

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD

April 6, 2010

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

Also Present: Betty Brosius, Inland Wetlands Agent

A public hearing was held prior to the meeting.

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

PENDING ITEMS

1. **#2010-020-PR:** Plenary Ruling application as required by Section 7.6 of the Inland Wetlands & Watercourses Regulations for the Town of Ridgefield for regulated activities within the wetlands and upland review areas for piping and reconstruction of watercourses in conjunction with the development of a single family residence on property located on **Second and Third Lanes** in the RA zone. Owner: Wayne E. Wood and The Estate of Charles F. Dean, Jr. Auth. Agent: John F. McCoy, VII, P.E. *Received 3/2/2010, walked 3/21/2010, public hearing commenced 4/6/2010 and Continued to 4/20/10.*

Chairman Mucchetti noted that the public hearing had been continued to 4/20/10, and there was no discussion.

2. **#2010-021-SR:** Summary Ruling application as required by Section 7.5 of the Inland Wetlands & Watercourses Regulations for the Town of Ridgefield to permit activity in the upland review area in conjunction with construction of a swimming pool, terrace and pavilion on property located at **39 Boulder Hill Road** in the RAA zone. Owners/Apps.: Christopher & Catherine Desmarais. Auth. Agent: Studer Design Associates, Inc. *Received 3/2/2010. 65-day action period ends 5/6/2010. Walked 3/21/2010. Discussed 3/23/2010 and tabled pending receipt of revised plan. For action.*

Chairman Mucchetti introduced Dean Pushlar, landscape architect from Studer Design Associates, representing the applicant. Mrs. Mucchetti pointed out that

revised maps and an extensive report had been received from the applicant in response to questions raised at the previous review.

Mr. Pushlar, licensed landscape architect, displayed drawings showing revisions made as a result of the discussion held on 3/23/10. The new plans show pipes for drainage and a large rain garden at the downhill side of the pool and patio, for discharge and filtering of runoff prior to infiltration into the wetlands. Mr. Pushlar also referenced his letter of April 1, 2010, addressing the concerns of the Board. Detailed information from the CTDEP on approved methods for discharge of pool water was included with the resubmission.

Chairman Mucchetti pointed out a memo from Wetlands Agent/Inspector Aimee Pardee. In the memo, she summarized revisions that had been made, and recommended approval of the plans as submitted.

Mr. Katz motioned, seconded by Mr. Chipouras, to approve the application according to the revised plans. Agent Brosius explained for the record that information received previously from the Conservation Commission included comments about wetlands that were based on insufficient information; comments were made about soils that were not actually wetland soils because the writer did not have the applicant's soils reports. Ms. Pardee has offered correction of the Conservation Commission error in her memo.

Chairman Mucchetti called for a vote on the motion to approve. The approval would be final, with standard conditions and referencing the new plans and information. The motion to approve the application passed by a vote of 9-0.

Mr. Fossi noted that it was helpful to have received the CTDEP pool regulations as part of the application.

NEW ITEMS

3. **#2008-119-PR and #2009-090-REV(IW)**: Receipt of memorandum from Land-Tech Consultants, Inc. re: **235 Wilton Road East**. Consider lifting the suspension of wetlands permit.

Chairman Mucchetti pointed out a letter and memo from Land-Tech Consultants, a report on activities at 235 Wilton Road East, stating that they are satisfied that the site has been stabilized. She said staff recommends that the permit be reinstated, provided that monitoring by Land Tech continues. Staff would also like authorization to adjust the inspection schedule, requiring fewer inspections as the work progresses.

The Agent referenced a condition in the Board's letter suspending the permit, allowing the suspension of the permit to be "lifted" upon determination that the site is stable.

Mr. Katz motioned, seconded by Dr. Autuori, to lift the suspension of the wetlands permit, to reinstate the permit, and to allow staff to adjust the schedule for the consultant's monitoring and inspection of the site as work continues. The motion passed, 8-0-1. (Dr. Gelfman was not in the room for the vote.)

BOARD WALKS

There were no site walks to be scheduled.

REQUESTS FOR BOND RELEASES/REDUCTION

- **#2006-103-SR: 20 Peaceable Street.** Letter dated March 30, 2010 from AMD Homes, LLC, request for bond release. *Agent recommends reduction from \$5,000.00 to \$2,500.00. For discussion.*

[Note: Mr. Walsh recused himself from discussion on this item.] **Chairman Mucchetti** referenced the Agent's memo and correspondence from the applicant requesting release of the \$5,000 bond posted for the work. There are also letters received from the downhill neighbor and his engineer.

