

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD

March 7, 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

At 7:35 p.m. Chairman Mucchetti called the meeting to order.

Mrs. Willis joined the meeting at 7:48 p.m., just prior to the vote on approval of the February 21, 2006 minutes. She was not present for the votes or discussion on items #1 through the discussion on the minutes.

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/Appl.: 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. Draft Resolution of Approval requested 2/21/06. 35-day action period ends 3/21/06. For action.*

The Chairman noted the draft resolution of approval that had been distributed to the Board.

Mr. Katz offered one minor correction in condition #2, to correct the spelling of “ensured” to “insured.” He then motioned to approve the resolution as drafted, seconded by Mr. McChesney. The motion passed, 6-2. Dr. Autuori and Dr. Gelfman were opposed.

2. **RESCHEDULED TO 3/21/06 - #2005-006-A-IW:** Commission initiated amendments to the Inland Wetlands and Watercourses Regulations for the Town of Ridgefield, Connecticut, to increase the size of the upland review areas; Sec. 4.5 and to clarify Agent

authority; under Sec. 13 “Enforcement” by adding new Sec. 13.1.1(a) and new Sec. 13.1.1(b). *Public hearing closed 6/7/05.*

The Chairman recognized for the Board and for the benefit of the public that the discussion on the proposed amendments to the wetlands regulations, pertaining to Upland Review Areas, had been rescheduled to March 21, 2006.

3. **#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. Draft Resolution of Approval requested 2/21/06. 65-day action period ends 3/16/06. For action.*

A draft resolution of approval for the application had been distributed to the Board. The Chairman noted that a letter had been received from the Fire Marshal about the proposed driveway grades.

Mr. Katz suggested acknowledgement of receipt of the letter only, as it is not Germane to the wetlands permit application. The Inland Wetlands Agent agreed, except that the Marshal points out the steep grade of the driveway at 17%, when 12% is preferred for access of emergency equipment. If the Board were to request changing the driveway to meet a 12% preference, it would require the applicant to do far more cutting and filling of the land, and would have a very different effect (and probably a greater impact) on the wetland and watercourse crossings. The 12% grade is only a requirement in the regulations for accessways, not driveways. The Agent suggests acknowledging his concern, but at the same time the Board does not have to require any change to the plans. Mr. Katz notes that there is also no fire code regulation that requires a particular grade for driveways. It is a preference but not a regulation.

The Chairman notes a strike-out of language in condition #2 and the Agent explains that the reference to an accompanying subdivision application is incorrect; the language should be removed as the driveway pertains to a First Division of property.

Mr. Katz motions to approve the resolution of approval as amended, seconded by Mr. Fossi. The motion passed, 7-1 with Dr. Autuori abstained because he did not walk the property.

4. **#2006-008-SR:** Summary Ruling application for replacement dock in the RAA zone adjacent to **180 Barlow Mountain Road on Pierrepont Lake**. Appl.: Barbara Morris. Owner: Twixt Hills Homeowners Association (THHA). *Received 2/14/06. 65-day action period ends 4/20/06. For action.*

The Chairman noted that the Board members were asked to walk the site on their own, and the Agent confirmed that this is an “after-the-fact” permit application since the dock was constructed a few years ago. The applicant seeks to comply with the regulations and

to satisfy a request from the homeowners association for obtaining permits on association land. They have granted permission for the dock to be in place, provided that a permit is issued.

Mr. McChesney motions to approve the request, seconded by Dr. Autuori. The Agent suggests that this be a final decision, and that no draft of the approval would be required. The motion to approve the permit passed by a vote of 8-0.

NEW ITEMS

There were no new items.

BOARD WALKS

The Chairman noted that there were three Board walks scheduled for the weekend: 214 Wilton Road West, Bryon Avenue, and 15 Canterbury Lane.

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

The Chairman referenced an invitation to the Board sent by Benjamin Oko, Chairman of the Conservation Commission, to attend the CC Annual Meeting on Thursday, April 6th. There will be a guest speaker, Dr. Michael Klemens.

MINUTES

The Chairman asked for any corrections to the minutes for February 14, 2006. She has one correction page 2, item #5, where "Mr. Walter" should read, "Mr. Slavin." The minutes were approved unanimously, with the correction.

The Chairman asked for a correction on page 3 of the minutes for February 21, 2006, under item #1, where Dr. Gelfman's reference to the stream should read "downsteam" from the Great Swamp, not "upstream."

Mrs. Willis joined the meeting at this point. She noted a correction on page 7, in the first paragraph of discussion, and the reference of open space land "to be donated" to the Conservation Commission. It was pointed out that the land is to be "purchased by" the Conservation Commission. On page 9, the next to last paragraph for item #4, Mrs. Willis asked for clarification of the reference to Fire Marshal comments as they pertain to wetlands. The Agent explained that the reference pertains to changes to the driveway grade that the Board might make as a result of the Fire Marshal's comments, and how the grading might affect impact to the watercourse. The language will be clarified for the final minutes.

Mr. Slavin motioned, seconded by Mrs. Willis, to approve the minutes for February 21st with the corrections. The motion passed, 9-0.

PUBLIC HEARINGS

The Chairman noted that the continued hearing for **Lot #33, Dogwood Drive**, should have been listed on the agenda for March 14, 2006, as scheduled previously.

Hearing no further discussion, the Chairman adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Betty Brosius
Inland Wetlands Agent

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION

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John Katz, Vice Chair
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Rebecca Mucchetti, Chairman
Walter Slavin
Patrick Walsh
Lillian Willis

Also Present: Betty Brosius, Director of Planning

At 7:55 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2005-125-REZ-A:** (1) Application to rezone ± 133 acres of land from CDD-Corporate Development District Zone to ARH-Age Restricted Housing, (2) application to amend zoning text in the Ridgefield Zoning Regulations and (3) application to amend Town Plan of Conservation and Development for the zone change and text change. Property located at **616 Bennett's Farm Road**, south of Bennett's Farm Road and west of Route 7. Owners: Eureka V LLC. Appl./Auth. Agent: J. Casey Healy, Esq. *Received 9/6/05. Public hearing commenced 11/9/05. Walked 11/20/05. Public hearing continued 11/22/05, continued and closed and tabled 1/10/06. Discussion tabled 1/17/06. Discussed 1/31/06. 65-day action period ends 3/16/06. Three applications denied 2/14/06. On 2/28/06, voted to reconsider the decisions to deny. Tabled to 3/7/06, for discussion/action. A motion and second to deny the proposed amendments to the PCD remains on the table.*

The Chairman noted the Commission vote on February 28 to reconsider the previous decisions to deny the three applications. With the vote to reconsider, the applications now come back to the table with a motion and second to deny the first application, the applicant's proposed amendments to the Plan of Conservation and Development (PCD). The Commission is now back to the point of discussion, prior to the calling of the question and the vote to deny on February 14.

Dr. Autuori asks for a clarification of the procedure, and his understanding that if the Commission votes in favor of the motion to deny, they effectively cut off further debate. But if the motion is overturned, then the Commission can carry on more discussion, and more proposals and motions can follow. The Chairman confirms that is correct. The motion on the table cannot be amended, but discussion on the motion can continue before the vote is called again. The Planner reminds the Commission that if the motion to deny is supported, then they would still have to act on the decisions for the application to

amend the regulations and the proposal to change the zone. The Chairman confirms that new motions to amend the Plan could not come to the table if the motion to deny carries. She notes that legal counsel has given advice on the proper procedures.

The Chairman reiterates that the Commission is again at the point where they can discuss the motion to deny, and they can continue debate on whether to make changes to the proposed amendment submitted by the applicant. They are at the point where discussion was halted, following the calling of the vote on February 14.

