funds for review of this new application since it is a modification of the earlier proposal. Mr. Katz confirmed that the consultant review should be done with the idea of noting the differences with the new application, and not a complete regurgitation of the previous review and information. The Board agreed, and the Agent will discuss the consultant review fees with the applicant.

Mr. Katz motioned, seconded by Mr. McChesney to treat the application as a summary ruling but to schedule a hearing concurrent with the subdivision hearing on 4/4/06, based on the significant public interest for the prior application. The plans presented for this resubmission do not appear to be substantially different from the

original plan. The motion to hold a hearing passed by a vote of 8-0-1, with Mr. Fossi recused.

NEW ITEMS

6. **#2006-011-SR:** Summary Ruling application for regulated activity in the upland review area to construct a two-story addition to an existing single-family residence located at **15 Canterbury Lane** in the RAAA zone. Owner/Appl.: James and Melanie Howley. *65-day action period ends 4/27/06. For receipt and schedule walk.*

Mr. Katz motioned, seconded by Dr. Autuori, to acknowledge receipt of the application and to schedule a walk for 3/12/06. The motion passed, 9-0.

BOARD WALKS

As noted above, walks were scheduled for **214 Wilton Road West** and **15 Canterbury Lane**.

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

There was no correspondence.

MINUTES

For approval: February 7, 2006

Mrs. Willis motioned, seconded by Mr. Slavin, to approve the minutes of February 7, 2006. Mrs. Mucchetti pointed out a minor typo on page 2. The motion to approve the minutes passed by a vote of 9-0.

Hearing no further discussion, the Chairman adjourned the meeting at 9:18 p.m.

Respectfully submitted,

Betty Brosius
Inland Wetlands Agent

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION

February 21, 2006

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

A public hearing was held prior to the meeting.

At 9:20 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

NEW ITEMS

1. **#2005-100-A:** Proposed amendment to Zoning Regulations (Turner Hill) Bulk Requirements for Conservation Cluster PRDs. Commission initiated. For discussion/action.

The Chairman noted the spreadsheet submitted earlier by the residents, which might be helpful to the discussion. She also referenced the memo prepared by the Planner for the meeting, and asked her to summarize the amendment and discussions thus far.

The Planner reviewed the past history of the review of this application and previous discussions, including the proposal to set bulk requirements with 8-foot and 20-foot setbacks, 18% coverage, and 30% floor area. There was also discussion about setting a cap on the total size of a house, at 4,500 square feet floor area. The homeowners had requested 35% floor area and 5,500 square foot cap. There was considerable discussion on those numbers, and the consensus of the Commission was that 30% FAR and a 4,500 square foot cap was appropriate. The Planner talked to legal counsel about establishing a special permit requirement for homes over 4,500 square feet, and it was confirmed that the Commission could make that requirement, relating it to the “considerations for approval” in Sec. 312.0 of the zoning regulations. The spread sheet shows that there are homes with the potential to go over 4,500 square feet. The Commission considered the increase over the cap as a special permit to make those

larger homes fit the character of the neighborhood and to maintain the integrity and intent of the original regulations.

The Chairman asked about the conflict with the proposed special permit requirement and the established cap of 4,500 square feet (paragraphs a and b of section 4). The Planner agreed that the language could be made clearer so that there would not be a conflict. It should not appear that the Commission is permitted to vary its own regulation.

Mr. Katz is not concerned with the language, but is concerned with the concept of a special permit at all. He feels that if we approve any one request for special permit, it will set a precedent that virtually requires approval of any request that follows. He cites section 312.0.C “considerations for approval,” paragraph (1), “The location, size and intensity of the proposed use or uses, and the size and location of the site shall be in harmony with the appropriate and orderly development of the district in which it is located.” This is a singular district; it is a conservation district. He feels that once we say that one increase is appropriate, then we will be forced to approve any such application.

Mr. Katz feels that the Commission should cap the house size at 4,500 square feet. People who buy into a conservation district do so for a reason (we would like to believe), for which it was designed, with houses in close proximity, and with large areas of open space. If it is desperately important for these people to have a home of grander size, for whatever their personal choices, part of that personal choice package is to move.