Agent Brosius pointed out that the AMD Homes letter references the various approvals and sign-off dates on work completed over the past year. It is the belief of AMD Homes that they have complied with everything they need to do, and the bond should therefore be released. The Agent has explained to the developer that the Board may hold the bond until it is satisfied that the work is completed according to the plans. It is agreed that the work was completed last summer, but in the fall of 2009 there were some dead trees removed and replaced in the berm at the northern property line, and soil disturbance and settling of soil caused the berm to be disturbed. This resulted, from about September through March of 2009, in runoff from 20 Peaceable Street to 113 High Ridge to be concentrated in a gully-like flow in one area, rather than flowing evenly across the stone trench and the 25-foot break in the berm.

Repairs were made about two weeks ago, with the berm extended to the edges of the stone trench, and in significant rains since this repair was done the water appears to be flowing evenly through the stone trench and the break and the berm. There is a significant amount of water coming through the opening because of the intensity of the storms, and there is an accumulation of this water on the Egan's property. The staff memo suggests that, because of the installation of the system designed by Mr. Trinkaus and approved by the Inland Wetlands Board as the remediation and modification of the wetlands permit, it would be appropriate to release half of the bond, and no more than half of the bond. The remainder of the bond would be left in place until late June or early July, and a letter should be required at that time from the applicant's engineer, certifying that based on the repairs that were made and sufficient time being expired through the rainy season, that the system still works, that it still functions as it should, and that there is in fact, no greater increase in the rate of runoff onto the Egan property than there was at the pre-development stage.

The engineer's representation was that the plan would maintain the pre-development conditions in regard to impact on the Egan property.

Dr. Autuori does not agree that any of the bond should be released at this time. Not only does he see "eminent logic and common sense" in the letters of Mr. Egan and engineer John McCoy, taking into account the demand of the developer that the bond be released in May, it's obvious that, even though it appeared that they complied with the plan, that it didn't work. It is Mr. Egan's contention that water is coming through the berm in areas where it is not supposed to flow. There is no harm in waiting until June or July as requested by both Mr. Egan and Mr. McCoy, to allow further observation. If it is not working the bond should not be released, if it is, then we should release it.

Mr. Mische asks about the specific wording of the bond. People come to the Board all the time with plans, the Board approves the plans, the applicant does everything they said they would do, the plans sometimes don't work, then does the Board still release the bond?

Agent Brosius says the dilemma in this particular case is that the applicant's engineer is stating on the record, backed up by his professional license, that this plan is operating as he said it would. Agent Brosius said both she and Wetlands Inspector/ Agent Aimee Pardee visited the site immediately following significant rains and observed water flowing evenly across the break in the berm. When the water gets to Mr. Egan's property, there is a significant amount that collects in ponded areas, one immediately below the berm by the fence, and also over the small catch basin about 10-15 from the berm.

The dilemma is that there is still a question about how much water is supposed to be running off the 20 Peaceable Street property. Agent Brosius says none of us know exactly what was happening before the development occurred, in terms of being able to quantify the volume of water that historically drained from south to north. The Board does not have a consultant who can say definitively that a certain amount of water was running off 20 Peaceable Street before development, and therefore the current system should not allow any more than that same rate of runoff now, post-development. All the Board has is the applicant engineer's certification, and his statement that the system is working. The observation is that the water is flowing the way it should, but staff cannot quantify the amount of water that is supposed to be flowing. The neighbor's engineer (McCoy) could not necessarily quantify it either [without complete knowledge of pre-development conditions]. There is certainly a large amount of water coming to the Egan property, but there has also been significant rainfall.

The recommendation is that Mr. Trinkaus [for the applicant] certify once again, with his stamp and seal, that the installed drainage system is working in a way that does not increase the rate of runoff over pre-development conditions. If he puts his stamp and seal on that certification, and the parties want to argue about whether the system

is working or not, that engineer's certification will be meaningful. The matter will become a disagreement between one property owner and another about whether the system works.

Mr. Mische asks whether the bond is then only to ensure that the work is done. The Agent says that the bond ensures that the work is done according to the plans. The bond cannot ensure that water flows at a certain rate. The bond has covered the terms of the permit conditions for the work that was done, according to the approved plans. Mr. Mische says that we have accepted sign-off from the engineer that the system works as it was planned, when in fact it did not. The bond seems symbolic.

Mr. Fossi references a letter from Mr. Trinkaus dated May 2, 2009, stating that the system was installed as designed, and it is his "professional opinion that all the work shown on plans prepared by my office has been completed in a proper manner to address the runoff issues on the site." There is another letter dated May 4, 2009 from John McCoy, P.E. for the neighbor Mr. Egan, stating essentially the same thing. Mr. Fossi states that, since changes were made in the fall causing disturbance to the area, and those areas have now been repaired, he does not know how the Board cannot rely on a statement from a professional engineer, with his license on the line, that the system is operating. After having six inches of rain in a 30-hour period, it is only the engineer who should be able to state the system is still adequate or not. Mr. Fossi would feel more comfortable releasing the bond when Mr. Trinkaus inspects the recent work that was done and gives his certification that it has been done properly. At that point, the engineer is responsible, and if the neighbor has a problem with it, it's between the neighbor and the engineer.