Mr. Katz states that the original motion was tabled a few weeks ago because some Commissioners wanted to take his comments and recommendations, his rationale to deny the proposed amendment to the PCD, and match his comments to the pages he referenced in the Plan, to see if their ideas concurred with his as to the severity of the change that was requested. And they heard in discussion last time, at least two of those Commissioners who had agreed to table for that purpose found at least some things he said to be accurate, they had questions about his other comments, and they wanted time to think about that and turn it into something that would be less draconian than he had presented it as being. But he still considers the changes requested to be draconian in terms of what the application is asking the Commission to do to the philosophy and content of the PCD. For those who think it is not as draconian as he does, that is the discussion that should occur tonight at the table.

Mrs. Willis says it is very difficult because you have to think purely in terms of planning concepts and planning philosophy in relation to the PCD, and it's very difficult to put pending litigation and other related issues out of your mind when you're thinking about that, but that is what this vote speaks to.

Dr. Autuori says the issue for him is he wanted to have a chance to re-work the language of the application, and the reason he voted along with the majority was he thought they had run out of time. He has since learned there is more time.

Mr. Katz does not want to reiterate his written comments and what has been discussed at some length as his original compendium or rationale to deny, but also does not wish to be silent on the subject. He reads some additional statements referencing the presentation made by consultants on behalf of applicant and their support of the requested amendments. "Eureka's economist Klepper-Smith concludes his exhaustive report and findings by saying that the proposed development would add 788 residents to Ridgefield. Why would we alter our Master Plan of Conservation and Development to further congest our town, when any need we might have would be for those who already live here." And you will recall that Dr. Klepper-Smith made a presentation that suggests that within an 8-town region there was a certain need for housing for people 55 and over. When he was questioned further he said that the proposal would meet the needs of Ridgefield, he claimed in the written text clearly that it would be 788 new residents. The applicant asked us to amend the plan, "with appropriate safeguards to protect public health, safety and the character of the neighborhood, [and] allow larger developments that may not satisfy all the locational criteria." What they're applying for meets none of our local criteria, and

according to the Department of Health, DEP, Aquarion and our own Conservation Commission, it fails to protect the public health and safety with regard to the potential damage to both current and future drinking water sources. Mr. Katz recognizes that the text proposed by the applicant, which would supplant the language in the current Plan, doesn't talk about these specifics. The applicant is asking the Commission to enable a concept that they expressly philosophized out of the PCD, and it would put in language that contravenes the recommendations of the DOH, DEP, Aquarion and the Conservation Commission. Moreover the public health/safety mantra is given support by the State Plan of Conservation and Development (2004-2009). Their recommendation is for one dwelling unit for every two acres of land, and they do it regarding buildable area. They want wetlands subtracted out of the area that you are counting. They suggest that this is the plan that needs to go forward in any water supply watershed area now or in the future.

Mr. Katz continues, "Amending our PCD as radically as the applicant would have us do would open us up to endorsing the contravention of this State caution, and our statutory responsibility. While the applicant asks us to amend the Plan to accommodate developments larger than the 25 units recommended, they wish us to include housing units that meet an 'identified town need.' The need is anecdotal and the housing the amendment would allow is more costly than can be absorbed by the alleged need. Hence their economist's written conclusion is that it would bring in 788 new people. Lastly, why would we amend our Master Plan of Conservation and Development in order to accommodate a Plan which will be too expensive for the alleged need, contravenes so much of the Plan's philosophy and recommendation, and flies in the face of every single piece of professional, State and local input we've got, except that submitted by the applicant's own professional." And he asks what is going on here – it does not make sense.

The Chairman asks if there is any more discussion on the applicant's proposal to amend the Plan of Conservation and Development.

Dr. Autuori responds with additional comment – in the main he agrees with most of what Mr. Katz had to say. He thinks that the applicant's proposed amendment doesn't make sense. He intends to vote against Mr. Katz's motion not because he supports the language of the applicant, but because he intends to propose new language that he thinks could allow for a smaller, much more environmentally friendly age-restricted development on this property, and he has become quite convinced that there would be a much better way to accomplish what the applicant set out to accomplish, consistent with preserving as much of the natural environment on the property. And, more importantly, for better or worse, the Board of Finance decided that this parcel was to be used for economic development. He has looked carefully in the past few weeks at comparisons between corporate and age-restricted development, and he has a document from Al Garzi, Assessor, that he would distribute, clearly establishing that, given comparable beginning points, an age-restricted development will yield more revenue for less impact at the outset and will grow over the course of 5-10 years and yield yet more revenue in the future, whereas a corporate development could either stagnate, not grow as much, or even decline. He will provide this information once the Commission votes on Mr. Katz's

motion, and he will also provide his own recommendation for new language for the PCD, if the motion fails.

Mrs. Willis asks Dr. Autuori if, when he puts his proposal forth, he is looking to have development outside the center of town happen elsewhere even if, perchance, the property owner should choose not to accept Dr. Autuori's language and proceed with its own lawsuit and perhaps end up with something more intense anyway. At that point the Commission would have opened up other parts of town to a new concept that really, in most terms, encourages sprawl.

Dr. Autuori explains that he does not want to encourage sprawl. His answer is to see what happens with Mr. Katz's motion, he will give the Commission his suggestions, and then it can be discussed. He thinks the question can be aired better at such time, if it happens, with his proposed new language.

Mr. Slavin says he wasn't at the meeting on February 28th, but he has read the detailed minutes reporting the arguments that were made, to lead them to the present situation. But in reading the minutes, one of his concerns is that those who will wish to modify our PCD will be forced, as Dr. Autuori is already saying, to re-write large sections of the Plan to presumably come closer to what the applicant wants. His concern is, having finished that, and potentially voted it in, what will happen if, as is extremely likely, the Eureka applicant does not plan to utilize that material and proceeds otherwise. We will then have been left with the changed Plan incorporating changes that everyone has said they prefer less than what we currently have in our Plan, and we still won't have settled the issue with the applicant. So, it seems to him very difficult to support the logic of changing the Plan to somehow meet the applicant's preference. He remains with his position of the meeting two weeks ago, unwilling to vote to open that possibility. He would continue to support the motion to deny that's on the table.

Dr. Autuori says, if it is the will of the people at the table, he will distribute what he has in mind. He asks if that would be better? The Chairman feels that the Commission should decide on the motion that's on the table. Dr. Autuori responds to Mr. Slavin and says that the changes he is proposing are not hugely disseminated throughout the Plan. He is proposing modifications to the two paragraphs the applicant submitted, and he is changing the emphasis. He is also changing the modifications not to help the applicant, but because he thinks the Town of Ridgefield could benefit (a) from appropriate and reasonable economic relief from the ever-rising taxes that we are having, and (b) from a final closing of this on-going, blood-letting litigation. These are issues that are circulating in his mind. He says this is coming from someone who originally wanted the whole parcel as open space. That is clearly in the record. He thinks the Commission has come to a different juncture.

Finally, Dr. Autuori says that whatever agreement was made between the Board of Selectmen and Eureka is not really our issue, but he does believe that, in the agreement, if Eureka decides that they don't like what we do, part of that agreement is that we can go back and un-do what we did. It seems a little convoluted, but he believes that is what the

First Selectman said. We would all be concerned if this opens us up to some horror show, and he doesn't want to go there.

Mrs. Willis asks if he would then vote to take out of the Plan what he just approved? Dr. Autuori says he doesn't think he would, because the changes he would propose are not as bad as some may think. He offers again to read his proposal, or will read it later if the will is to take care of Mr. Katz's motion first.

The Chairman says she is going to oppose the motion as she did before for the same reasons, and she will restate the reasons for the record. She finds support within the Plan for the changes that the Commission is considering. Mr. Katz finds opposition, and that's part of why this document is such a good guide. It doesn't promote, it guides, and she thinks that is what the Commission needs in a document. It is something flexible.

On page 32 of the PCD, it says that we have a stated goal for 30% of the Town to be open space. This project furthers that goal, because 122 of the 153 acres would be open space. On page 50, it gives a list of criteria for site location of multi-family developments. The proposal as presented meets criteria 1,3, 4 & 5 of the site location chart.