Dr. Gelfman totally agrees with Mr. Katz, as does Dr. Autuori. The Planner points out that if there is only a cap set at 4,500 square feet, the homeowner could still apply for a variance as with any other bulk regulation. That should be clear – there is no absolute prohibition of a larger house size.

Mr. Walsh says that if the Commission is concerned about house size, why not require a special permit for anything beyond 4,000 square feet but not to exceed a maximum of 4,500 square feet. Mr. Katz acknowledges that this would bring the “first blow” of the impact of the regulation to the P&Z table first. Mr. Walsh and Mr. Katz both acknowledge that the problem with getting a variance is the applicant has to prove his property is unique in that zone, and that there is a hardship, for a ZBA application. The Planner notes that the ZBA follows those rules and does not typically grant variances, at least within the past few years, unless the “uniqueness” of the property can be proven. Recent examples on Bryon Avenue and Greenfield Street, where variances were denied, were cited.

Mr. Katz would be more comfortable with a maximum cap set, but no special permit. He would like to see the integrity of the original zone preserved, addressing a need to correct inconsistencies as has been stated, but not going beyond that.

Dr. Autuori asks what is wrong with setting a cap at 4,000 square feet. The Chairman refers to the numbers shown on the spreadsheet and says that 4,500 was discussed as being a fair number during previous discussions. The Planner notes that the homeowners asked for 5,500. Dr. Gelfman feels that 4,000 square feet is enough. Mr. Walsh says that 4,000 square feet would assist 43 homes currently, according to the chart. If bumped up to 4,500 square feet, eleven homes would require variances to exceed 4,500. The Chairman points out that some homes would be max'd out at the 30% FAR, below the 4,000 square foot cap. She doesn't disagree with the concerns - this zone is working the way it was designed, and it is a wonderful neighborhood. a 4,000 square-foot home is not small. Dr. Gelfman is concerned with protecting the district as a whole.

Mr. Katz asked if the FAR was needed in addition to the cap. The Planner stressed the need to correct the regulation to make it fair and consistent with requirements in other residential zones. At present, the standard PRD regulations apply to this development.

Mr. Katz feels that the proposal by the Planner and staff is good, along with a cap of maximum house size that would preserve the character and integrity of the district and the neighborhood. The Chairman states that the extra 500 feet is really not that much; it is only an extra room.

The Planner points out that the proposal is for 4,500 square feet or 30% FAR, whichever is less. There are many homes that, at 30% FAR, will be well below 4,500 square feet. The proposed numbers were not arbitrary, but were based on review of the 70 or so surveys for the development and a determination of what was already customary and reasonable for the zone. The homeowners requested 35%, and she agrees with the Commission that 30% seems fair based on a review of the surveys, and certainly more reasonable than what they have now, which is the standard PRD bulk requirements.

Mr. Katz points out that people should know what they have when they buy into it. The Planner states that under the standard PRD regulations, the Conservation Cluster is confined to a 25-foot perimeter setback which is unrealistic. Mr. Katz reiterates the consensus of 30% and 4,000 square feet. The Chairman still favors 4,500 square feet for a cap. With more discussion, the consensus was to strike paragraph (b) for the special permit, and amend paragraph (a) to establish a cap of 4,000 square feet.

Mr. Katz states for the record that he recalls a lot of the discussion at the table for the original zoning regulation, and Dr. Gelfman and Dr. Autuori's support of the concept for a Conservation District. The concept was adopted in unanimity by the Commission at the time. It's important that Commissioners who sit after the advent of a good idea perpetuate the good idea. Dr. Gelfman points out the example of a home in town built up to the property setback lines. That is what he fears here, because that home spoiled the whole streetscape in that case. The Planner points out the 8-foot and 20-foot setbacks proposed are based on examples of what is already in Turner Hill. That shouldn't happen under the proposed regulation. The original regulations had no

setbacks, with zero lot-line setbacks permitted. This is better. The Chairman notes that the majority of the homes still have the ability to add on as they wish.

The Chairman asks for a motion on the regulation as amended, with the 4,000 square foot cap and no special permit requirement. She also notes the other proposed changes at the beginning of the regulations, as “housekeeping,” minor changes.

Mr. Katz motions, seconded by Dr. Autuori, to adopt the regulation as amended. The motion passed, 9-0.