On page 50 of the Plan, the second paragraph, she quotes, "In order to blend with Ridgefield's residential density scheme and maintain compatibility of land uses within Ridgefield..." The applicant's property abuts one of the most highly-developed areas of town. The lakes area is zoned RA but it is developed as either R10 or R20 lots. Its character is defined as "medium-density," but the density of the abutting neighborhood is far more intense than what the applicant is proposing. The applicant proposed three units to the acre; she put on the table a suggestion for two units to the acre. That's far less dense, but because of the criteria that is established in the Plan, that's extrapolated to be a high-density development.

The Chairman continues, when you get into page 55, there's a listing of Housing & Residential Strategies. Under "Maintain the overall residential pattern," #2 says, "Guide residential development in accordance with the overall community structure to provide for a diversity of housing types." This conforms to that. Mr. Katz asks how? She responds that it is because the Commission is guiding residential development in accordance with the overall community structure, and it is noted that Ridgefield is primarily a residential community.

Under "Make appropriate regulatory changes," item #4, it says, "Adopt residential density regulations that establish a maximum development yield (units per acre)." The proposal, if amended to two units per acre, and even as it stands at three units per acre, is the least dense of all our multi-family zones.

Under "Encourage flexible residential development types," page 55, item #8, it says, "Allow other flexible residential developments that enhance the preservation of large areas of meaningful open space while maintaining a similar density to that currently proposed." We have gotten off-track, that this land is deed-restricted open space. It is

153 acres of corporately-zoned land, with an 80% open space ratio, which this age-restricted regulation has as part of its requirements.

The Chairman says she put on the table two weeks ago a suggestion for 12% FAR (floor area ratio), which is also part of the CDD zone. What we are considering here is less intense development because it would be residential, not corporate. You wouldn't have a huge influx of cars and people coming in, and if you extrapolate it out, it's about 2200 people within 800,000 s.f. of office space. You have the same open space ratio and the same FAR as the corporate zone. It's corporately-zoned land now, it's not open space. To look at it as open space versus residential development is unfair to the discussion. The current corporately-zoned land has a density factor, an FAR, and an open space ratio already attached to it.

Under "Address housing needs," #9 on page 55, it says, "Provide for a diversity of housing type opportunities, choice, and costs consistent with community conditions and constraints (such as the availability of adequate water and sewer facilities, and the character of the area and surrounding uses, zoning, and natural resources." This abuts a medium-density residential neighborhood, and it's been shown as sewerred since 1982 on WPCA (Water Pollution Control Authority) maps.

On page 56, under "Carefully controlled multi-family development," #13 states, "It continues to maintain the established goal," #14, "Meets 4 of the 5 criteria for evaluating proposed multi-family developments, and #15, "Property has been shown as 'to be sewerred' on the Town of Ridgefield sewer district maps since 1982." She thinks that it is possible to find support within the Plan for this development, just as easily as it is to find reasons to deny.

The Chairman restates her position that she will not support the motion that is on the table.

Mr. Katz points out that many of the areas that the Chairman cited as "comporting" with the Plan, he finds totally at odds with the Plan. This does not provide diversity of housing; these houses will start at \$700,000 if they go on sale tomorrow. It fails the diversity test. It is not a multi-family zone – one of the areas you pointed out was multi-family housing. This is age-restricted housing that could be single-family in style. The open space is a wonderful concept but it's fudged in this plan, because it takes into account the areas that are surrounding the houses, not deed-restricted as open space. As he said before, the open space concept is a fallacy. There are many tests that have been spoken to as being "met" by the proposed amendment to the PCD that he finds to be offended by the proposed changes. It has been demonstrated by our tax assessor and other documentation that because of the value of today's residential structure, they can enure to the tax benefit of a municipality. But in order for that to pay in a town like Ridgefield, you have to have a lot of them, a lot more density than he would ever support on this property. He does not know what Dr. Autuori has to distribute from our own tax assessor, but he recalls that his figures are based on a proposed density that might be permitted were these amendments be accepted to the PCD. He continues to be strongly opposed to the PCD amendments.

Dr. Autuori mentions that he reviewed the Plan, in particular the Preface, and reads, “The Plan must be open to refinement and improvement, where and when necessary, to reflect new conditions and challenges.” One of the things that has become clear to him, looking at the Plan and where the Commission is in this process today, is that whereas the Plan makes a clear distinction between residential and commercial, and it speaks about percentages of residential versus percentages of commercial, as far as tax base “plus” goes, age-restricted housing really belongs with commercial. It is not a commercial situation, but it belongs with the commercial in terms of enhancing the tax base. That is clear to him in today’s world, and it wasn’t such a clear issue in 1996 when the Commission started to re-draft the Plan. In terms of refining and improving to meet new issues and challenges, we have, in essence, a new economic reality, and using age-restricted housing in lieu of corporate development is now justified, and makes sense.

He says one of the other interesting things about the locational criteria, on page 50, is it talks about the different densities at different locations. Ridgefield Center has a density of 6-8 units per acre, in and near Branchville they use the lower density, and then it says sites farther from the center should be developed at lower densities yet – and there is a third category. Even in the existing Plan, it doesn’t absolutely rule out locational criteria. The final thing he wants to say on density, although controversial, is valid. When the First Selectman was testifying at the public hearing, he said if you look at the entire original site of 600 acres and then at the density proposed, it is a very low density. He does not support the density proposed at present by the applicant, but would look at another iteration of the proposal, a smaller density, kinder to the environment. He would rather see nothing, but that’s not going to happen.

Mr. Katz makes two points regarding to Dr. Autuori’s reference to housing being considered as commercial. He agrees it could be considered so, but our PCD recommends with regard to corporate development zoning, that “Modifications to [such zoning] should be to ...diversify the economic base and allow the development of high quality business parks.” In this section and two other sections, the Commission gave itself three opportunities to suggest as a philosophy and a goal in the PCD that we be flexible to introducing the potential for housing to Corporate Development Districts. We didn’t do it in any one of those three cases, and it wasn’t by accident. He is not saying that we should never do that, but this is not a modest change to the PCD. It is something that should be done in consultation with our Director of Planning who was never consulted about any of this project, or any of the modifications to this Plan, or the subsequent requests that were made. The office has not been visited for its professional and extremely knowledgeable input. There is a way to do what the applicant wants to do, with far less density. But the Commission should not be in the business of writing this to get to that, and then to get the other. And that’s what happens here – the three dominos fall. We are going to be responsible for putting the dots on every one of those dominoes, and that’s not our job. We are charged this evening with what we are requested to do, to put amendments into the PCD, so that anything we do on the second and third applications comports with the then re-drafted PCD. That may happen, but he does not think this is the proper way to do that. This is a re-do of the philosophy and goals of what the Commission put into place when

they drafted the PCD. To put all that in place with the applicant's pen is not the way to do this, especially considering the amount of public input that went into the original writing. It was a collective work product of those who work and pay taxes in this town. That's the way to go forward on this, and the motion to deny should be supported.

Dr. Autuori says that if Mr. Katz is speaking about the applicant's proposal and language, he has no argument, except that he will not support the motion to deny.

Mr. Walsh says many of Mr. Katz's points are valid, which is why he supported the motion the first time around. But we keep reading and re-reading the PCD, and whether we like it or not we are charged with looking at the document. We look at it frequently, and we have made changes to the document at the request of applicants on numerous occasions. He thinks it would be short-sighted not to take this evening's discussion one step farther, and to listen and discuss alterations and changes to the PCD that might meet this Commission's approval. If the changes do not gain approval, the amendment will not succeed. But he thinks we owe it to ourselves and to the Town to listen to possible changes to the PCD this evening.

Mrs. Willis asks if it would not be better to do that on our own, and not in concert with the idea of solving a problem that we hope is going to be solved. It is a far more serious and sweeping change, and it's not a simple fix. The repercussions are vast – to the center of town, and to the things that make this town so special, in terms of traffic, et cetera. She doesn't think it is an easy matter to solve, and she is afraid that they will come up with something that they hope will solve a lawsuit and it's not going to work, and you will have opened a massive can of worms for the rest of the town. And somehow you will encourage the kind of development that you do not want. We don't want something that continues sprawl, and that's exactly what she is afraid they are going to do.

Mr. Katz says he feels compelled to introduce something that he hoped he did not have to introduce, but it is Germane to where the Commission thinks it will be able to go, for those who think they will vote against the motion, who believe that the vote will enable them to craft something that might more closely meet the majority opinion about what could be done to the PCD. If the motion on the table is defeated, and the Commission is in discussion about what could be done to modify the PCD to accommodate the next two steps, he would then ask by motion on the table, under Sec. 8-23 of the statutes, to find out whether or not a majority of the Commissioners felt that the proposed amendment was significant. It's hard to imagine that the preponderance of those at the table would think that anything done to the PCD would so change it as to allow developments of this nature outside of the center of town, that we wouldn't consent that this is significant. If the Commission voted that the change was significant, because the legislative body of the town is the town meeting, that proposal would not be in our hands. It would have to be referred to the Board of Selectmen, who could schedule a public hearing, but would have to schedule a Town meeting to vote that proposal up or down. If the proposal is voted down at Town Meeting, it would come back to the Commission table and would need a 2/3 vote in order to over-ride that turn-down. For those who oppose Mr. Katz's motion, he says the shortest route to the goal to revise language in the PCD and adopt a new

regulation might be to vote in favor of the denial, forcing the applicant to do his due diligence and bring another proposal to the table.

The Chairman says that since Mr. Katz brought up the discussion they (the Chairman and Vice Chairman) had with land use counsel and the Planner, she explains that the language in 8-23 is very broad as it pertains to the Commission's ability to modify the Plan, and they have broad discretion. There are no limits to the amount of modification that can be made. However, the stipulation is that if there is a monumental change to the goals and objectives of the Plan, not to the language being proposed, but to the goals and objectives of the Plan, then the Commission might vote on whether or not the significance was such that it needed to be sent forward to the Board of Selectmen. It is the Commission's determination as to significance, and the Commission's determination as to whether it gets sent forward. It's not just a matter of taking, for example, the applicant's language, if none of the words were the same but the goal and intent was not altered significantly, that's not considered a significant change. The significant change is to the impact to the PCD as to its goals and objectives.

Dr. Autuori asks to clarify that we are talking about a change in the goals and objectives of our Plan, not in the goals and objectives by the applicant. The Chairman confirms. He believes that the language he is proposing is totally consistent with the goals and objectives of the Plan. The Chairman asks Dr. Autuori to read his statement, since the motion is on the table and seconded, and this might give the Commission the opportunity to consider different language. The Commission agrees by consensus.

Dr. Autuori reads his proposal to change the applicant's language to the two paragraphs, one to the locational criteria and the other to the size issue. As to the locational criteria, he reads: "In order to preserve significant open space that will protect critical natural resources, to enhance the tax base in a revenue-positive manner and to provide for the housing needs of our aging population, allow larger developments to be located in areas that may not satisfy all the locational criteria relative to shopping, community facilities and public transportation, with appropriate safeguards to protect public health and safety and neighborhood character."

The second paragraph, relating to the size proposal, is as follows: "In order to preserve significant open space that will protect critical natural resources, to enhance the tax base in a revenue-positive manner and to provide for the housing needs of our aging population, allow larger developments with appropriate safeguards to protect public health and safety and neighborhood character." For each of the proposals he has alternative wording, but he says if the Commission considers the Preface to the PCD, it basically says that conservation comes first. The protection of critical natural resources has got to be our first priority. What this does is to make it very clear that the main reason to make this amendment is to preserve significant open space that will protect critical natural resources, and it specifically makes reference to enhancing the tax base, and it talks about an aging population, in that order. That's what he would propose, and would make it a motion if Mr. Katz's motion fails.

Mr. Katz asks Dr. Autuori if it his contention, that to revise the Plan as he mentioned, does not significantly change the “policies and goals” (the statutory language) of this PCD? Dr. Autuori says it does not, because it puts the preservation of natural resources in the hierarchical position where they exist at the very outset of the Plan. Mr. Katz asks him, What about the size of large developments that are not located near the center of town? What about the policy and goal of the size developments that are sewer-avoidance? What about the size and intensity of a development that requires water from a water company that says the project shouldn’t be built? Dr. Autuori says those are things that would have to be looked at individually. He is not sure that the way Mr. Katz is presenting them, they are necessarily “goals.” In the main, Dr. Autuori says his proposal is not inconsistent with the goals and objectives of the Plan, considering that the Plan is an evolving document.

Mr. Walsh says that a Pandora’s box has been opened up. He says Dr. Autuori’s language was an excellent attempt to try to modify what the applicant has proposed, but the thing that was obvious for him and that he would have a very difficult time supporting, is the claim that it addresses the housing needs of our aging population. He doesn’t think that this application does that. He doesn’t think the economist spoke to addressing our aging population. He certainly thought it might help out 10 or 12 communities surrounding us, but he never testified that it would help our aging population. Mr. Walsh still thinks, and the main reason why he voted against the change as it was drafted, was because as Dr. Gelfman so eloquently pointed out, the 800-pound gorilla was still in the room. And the changes that Dr. Autuori put forth do not address the gorilla, and they don’t address the fact that the Plan that’s submitted by the applicant, all three phases, the PCD, the zone, and regulation, aren’t an attempt to address our aging housing needs.

Dr. Autuori agrees that the types of housing that the applicant has proposed do not address our aging population. But this proposal would open the door to revisiting the regulation and adjusting that. He also has ideas of how to address the regulation, to change the housing configuration, possibly the bedrooms, etc. In other words, it’s all open for discussion. This proposal doesn’t say that therefore we must have a lower density, or environmentally friendly \$800,000 houses. It just says if we make this change, we can then proceed, and we have an opinion that we can in fact modify the regulation. It may be that when we are done, we’ll have a regulation that will meet the needs of our aging population. And then the essential question is, will the applicant go for it, or are they going to say no? He is doing this because he wants to come up with something that meets Ridgefield’s needs. This is step one. If Mr. Katz’s motion goes down, and some reiteration of this proposal gets passed, then we go on to the regulation.

Mr. Katz, to back up Mr. Walsh, quotes from the Fiscal Impact Statement done by Dr. Klepper-Smith, “A proposed residential development will add 788 new residents in a 345 age-restricted townhouses.” That’s their conclusion. It doesn’t say anything about doing anything for Ridgefield. And the pricing tells the story. He says he also has a re-draft of the regulation as a fall-back position, but asks why the Commission is considering this? For what other applicant would they become their hired hand? This is something the applicant knows how to do now, because we have tutored the applicant over weeks of

testimony, public hearing, public input, discussion at the table. The applicant has been tutored in the way of the world in Ridgefield, and if he doesn't get it, it's not our fault. And the place to start rejuvenating the "get-it" factor is upstairs with our professional planner.

Dr. Autuori says he just has a different perception from Mr. Katz about what they could or couldn't do, should or shouldn't do. He doesn't mind doing some re-working. If the applicant would come with exactly what we want, that would be fine. But he doesn't know that would happen. This is not a hands-off Commission and sometimes we do re-work proposals for the applicant. But this is a crucial issue for the whole town. And for that reason, even if he were normally unwilling to make specific suggestions and re-work specific regulations, in this particular instance he is willing to work to amend this.