2. **#2005-142-SP-SR:** Special Permit application under Sec. 312.0 as required by Sec. 412.0.B.(5) of the Ridgefield Zoning Regulations to construct a 20-unit multi-family development on 5.16 acres of land located at **66 Grove Street** adjacent to existing commercial building in the B-2 zone. Owner/App.: 66 Grove Ridgefield, LLC. Auth. Agent: Artel Engineering Group, LLC. *Received 10/11/05, walked 10/16/05, 11/6/05 and 1/22/06, public hearing commenced 12/6/05, continued 1/17/06, 1/31/06, 2/7/06 and 2/14/06. Public hearing closed and tabled 2/14/06. 65-day action period ends 4/20/06. For action.*

The Chairman opened the discussion on the special permit application, noting that the Inland Wetlands Board is requesting a draft, favorable resolution on the summary ruling application for the project.

Dr. Gelman made a motion to draft a resolution of denial, seconded by Mrs. Willis.

Dr. Gelfman says his opinion principally based on his knowledge that it is a contaminated site, and it is unfit for housing. Personally, he wouldn't bring his family onto that site for another 20 or 50 years. Mrs. Willis agrees. She can't responsibly approve housing. She has heard the arguments of the different engineers, but she just can't support it. She also doesn't like that fact that they are building so close to the neighboring property and depending on them for screening.

Mr. Slavin supports the motion to deny. He says that long ago he worked in the environment of testing for those standards for the federal EPA, and the science people wanted tighter limits than the EPA did then and does now. He thinks that there is a risk for people, potentially, in the limits that have been set, and for its potentially risky environment for people.

The Chairman refers to the analogy made during the public hearing process to testing for radon, and asks Mr. Slavin if he does not agree with that analogy – Mr. Slavin does not agree that analogy, but he doesn't strongly disagree. He says that setting limits for testing is very hard, because how do you test for the limits? If the levels are low, but in fact there is a long enough time at those levels, you begin to have problems with cancer, and you have to wait a long time for that. The Chairman asks if that means longer than we have waited for so far on this property. He says yes. He says this is like the comments that Dr. Autuori has talked about from time to time, about the

potential for biological problems. You can't say that there clearly is a biological problem, but there is a potential and it's a risky business, and the levels should be lower than the levels they are reporting before you put people in there, with children living in it. That's quite distinct from having something commercial there.

Dr. Autuori has two points. He agrees with the general tone of what's being said. What most concerns him about the type of contamination is that it is volatile. If this were some sort of mineral or metal that binds to the soil and never goes away, you could cover it with concrete or a barrier and it's out of commission. But this is not the case. The minute they spoke about vapor barriers, he was concerned. He does not trust these barriers for human habitation. The standards that are set by the DEP are a concern. He refers to a report he gave the Board of Selectmen about a pesticide that is now being reported as damaging to the public health, even though previous standards were met. The whole point, he says, is that it is a risk that, as a public official voting in favor of housing, he is unwilling to take, that humans should go and live on this site. He is concerned about long-term biological effects, albeit very small. He doesn't have to balance the economic benefit to a large corporation versus one life in a 100,000 or a million, he is just looking at those lives. On that basis alone, he does not feel comfortable voting for this project.

Mr. McChesney asks what is the risk for the existing business or to some other office or business? Is it less? Mr. Slavin says yes, it is a combination of how high a level of the contaminants gets into the environment where people are living, and how long they are subjected to that. He would feel more comfortable with an office complex as opposed to residential, where people are there for only 40 hours per week, and there are no children. That's very important. Children are far more susceptible to trouble from these volatile compounds.

Mr. McChesney asks what Mr. Slavin would think if the housing were age-restricted, for 62 and over? Mr. Slavin thinks that would be much less of a problem. Dr. Autuori says that it would take 30 years, plus or minus, for the effects of the effects of carcinogens to show up. Mr. McChesney asks about a daycare center, and both Mr. Slavin and Dr. Autuori agree that it would not be appropriate.

Mrs. Willis also makes the point that the monitoring wells are going to change and will be moved. It is better to deal with the wells that are there, because you are dealing with the same place. You can't truly relate the on-going statistics to previous testing if the wells are shifted five or fifteen feet from where they are currently located.