Mr. Katz addresses Mr. Walsh's remark about previous modifications for applicants to the PCD – they have done that. But those modifications haven't risen to the level where any of the Commissioners have felt the need to bring to the table the concept of whether or not those are significant changes in policies and goals to the PCD. That's the issue to which 8-23 speaks in several sections, most notable among them f, g and h. Section f is the one that is mandated, if the Commission were to vote that the changes to the goals and policies are significant changes. Moreover, he doesn't mind tweaking the regulation, but this is a total re-do. The Commission could sit for hours to debate this, and take up staff and Commission time that would take away from other applicants who come to this table with legitimate business. Re-writing an applicant's presentation from stem to stern is not the purview of this Commission. We shouldn't be asked to do it, and he thinks the Commission would be neglectful and renegade to be in that position. If we do it for one, then fairness suggests that we can do it for anyone, and it means that all anyone has to do is bring an application to the table and we will re-write it for them, and how foolish is that? This thing should go down, and let the applicant take the good will and good efforts and recognition that this is not going to be a pea-patch forever, and go home and come back with good applications in that mode.

The Chairman asks if there is any more to add? Mr. Walsh asks Mr. Katz if he has a re-write for the PCD, and Mr. Katz says no, he has only suggested changes if the first motion fails and they are in a position to be making changes to the proposed regulation. The Chairman says she drafted some language for amendments to the PCD, for the two paragraphs presented by the applicant. She added after the word "transportation" in the section on locational criteria the following: "...are within proposed or existing sewer districts of the Town of Ridgefield," and to the next paragraph, after the word "development," she added the same. This is within the Plan's language, not to extend existing sewer districts, which is within the stated goals of the Plan. This property has been shown since 1982 to be sewered, it is therefore in harmony with the goals and objectives of the Plan. She says, had they gotten to the point of discussing other language, this is what she would have proposed.

The Chairman asks if the Commission is ready to vote? The motion to deny has been made and seconded and there has been plenty of discussion. Hearing no objection, she called for the vote.

Mr. Katz, Dr. Gelfman, Mrs. Willis, Mr. Slavin and Mr. Walsh were in favor of the motion to deny. Mr. McChesney, Dr. Autuori, Mr. Fossi and Chairman Mucchetti voted against. The motion passed, 5-4.

The Chairman states that the other two applications have to be dispensed with. There was some discussion about the prior votes and motions.

Dr. Autuori motioned to deny the proposal to amend the regulations because the application to adopt the amendments to the PCD had been denied, and the new regulations would not be consistent with the Plan. The motion was seconded by Mr. Walsh. The motion passed by a vote of 9-0.

The Chairman called for a vote on the application to rezone the property from CDD to ARH. Mr. Slavin motioned, seconded by Mrs. Willis, to deny the zone change because the proposed regulation that would have created the zone was denied. The motion passed by a vote of 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/Appl.: 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. Draft Resolution of Denial requested 2/21/06. 65-day action period ends 4/20/06. For action.*

The Chairman noted that a draft resolution of denial had been prepared as requested by motion, second and vote on February 21st, and it was distributed to the Commission at the table. She asked for corrections before calling a vote.

Mr. Katz asked that the last sentence in condition #2 read as follows: “ ... the Commission finds these precautions to a degree that suggests the health of residents, especially children, cannot with certainty be protected.” And on #4, the words “expertise is in...” should read, “Commissioner Slavin, who has extensive expertise in...” (leave out “is”).

The Chairman called the vote on the resolution, and it was adopted unanimously, by a vote of 9-0.

3. **#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. Tabled 2/21/06. 65-day action period ends 4/13/06. For action. (tentative- pending receipt of legal opinion).*

The Chairman referenced the opinion letter received from land use counsel Fran Collins, distributed to the Commission. She asked the Planner to speak to the content of the letter.

The Planner referred to the letter of request for opinion, where the Commission asked questions regarding to the filing of the subdivision map prior to the house being removed from Lots 3 and 4 (it straddles the property line). The Planner suggested reading Attorney Collins' letter into the record. Mr. Walsh asked who owned lots 3 and 4, and the Planner answered that the owner is Richard Mele.

The letter of Attorney Collins dated March 6th was read into the record. The attorney addressed the owner's request to amend condition #3 of the subdivision approval. The owner had requested that the condition, which requires removal of the house before the subdivision map is filed, be modified to require removal before any permits, except a demolition permit, are issued on the three unimproved lots.

The first question in the Planner's letter asked the attorney if the filing of the map would create a zoning violation if the house were not removed, and what would be the effect if the house is subsequently not demolished? Attorney Collins states that the Commission has authority to modify the condition in the subdivision approval if they choose. A zoning violation would occur if the lots were sold separately, and the concern can be disposed of if the Commission requires that the house be demolished before any building or zoning permits are issued on any of the lots, and secondly, before any separate use of lots 3 or 4. If the house was not demolished, the lots would remain together for zoning compliance purposes.

The second question addressed the Commission's long-standing policy to require the removal of non-conformities prior to stamping maps "Approved for Filing." The Commission has supported the office and staff in the enforcement of this stipulation because notes such as "to be razed" or "to be removed" on non-compliant structures had been ignored on numerous, previous occasions. The attorney notes that the Commission, under 8-26 of the zoning regulations, can only approve subdivisions that comply with the zoning regulations, and the revised condition could prevent a zoning violation on either lots 3 or 4. Mr. Collins notes that the proposed map has a note that the house is "to be razed." He is aware that other communities have allowed this type of note on filed maps as suggested, for structures that are eventually going to be removed.

Mr. Collins then addresses the question about 8-12a, pertaining to the "three-year rule" in the statutes which says a zoning violation for setbacks becomes "compliant" after three years if no action is taken. He suggests that a condition could be imposed to put a time limit on the removal of the house, no later than three years from the date of the approval of the subdivision.

The final question asked the attorney if a special permit application could be filed for any of the lots [as required under the SD R-20 zone] prior to the filing of the subdivision map. The answer was no, because the subdivision lots are not created until the map is filed, and the special permit is specific to the lot. An affidavit from the applicant for the removal of the house would not be sufficient; the Commission can only respond to the request by modifying the condition of approval.

The Planner notes that the letter is bit confusing as to the best way to proceed.

Mr. Katz says the letter indicates if we take certain procedural steps, by condition, we can try to get out of this conundrum. But if we do that, although the intent is very legitimate, born of human sympathy, it is probably a mistake to do this. He feels that it creates, going forward, issues that we will regret we set into motion. It doesn't seem that we can charge the Zoning Enforcement Officer with saying to applicants, "That was then, this is now," and "Yes, that's the way we used to do it, but we're not going to do now," the "it" being setting up a circumstance where the Commission has been brought an application that speaks to a certain lot configuration by the approval, but they don't exist until the map is filed. The situation here is that we have a house sitting on two different lots. He thinks we are opening the door for a great many instances where we are going to be hung by our own petard. And as cruel as it may sound, he recalls that he was the one who asked the Commission to try to prevent having one of the occupants of this proposed subdivision forced to vacate his home in advance of his own timetable. He thinks we have explored the issue at some considerable length, and the letter is the document of final exploration. It seems to him that, while the Commission does have a loophole here presented by counsel that could be used to achieve his [Mr. Katz's] goal of not having the occupant leave his home, it's more cumbersome that we should ask the town to live with it, or this Commission because it's precedent-setting whether we like it or not. Even though he was the instigator of exploring this further, he now thinks it is a bad idea, well-explored, and should be rejected.

Dr. Autuori says that when it comes to a conundrum for the Commission to set an impossible precedent, he is not sure how many houses straddle lot lines in the Town of Ridgefield. But if it's a choice of letting a man live in house for another three years, and using some loopholes to do it, or throwing him out, he feels that this conundrum is talking about a human being who is living in a house. He does not see where the administrative, Commission, precedent-setting problems, small that they may be, outweigh the human need of letting the man stay in his house. He cannot support denial of the request, as long as we have a way to allow him to stay there, and we condition it multiple ways as noted in Mr. Collins' letter.

Dr. Gelfman says to be even-handed, he supports Dr. Autuori's comment.

Mr. Fossi would like to hear what the Planner has to say. Mr. Walsh asks what happens to lots 1 and 2.

The Planner reads the attorney's letter, where he says, "While a zoning violation would occur if lots 3 and 4 were sold separately, that concern could be disposed of by modifying the condition to require the removal of the house before any building or zoning permits were issued on any of the lots." The Planner thinks what Mr. Collins is saying, because the condition is being imposed on the entire subdivision, you would in fact be tying up all of the lots within the subdivision under this condition. Mr. Walsh asks what Mr. Coffey has to say. The Planner says that Mr. Coffey is the author of the letter, although it is under Mr. Mele's signature, and he is aware of Mr. Mele's request. The Planner notes that neither of the property owners has had a chance to see the attorney's letter because it was just received.

Mrs. Willis thinks it is important to know how Mr. Coffey feels. Mr. Katz says this is a QED. These are the kinds of things that staff will be facing for years to come. We have to remember that we are a land-use agency, we are not a people-who-use-the-land agency. And if we were, he reminds the Commission that it is the people who use the land who brought the application, one of whom resides in the house in contention. He repeats that the Commission is a land-use agency and once they get beyond that, not that they shouldn't be kind and considerate to the degree possible as they consider land-use questions, but when the Commission becomes a people-use agency it has abrogated its responsibility under statute. We don't deal in hardships, that's not the business we are in. Let's not get into it.

The Chairman feels that the Commission should not start letting people pick and choose the conditions of approval that they want to abide by. It was a very standard resolution of approval with a lot of standard language in it.

The Planner asks to address the concern of the office, and not without sympathy for the owner of the property – that is certainly somewhat of a hardship for the owner – but to condition the filing of the map with a house left on top of a property line sets a very dangerous precedent for the office to have to deal with in the future. We are receiving applications about every two weeks for First Divisions and lot-line adjustments and so forth, and routinely those applicants have to go the Zoning Board of Appeals if there is a situation similar to this. For example, they want to leave a shed too close to a property line or whatever. With the First Division recently reviewed by the Commission for approval of an accessway on North Salem Road, the office required that the existing garage for the house be removed prior to the filing of the First Division map because the structure was on top of a proposed property line. We have a problem facing someone like that at the counter, saying that they have a violation and then offering that if they promise to take it down in a couple of years, its okay to file the map. It sets a very bad precedent, and if nothing else it creates an issue that the office has to monitor, down the road, to make sure that structure really is removed when the owner promised it would be. The chicken coops left on a property on Peaceable Street are another specific example. They were not removed as promised.

Mr. McChesney asked what would happen if lots 3 and 4 were left as a single lot, and the easement for the driveway on lot 2 be left in place. At some future date the applicant

could come back to divide the lot. The Planner notes that it would prevent him from seeking the special permits for lots 3 and 4. The map has to be filed in order to apply for the special permits. If the goal of the property owner is to go to the next step to get the special permit, then the lots must be created. The house would still have to be gone when the lot is divided.

Mr. Walsh references the applicant's letter, and notes that the property owner wants to stay in his house throughout the permitting process. It's in the letter. Even in Mr. McChesney's scenario, the owner would still have to get out of the house before the special permits are issued.

Mr. McChesney says that is Mr. Mele's main objective is to stay on the property, because he has no place to go, then if he moves out of state or leaves the property to an estate, the property could then be subdivided into two lots and go through the permitting process then. He has that alternative.

Mr. Walsh reads from Mr. Mele's letter, "We're working with a builder in the process of developing this three-lot subdivision as rapidly as possible. As previously mentioned, site plan approval must be obtained. This takes time and builders do not close on properties until approvals are granted." Mr. McChesney realizes that, but maybe the owner never thought about living on the lot, and he could wait while still giving Mr. Coffey easement for access to Lot 2, and then divide his property later.

Mr. Fossi asks how long the applicant has to file the subdivision map? The Planner states that there is a 90-day period with two 90-day extensions that can be granted under the statute. The date for this subdivision is some time in November, with the extensions. He asks if they came in for site approvals before the map was filed, couldn't the approval be pending the map being filed? The Planner says that is the problem – the special permit, under the SD-R20 zone, is specific to the lot, and the lot has to be created first as noted in Mr. Collins' letter. There's nothing to prevent the owner from selling the house right now, and whoever buys it could take the house down so the map could be filed, but he is saying that the buyer wants all approvals in place before the sale.

The Chairman asks what should be done. The Planner suggests a motion and a vote because it was a request for an amendment to a condition of the approval of the subdivision. If you decided in favor of the request, then language for the revised condition would have to be drafted. The Chairman reads condition #3, subject of the request for waiver or modification: "The existing house located on the Richard F. Mele property, lots 3 and 4 in the subdivision plan, must be removed prior to the filing of the subdivision map in the office of the Town Clerk."

Mr. Katz motions, with sincere regret, that the Commission deny the request for modification based on the discussion at the table of this date. Mr. Fossi seconds the motion.

Dr. Autuori asks if the condition could be modified to say that the house has to be removed prior to the sale of either lot that the house straddles, prior to the conveyance of transfer. It would allow him to stay there, and nothing could be done. Mr. Katz says the essence of the problem does not have to do with the mercantile intent of the subdivider, but the fact that creating two lots creates a situation where the house will be sitting on two lots, which violates every precept of zoning we've got. It isn't the sale that triggers the problem, it's the creation of the lots. Dr. Autuori feels that the sale of the lots could trigger the removal of the house. If either lot is ever sold, then the house has to be removed. Mr. Walsh points out that the Commission would have created non-conforming lots by the filing of the map with the house in place.

Mr. McChesney re-states his earlier position, that the owner does not have to subdivide now and could do it later. The Planner can relay that message verbally to the property owner.

The Chairman called the vote. The motion to deny the request passed, 8-1. Dr. Autuori is opposed.

There was some discussion about the letter and informing Mr. Mele that he could come back at a later time to divide the lot. It was noted that the drainage and access plans involve the Mele property, and there would be a need to modify the subdivision map and plans to require certain improvements for access to lot 2 and the eventual development of lots 3 and 4. There may be a need to modify the approval, if 3 and 4 were not divided at this time, and it might change the entire subdivision. The Chairman and Mr. Walsh agree that this proposal appears to be a whole new application, for three lots instead of four. The whole plan would have to be re-done, which would defeat the purpose of the two owners coming together in the first place. It is more complicated than Mr. McChesney thought.

4. **#2005-159-REV:** Request to modify approved Revision to the Special Permit, Item #2, property located at **387 Main Street**, Addressi Jewelers, in the CBD zone. Owner: Wayne A. Addressi. *Received and tabled 2/21/06. 65-day action period ends 4/27/06. For action.*

The Chairman notes that this item was discussed earlier in the day with counsel Fran Collins and she says that, unlike item #3, just discussed by the Commission, this is a special permit and the request to modify the conditions of approval is a completely different matter. The Commission cannot waive or vary its own zoning regulations. This is a situation where there was known to be an existing zoning violation, and one of the conditions made was that the zoning violation had to be corrected before a zoning permit for the vestibule at the back of the building could be issued.

The Planner noted that the applicant was in the room, and he came forward to address the Commission about his request.

Mr. Addressi distributed copies of the Ridgefield Magazine, photographs of the building, and letters about the awnings from his tenants. The issue of the zoning violation has to do

with signage on the awnings. He states that in 2002 he went to the Zoning Board of Appeals for a variance and subsequently withdrew the application when it became evident that the appeal would not be granted. There was some confusion as to whether the ZBA could review this because of disagreement about whether the signs were advertising or information. He then talked to the Chamber of Commerce, and to former Planner, Oswald Inglese, and finally the current Planner about amending the zoning regulations for signs in general, for sandwich boards, kiosks and the like.

The Chairman asked Mr. Addessi why the awnings were not replaced or changed to remedy the violation? If he went to the ZBA and received no variance, and talked to two planners and the regulations were not changed, why not fix the awnings? Mr. Addessi said he thought the sign regulations were under discussion and might be modified. The Chairman agreed, but under the current regulations the signs on the awnings are in violation. Mr. Addessi says that signs are critically important to the businesses. The letters on the signage that help identify products are very effective. In the past there were other awnings, but in the upgrade to the store fronts the signs were added. There were signs in the windows of the stores prior to that, but now the lettering is on the awnings. These are very effective signs, and he gives an example of the Rolex sign that brought in a customer who purchased almost \$100,000 in Rolex products.