Mr. Walsh says the standards were very difficult to understand as presented, but there are standards, and the engineers live their lives by those standards. There were two professionals, and one stating that as it is right now, they don't even meet the volatility criteria. One says there is a possibility that it will meet the standards if the volatility decreases. The other engineer, working on behalf of the Board, said the same thing. It doesn't come close to the existing standard. We're not there yet.

Mr. Slavin says they are close to the current governmental standards, but it is still significantly above the established levels, and that's part of the risk. He reviewed the detailed data presented by the applicant, and notes that one or two of the compounds are slightly higher levels than the current standards of the EPA. Mr. Walsh is confused and thought there were standards that were not met.

Mr. Katz refers to the comments made by (LEP) Scott Bristol in his letter to the Commission, comment GE4 about the groundwater tests. He says that the DEP has established less stringent remediation criteria for the GB, the nonpotable water, and under questioning, their LEP (licensed environmental professional) said there could be no sign-off yet, and then we learned that the less stringent standard at the site, has been determined to be contaminated with chlorinated solvents and he goes through a laundry list. He says the contaminant levels as determined by ATC Associates have been found to exceed current and proposed ground water level volatilization criteria for residential areas, thereby requiring remediation. The germane point here, is that despite the fact that they are going to put a fabric barrier down, despite the fact that they are going to move monitoring wells, they can't sign off today even on the lesser standard for GP water. If that were an isolated fact, we would have to go through the machinations to assess risk. But we are asked to approve a special permit for this complex, and if we look at number four of our considerations for approval in that section of the regulations which we "shall find" have been met, it says that, "The proposed uses shall not impair the public health, safety or welfare." That is an absolute imperative at this point, because their professionals don't know enough and can't sign off that this is okay, and won't be for some years to come. And they were asked by Mr. Katz why they didn't wait until they could sign off, when they've got a legitimate project. But he can't vote for something that has a "shall" in it when their own people won't sign off.

Mr. Walsh says that our consultant indicated that the groundwater has nothing to do with this site because they're not going to drink the water there. It has nothing to do with the volatility, which is what the Commission is concerned with. As it pertains to the volatility, the engineer said there is nothing wrong with this site.

Mr. Slavin agrees, but there is still a risk. Mr. Katz says that his ability to say that he knows for a certainty that these living quarters will absolutely, shall not, present any safety or health risks, for youngsters especially - and he might feel the same about old people, too - that's the imperative.

Dr. Autuori says he doesn't think it's the Commission's job to be involved in risk assessment. The Commission is mandated to safeguard the health, safety and welfare. He would not say how serious this risk is - he sees a risk, albeit small, it is real, in the ground. We have heard engineers tell us that based on engineering parameters there is no problem, but he is not looking at it as an engineer. He is someone who is concerned about the adverse health potential if any of these volatiles would escape.

Mr. Walsh asks if Dr. Autuori can come to that conclusion based on the expert testimony that the Commission has heard? He says, no, he cannot. He has a certain amount of expertise, not as an organic chemist, but he has a doctorate in biology and physiology, and he knows for example about the elderly versus the young. Dr. Autuori asked the applicant if the units were age-restricted, and they were not. When you have the potential for carcinogenicity or teratogenicity, which has to do with damage to embryonic tissue, the more rapidly developing cells such as you find in children, are more susceptible to damage and usually in lower doses than older individuals. And there is a latency period, from the time that you are exposed to carcinogenetic materials and the time that cancer develops if it does. It can go from a few months to many years. If a person is 65 or 70 and lives in a place where there are carcinogenic materials in the ground, that person is probably going to die of natural causes before he would develop cancer from that particular problem. But if you put children in a place like that, or even people 35 or 40, you are putting them at risk. The elderly would be less affected because of the latency to exposure.

Mr. McChesney has to defer to those who are more knowledgeable, but asks if they would be receptive to this project if it were to come back as age-restricted? Dr. Gelfman, Mr. Slavin and Dr. Autuori feel they might be able to support it, if the age restriction were high enough. The Chairman asks what kind of message that sends - we don't mind approving a project on contaminated soil, as long as it's age-restricted.