The Planner interrupts and reminds the applicant that this Commission cannot vary the regulations, so the issue is not the signs and whether the lettering should stay there, the issue is whether the Commission wants to allow the revision for construction of the vestibule when there is a violation on the property. Mr. Addessi says he wanted to clarify the history of why the signs are there. The Chairman says it was explained very well in his letter. She noticed signs on the building above the awnings, so it seems that the signs on the building address the concern about what is behind the glass in the window. Mr. Addessi says it does not. She points out again that there is a zoning violation.

Mrs. Willis says his request would set a horrible precedent for the Commission. She points out that they have been talking about precedent all night long, and this is a terrible request for the Commission to approve. Mr. Addessi says this has taken such a long time. He says that since 2002 the businesses have tried to address the Commission about some of their problems downtown and they have gotten nowhere. And that's why he brought in the article called "Out of Inc." in the Ridgefield Magazine. It talks about corporate business in Ridgefield. But the Chairman points out that what is in front of the Commission tonight is a zoning violation that he wants waived so that he can build his vestibule. Mr. Addessi agrees. The Chairman says it is counsel's opinion that the Commission cannot waive its own regulations. The easiest solution is for the applicant to replace the awnings, and then the zoning violation is remedied and a permit for the vestibule can be issued.

Mr. Walsh asks if the awnings are in violation of just what's written on them? The Planner states that awnings do not have building permits, according to the Building Official. A building permit is required, although the Building Department has never issued a violation for lack of permit. Mr. Fossi asks if he were to obtain a building permit

for the awnings, would the signs still be in violation? The Planner says yes, the concern of the Planning and Zoning Department is only with the signage. The awnings could stay, but the advertising has to be removed. The zoning violation is the signage only.

The Planner reminds the Commission of the Chairman's opening remarks, and how the situation relates back to the previous application in item #3, that the dilemma for the Commission is the request to waive or vary their own regulations. They cannot do that. The Commission is at a loss to be able to help the applicant, in the absence of a zoning variance from the ZBA permitting the signs to remain. Mr. Addressi says that when he went to the ZBA, they referred him to the Zoning Enforcement Officer to clarify the violation, and he got nowhere. He says the ZBA was confused as to what jurisdiction this falls under. Is it information or advertising? The Planner says that the content of the sign is not regulated in the zoning regulations, so she is not sure what the confusion was. For example, if someone is just changing the lettering on a sign and not the sign itself, no zoning permit is required.

Mr. Addressi quotes ZBA Chairman Charlie Creamer in minutes of a meeting of the ZBA, where he says, "The powers granted to the towns under the CGS [Connecticut General Statutes] with regard to signs are limited and should be strictly construed." He noted that the CGS referred to advertising signs and questions the difference between advertising signs and regular identification signs. That's when he said that the procedure might be to appeal to the Zoning Enforcement Officer. The Planner notes that Mr. Creamer is of singular opinion on the ZBA in his interpretation of the CGS on the matter of signs. The Chairman states that Mr. Creamer has been consistent in that opinion. Mr. Katz notes that Mr. Creamer's statement is not a legal opinion, and the opinion as a layman runs counter to the legal opinion.

Mr. Katz says that Mr. Addressi's argument is falling on its face to a degree, in that, if you carried it to the extreme there would be no limit to the number of signs a retail business might post to advertise its specific products. That would be absurd. If this Commission permits this in one instance for Rolex, that's what the Commission has opened the door to. No one would go to Adessi's for a chain saw, nor would they go to Ridgfield Hardware for a Rolex.

The Planner reminds the Commission that the issue is not what the sign says, but the area of the signage. It is advertising, and it counts toward the total area of signs permitted on the building. The area is exceeded. Mr. Addressi is confused about how businesses in town can do things to help themselves, when there is no tool for him to go to ZBA, to have this approved. The Planner states that his tool is the ZBA, and if he is not granted a variance, then he has to comply with what the regulations are in effect. He is correct that the Commission is looking to change the regulations eventually, but those regulations may not be adopted until the end of the year. There has existed, for at least the last few years, a violation of the signs currently on the building. Mr. Addressi asks if there can be a special exception? The Planner says no, not from this Board. The remedy at this point is to obtain a variance from the ZBA, or to remove the signs from the awnings.

Dr. Gelfman asks if the total area of signs for the building exceeds the regulations? The Planner says yes, the linear feet of the whole building is considered as one unit in the zoning regulations, and all of the signs on the building count toward the total sign area permitted. If the regulations are changed, it is possible that the signs might become compliant, but that is not the case at this time. The Planner explains that the lettering is what's counted, not the whole awning. Mr. Addressi says they did not count the side of the building in their calculations, so that might help. But he points to the reduction of allowed sign area when the regulations were changed in 1988. Sign area was reduced by 70%, as he remembers.

The Chairman points out that there are some avenues that the applicant can follow. Violations have to be addressed. Dr. Gelfman thinks the removal of the white lettering would decrease the aesthetic appeal of the building. The Planner restates that the issue is too many signs on the building, and the Commission can't vary their own regulations. The lettering is the issue.

Mr. Addressi says that since this has gone on since 2002, he doesn't know what to say. He knows the Commission has its rules, policies and ordinances, but he is frustrated, and all the businesses are frustrated. To do business in this town is getting more and more difficult. The Chairman notes that this is not a platform for debate; what's in front of the Commission is a zoning violation. The applicant has had many venues and has taken the opportunity to express his views, and she thinks he needs to decide what to do here. Dr. Autuori notes that if he reports his appearance in front of the Commission to the ZBA, it might make a difference in his next attempt for a variance.

Based on the discussion, the consensus of the Commission is to deny the applicant's request for a change in the revision to special permit.

NEW ITEMS

- 5. Pursuant to Sec. 8-7d. (c) of the C.G.S., the following application is considered received 2/28/06. #2006-015-A: Proposed Amendment to Section 334.0 C2 Exterior Lighting Standards of the Ridgefield Zoning Regulations. Applicant: Ridgefield Professional Office Complex, LLC. Auth. Agent: Robert R. Jewell, Esq. 65 days to commence public hearing ends 5/4/06. Received 2/28/06. Acknowledge 2/28/06 receipt and schedule public hearing.**

The Chairman points out that items 5 and 6 will be received and scheduled separately, but will probably be discussed jointly. She asked the Commission to acknowledge receipt and to schedule a public hearing. Dr. Autuori made the motion, seconded by Mr. Slavin.

Mr. Katz notes, and the Planner confirms, that the application for regulation amendment has to be considered prior to granting any revision to the special permit under the new regulation.

The motion to receive passed by a vote of 9-0, with May 2, 2006 as the date for the public hearing. Mr. McChesney pointed out that a lot of work is being done on the site already, and the center of the existing building has been removed.

6. **#2006-018-REV:** request for revision to Special Permit to allow fewer lighting fixtures on premises located at **901 Ethan Allen Highway** in the CMDD zone. Owner/Appl.: Ridgefield Professional Office Complex, LLC. Auth. Agent: Donnelly, McNamara & Gustafson, P.C. *65-day action period ends 5/11/06. For receipt and schedule walk if necessary.*

The Chairman asks for receipt and scheduling a hearing on this item, relating to item #5. Mr. Katz notes that it is not a request for fewer lights, but taller lights, some as high as 25 feet in height. It is not a modification to allow fewer standards of what we have, but to allow the regulation to be changed.

Mrs. Willis questions the planting plan that was submitted, because it has Bradford Pears that are unsuitable for this site. The Planner suggests that the planting plan be discussed when the applicant is before the Commission. The planting is typically shown on the same plan as the lighting. It was submitted for the purpose of the lighting.