Dr. Autuori says that the risk is not the same. Mr. Slavin says there is absolutely no question, and the consultants confirm, that these materials are poisonous and are carcinogenic, and volatile. That's known and clear. The question is, at what levels? And how much will people in these houses be exposed to? It is hard to assess because it's hard to know whether the volatility will drive those materials from the ground, especially when they move the wells around and expose different layers. That's risky. How do you make a judgment on how much risk are we willing to take? In the job that we're in, we shouldn't take much of a risk.

Mr. Katz refers again to the letter from LEP Scott Bristol, comment GE6 about the soil, and reads "No data was reviewed pertaining to current status of potential soil contamination. Sampling conducted during prior soil removal activities indicated that contaminant levels in excess of the applicable RSRs are present in the vicinity of the existing site building." That is not a surprise, but it indicates that the complete testing of the site that the applicant testified to, has not been done, and no sign-off at this point can occur. He would probably support an age-restricted development, too, but not one for the general population.

Chairman Mucchetti says that as the public hearing process continued, she realized that there was more contamination on the site than she had thought. And then the applicant's representative alarmed her more when she found out that he represented the DEP in the remediation as well as the applicant. With the second public hearing and testimony from the Board's LEP consultant, Mr. Bristol, she was a little more comfortable. Then she started hearing about all the disclaimers that would be put into

documents on the project, and realized that at every turn the homeowners would be made aware of the contaminants on the property, and the builders would be doing the “belts and suspenders” remediation (the vapor barriers) on the units. The building community says this is not unusual – it’s like radon, and we live with it all the time. But now she has listened to people’s opinion for which she has great respect, especially Mr. Slavin and Dr. Autuori with their expertise and background, and her comfort level has sunk again.

Mrs. Willis asks if the reports about the contamination have been coming on a regular basis. The Planner states that there is a stack of reports covering several years, and the applicant supplied missing reports at the office’s request. There was a time, however, when the site was not monitored. The current company (ATC) has been monitoring for the past few years. Mrs. Willis asks if there was a legal opinion on the issue of liability for the Town. The Chairman thinks that if you have to ask the question, that should be the first concern. If you want to be absolved from responsibility, you need to think about the kind of decision you are going to make.

Dr. Autuori says that he is in no way trying to set himself up as contradicting the engineer. He is coming from different training, level of concern, his own discomfort and ultimately he has to live with his vote.

Mr. Katz says it’s also good to remember that the most specific of statutory requirements for the work of a Planning and Zoning Commission is to protect the public health, safety and welfare. That’s number one, even if we don’t do anything else we can’t get away without doing that. This probably is okay, but “probably” may not be good enough in this circumstance. He would like to call the question.

The Planner cautions that any action now has to be a draft resolution and not a final vote, because the Commission cannot act until the Inland Wetlands Board has completed its decision. The Chairman wants to be sure before calling the vote, especially since the opinion of some of the Commissioners in this discussion seems to be swaying the opinion of some who may have been marginally in favor of the proposal. She respects the knowledge of Commissioners who may know more than she does on the issues discussed. She wants to make sure that there is enough information and answers to questions before taking action.

Mr. McChesney thinks there has been a good summary of the hearing and discussion from our own knowledgeable people. One comforting thought is the idea that it might be age-restricted. This is kind of appealing, and the representation that the vapor barrier would minimize the risk of contamination is a positive piece of construction that would make age-restriction even more palatable, as well as less risky. If that’s an alternative the applicant would want to consider in the future, we could turn this proposal down.

Mrs. Willis says she is not in favor of any housing. She does not want to say that housing is okay for the elderly because their death is inevitable anyway, in 30 years. This doesn't make a difference.

The Chairman asks if they are ready to vote for a draft denial, and the consensus is to vote based on the earlier motion of Dr. Gelfman and the second by Mrs. Willis. The motion passed, 7-2. Mr. Walsh and Mr. Fossi were opposed. The draft will come back in two weeks.

3. **#2005-175-R:** Proposed re-subdivision of 3.061 acres to create two building lots on property located on **Lot #6, Old Still Road** in the RAA zone. Owners/Apps.: Christina and Charles Stietzel. *Received 12/13/05. Walked 1/8/06. Public hearing commenced and closed 2/7/06. Draft Resolution of Approval requested 2/7/06. 65-day action period ends 4/13/06. Tabled 2/14/06. For action.*

The draft resolution was distributed the previous week and tabled to allow the Town Engineer time to comment on the conditions pertaining to work in the town road right-of-way. The Planner outlined the conditions in the proposed resolution, and indicated that the Town Engineer did not have any concern with the proposed conditions.

Mr. McChesney motioned, seconded by Mr. Slavin, to approve the proposed resolution of approval for the subdivision. The motion passed by a vote of 9-0.

4. **#2006-006-REV:** request for Revision to condition #3 Four-Lot Subdivision Adopted Resolution of Approval (#2005-160-S) to permit house to remain on lots 2 and 3 when map is filed for property located at **593 Main Street** in the SD R-20 zone. Owner: Richard F. Mele. Appl.: Richard F. Mele and Joseph R. Coffey. *Received 2/7/06. 65-day action period ends 4/13/06. For action. (tentative- pending receipt of legal opinion).*

The Chairman noted that the legal opinion was not yet available from counsel, and the item should be tabled.

NEW ITEMS

5. **#2006-012-SP:** request for Special Permit under Sec. 312.0 as required by Sec. 333.0 of the Ridgefield Zoning Regulations to construct a Historic Equipment Storage Barn on property located on **Halpin Lane** in the RAA zone. Owner: Town of Ridgefield. Appl.: James Belote, Ridgefield Volunteer Fire Dept. *65 days to commence public hearing ends 4/27/06. For receipt, schedule walk and public hearing.*

Mr. Katz motioned, seconded by Mr. McChesney, to acknowledge receipt of the application and to schedule a walk for 3/12/06 and a public hearing for 4/4/06. The motion passed by a vote of 9-0.

6. **#2006-013-AH:** Application under Sec. 8-30g of the Connecticut General Statutes for a 20-unit, all affordable, housing project on property located at **Prospect Ridge Road and Halpin Lane** in the CAH zone. Owner: Town of Ridgefield. Appl.: Philip Bergquist, Chairman Ridgefield Housing Authority. Auth. Agent: John F. McCoy VII, P.E. *65-days to commence public hearing ends 4/27/06. For receipt, schedule walk and public hearing.*

The Planner briefly explained that the application was submitted under §8-30g of the Connecticut Statutes because the density is slightly higher than allowed on the parcel. The applicant will include data on the existing congregate and affordable units on the adjoining parcel of the Ridgefield Housing Authority. as part of his presentation of the proposed new units.

Dr. Autuori motioned, seconded by Mr. Katz, to acknowledge receipt of the application, to schedule a site walk for 3/12/06, and a public hearing for 4/11/06. The motion passed, 9-0.

7. **#2005-159-REV:** Request to modify Revision to Special Permit, Item #2, property located at **387 Main Street**, Addressi Jewelers, in the CBD zone. Owner: Wayne A. Addressi. *For receipt/action.*

Chairman Mucchetti asked the Commission to read the letter from Mr. Addressi requesting a change to the conditions of the approved Revision to the Special Permit for the vestibule at 387 Main Street, and noted that the item would return to the agenda on March 7, 2006, when the applicant would be present to explain his position.

8. Chairman Mucchetti asked for an additional item to be added to the agenda, for receipt of the application for special permit for the **10-Year Plan for Tiger Hollow** (Ridgefield High School). She suggested a site walk for 4/2/06 and a public hearing for 4/18/06.

Mr. Walsh motioned to add the item to the agenda for receipt and to set the dates for walk and public hearing as suggested, seconded by Mr. Fossi. The motion passed, 9-0.

COMMISSION WALKS

As noted in items above, walks were scheduled for **Halpin Lane, Prospect Ridge, and Tiger Hollow.**

REQUESTS FOR BOND RELEASE / REDUCTION

There were no requests for bond release or reduction.

MINUTES

For approval: February 7, 2006.

Mrs. Katz motioned, seconded by Mr. McChesney to approve the minutes of February 7, 2006. Chairman Mucchetti noted a minor correction under "Correspondence" on page 8,

stating that Mr. McChesney had given the report on the Economic Development Commission meeting held by the Board of Selectmen. The motion to approve the amended minutes passed by a vote of 9-0.

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

Respectfully submitted,

Betty Brosius
Director of Planning