Dr. Autuori motioned, seconded by Mr. McChesney, to acknowledge receipt and to schedule a public hearing for May 2nd. Mr. Katz stated that the item does not have to have a public hearing. The Planner agreed because it is a revision, but the Commission has the option to schedule a hearing. The proposed revision is the specific example of how the regulations would be implemented, and it might make sense to hold a concurrent hearing. More importantly, since the application is for taller lights and there was concern expressed by neighbors specifically about lights during the initial hearing, it might be appropriate to open this proposal for public comment. It would be expedient for the Commission to look at both applications at once, and would benefit the public who might be interested. The regulation would have to be adopted and effective prior to granting any revision to the special permit.

Mr. Katz feels that it is prejudicial to our consideration of an amendment to the regulations, to bring in an application which is by its nature contentious. Whether or not the town sees in its wisdom to have a lighting standard that is different from the one we now have, to the degree we're requested to have some discretion in the height that we permit, stands alone. But to confuse that with an application is a separate issue. If we have a regulation in place, then a request for a revision to that law stands separate from the fact that there is an application for a revision to a specific plan.

The Chairman says the applicant is the same for both items in this case. There might be a timeline issue in this case, to set public hearings and to deal with both applications. But she agrees that item #5 has to be decided first.

Mr. Katz says that his concern is that the first issue applies town-wide, and the second issue is sight-specific. The Planner points out that the Commission frequently considers

proposed regulations changes in the presence of a specific example of how the regulation would be applied. It is more difficult to make such a change in the absence of knowing how it would be implemented. The Planner agrees wholeheartedly that the issues have to be separated, and the Commission needs to understand that the regulation could be applied to places like Stop & Shop, the High School, and other locations throughout the town. They would have to look at it carefully, but having a specific example is helpful.

Dr. Autuori doesn't see where the application is going to be all that contentious. Mr. Katz withdraws his objection based on the Planner's comment. Mr. McChesney says it will be awkward if there are sequential hearings for the two applications on the same night, and it would be better to combine them. Mr. Walsh asks if the applicant can withdraw the second application. The Planner says there will be no problem with the timelines if they are heard concurrently. Only the decisions would have to be separated, and if the regulation is adopted, it would have to be "in effect" prior to voting on the revision to the special permit. It makes sense to combine the hearings to hear the regulation in conjunction with a specific example.

Mrs. Willis asks if there are other locations nearby where they might see examples of the type and height of lights that are being proposed? The Planner will contact the lighting designer to see if examples could be found in Danbury or nearby. The Commissioners agree that other sites should be observed at night and not in daylight. The Chairman asks if it is necessary to walk the site. The consensus, for the moment, is that looking at examples on other sites would be more beneficial at this time. Mrs. Willis wants to understand the difference between the 14-foot height and the 25-foot height in terms of the circles of light generated. The Planner says the plan has been designed by a lighting expert, and the questions would be appropriate at the hearing.

The motion to receive and schedule a hearing for May 2, 2006 passed by a vote of 9-0.

7. **#2003-005-SP:** request for **courtesy review** of proposed plans and location of exhibit at **Aldrich Museum of Contemporary Arts**, 258 Main Street, Harry Philbrick, Director. *Schedule walk if necessary.*

The Chairman referenced the letter from the Aldrich Museum for courtesy review of the proposed art exhibit on the site, a temporary building. They are anticipating construction time of 6 weeks. She asked the Planner for comment.

The Planner reminded the Commission that the original museum plan was a special permit, and there was a certain amount of concern about the effect of activities there on the neighborhood with noise and light. The handout with the letter shows photographs of what is being proposed – there is an actual building that is being circulated to various museums around the country, and it is part of the exhibit as well as the art that is contained within it. It is temporary, and it is the opinion of the Planner and the Zoning Enforcement Officer that it does not require a revision to the special permit. The staff is looking to the Commission to confirm that position, in their understanding of what is being proposed. The building is large and very visible, and requires permits for fire and

safety codes because it is open to the public. The staff felt that it was worthy of at least a courtesy review by the Commission, with a request to support the staff's interpretation that no revision to the special permit is required.

Mr. Katz motions that there is no action required, seconded by Mr. McChesney. The Planner points out the proposed location, and notes that it will be totally dismantled when the exhibit period is done. It is being presented in conjunction with their spring gala. It's no different than the baby sculpture that was temporarily on the front lawn.

The Chairman asks what a "shallow foundation" means. Mr. Fossi explains that it does not require serious digging because there is no frost during the time that it will be there, but it is required for support. The Chairman is just trying to clarify for the record the details of what is being asked.

The Planner confirms that she and the ZEO have met with the Building Department and the Fire Marshal and so forth, and the P&Z staff is asking the Commission to support their position that no revision to the special permit is required for this project. The description of what is proposed, and the statement by the museum director that it is a temporary piece of artwork on the property, support the position that it is not a revision to the special permit. It does not require the Commission's approval, only consensus that staff is interpreting the zoning regulations correctly.

The Chairman called the vote on Mr. Katz's motion that no further action is required by the Commission, and to support the interpretation of the regulations by staff. The motion passed, 9-0.

COMMISSION WALKS

There were no new walks added to the schedule.

REQUESTS FOR BOND RELEASES/REDUCTION

#2004-127-S-PR: There was a request to release the \$3,800 bond posted for installation of boundary and open space markers for the Buchsbaum subdivision on **Bridle Trail and Spring Valley Roads**. The Planner stated that the new Wetlands and Conservation Inspector, Aimee Pardee, has inspected the site and prepared a memorandum with her findings. She encouraged the Commission to read the memo, and informed them that Aimee is doing a great job and following up her inspections with paperwork to support the records. The recommendation is to release the full bond, as Ms. Pardee found the markers to be properly installed.

Dr. Autuori expressed concern about pipes sticking up out of the ground. The Planner stated that she has been working with the surveyors to start using plastic posts that could be pounded into the ground next to the metal stakes. There is a liability and safety issue with the pipes sticking out of the ground. The posts will be brown plastic, and the Conservation Commission is purchasing stickers that can be applied to the posts.

Dr. Autuori motioned, seconded by Mr. Slavin, to release the bond as requested. The motion passed, 9-0.

PUBLIC HEARINGS

The Chairman informed the Commission that there is a sold-out performance for a concert at the Ridgefield Playhouse on **March 21, 2006**, and asked if anyone wanted to start the meeting at 7 p.m. on that night to avoid the crowds and to find parking. The consensus was to leave the meeting time as scheduled.

CORRESPONDENCE

The Chairman noted various correspondence distributed in the packet.

MINUTES

There were various small corrections made the Chairman, Mrs. Willis and Mr. Slavin to the February 14th minutes. The Chairman pointed out that the item dealing with 545 Ridgebury Road should reflect that Mr. Katz recused himself from the vote. Dr. Autuori brought up the issue of noise from a loudspeaker that was brought up by a neighbor. The Chair pointed out that since the neighbor was sitting at the table and had recused himself from the discussion on this application, the comments were inappropriate. The vote was 7-1-1 because Mr. Katz recused, and Dr. Autuori opposed.

Mrs. Willis motioned, seconded by Mr. Slavin, to approve the minutes of February 14th as amended. The motion passed, 9-0.

There were various small corrections made by the Chairman to the February 21st minutes. Mr. McChesney motioned, seconded by Mr. Katz, to approve the minutes as amended. The motion passed, 9-0.

Prior to the dismissal of the meeting, the Chairman recognized Mary D'Addario, a member of the public, who said that she and her husband Dom wanted the Commission to know how much they appreciate all that the Commission does for the town. Secondly, she treated the Commission to a recitation of a poem remembered from her childhood. It is called, "The Village Smithy," by Henry Wadsworth Longfellow, and she presented it from memory. The Commission was appreciative of her thoughts, and thanked her for the honor of sharing the special poem.

Hearing no further discussion, the Chairman adjourned the meeting at 11:30 p.m.

Respectfully submitted,

Betty Brosius
Director of Planning