Agent Brosius asks Mr. Fossi when he would like to see the letter written. Mr. Fossi says he feels the letter could be written immediately, if the engineer feels comfortable doing that. The Agent prefers to release a portion of the bond now, with the remainder to be released after the rainy season. The system may be operating correctly today, but the rainy season is ahead and there may be additional problems. Mr. Fossi concedes that the recommendation to release half now might be reasonable. The Agent states that releasing half of the bond now acknowledges that the work was done and it appears to have been done in good faith and in a proper manner, but holding the second half means that the Board is going to wait through the rainy season to ensure that the work holds up.

Mr. Katz says that the Board is caught between "warring" parties, each of which feels that they have been unfairly treated by staff and the Board. Traditionally, when an applicant presents a set of plans prepared by a hired professional, and the Board approves those plans with conditions, and those plans are implemented and then sometimes even improved upon at a later date based on a bond that has been held, we have traditionally released at least 50% of the bond, if 50% of the work has been done. This plan has been improved upon once, and it may or may not be satisfactory in April and May rains, but we owe it to ourselves to release at least 50% of the bond, holding tenaciously to the other 50% for "proof of purchase," that proof to be

certification from the engineer, perhaps at the end of May. It seems to be slightly punitive to withhold the entire bond, when an engineer has signed off on the plans.

Mr. Katz makes a motion to release half of the bond now, and to release the other half when staff (Brosius and Pardee) feel that they have proof positive with Mr. Trinkaus's sign and seal on a letter, that he is professionally behind the function of the plan and the work that was done. Mr. Fossi seconded the motion.

Dr. Autuori agrees that Mr. Trinkaus's plan may work if it was constructed exactly as designed. But AMD Homes gets the bond back, not Mr. Trinkaus. Dr. Autuori is not suggesting that the problem is Mr. Trinkaus's design, but it may be the way it was put into the ground. When he [Autuori] was at the site, there was water flowing over the stone trench, when it was supposed to be absorbing the water. The Agent corrected Dr. Autuori, explaining that the trench was to act to slow the flow, not detain it. There will be times when the trench is completely full because of the volume of water (as in the significant rains), and water will then flow over it. She points out that Dr. Autuori was at the site prior to the repairs being made, when there was a definite "rut" where the water was flowing in a concentrated stream on the western end of the trench. The repairs, in her opinion and in Aimee Pardee's opinion, appear to have restored the system to the way it was supposed to work according to Mr. Trinkaus's description. We have to rely on his stamp and seal.

She asks that the motion made by Mr. Katz be modified to state a specific time for consideration of the release of the second half of the bond, such as "no sooner than" June 1st or June 30th. She prefers "not before" June 30th.

Mr. Katz agrees to modify the motion to include the date, and Mr. Fossi agrees. The decision would reduce the bond by half (to \$2,500) as recommended by the Agent, and to require a statement of certification by the applicant's engineer following the rainy season (no sooner than June 30) to certify that the repaired system (berm, opening for drainage, and stone trench) remains in a condition that complies with the approved plans [for the modified wetlands permit], and that the system functions to manage drainage from 20 Peaceable Street to 113 High Ridge (Egan property) in a manner that restores the site to "not greater than" pre-development rate of runoff. The remainder of the bond may be released by the Board following receipt of this certification, after June 30.

The motion passed, 7-0-2, with Mr. Walsh recused and Mr. McChesney abstained.

CORRESPONDENCE

There was no correspondence.

MINUTES

Mr. Mische motioned, seconded by Mr. Fossi, to approve the minutes of March 9, 2010. The motion passed, 9-0.

Mr. Mische motioned, seconded by Mr. Chipouras, to approve the minutes of March 23, 2010. The motion passed, 9-0.

Hearing no further discussion, the Chairman adjourned the meeting at 9:55 p.m.

Respectfully submitted,

Betty Brosius
Inland Wetlands Agent

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION

April 6, 2010

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

Also Present: Betty Brosius, Director of Planning

An Inland Wetlands Board public hearing was held prior to the meeting.

At 9:56 p.m., Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2009-016-POCD: PLAN OF CONSERVATION AND DEVELOPMENT**, Town of Ridgefield, updated implementation table. *For discussion.*

Chairman Mucchetti referenced the draft “Implementation Table” prepared by consultant Heidi Samokar with help from staff. The table lists the strategies outlined in the Plan, and identifies the agency or official who has “Prime” or “Continuing” responsibility for implementation of the strategy. The Planner stated that the table needs to be approved for inclusion in the draft Plan, so that the final draft can be sent to the printer in time for distribution to the Board of Selectmen on April 26th [65 days prior to the public hearing scheduled for June 29th].

Mr. Mische said he has trouble understanding the goal of the matrix. There was general confusion over the definition of “Prime” and “Continuing” and the Planner attempted to explain that “Prime” indicates primary responsibility for implementing the task, and “cont.” means that the task is a continuing function.

There was continued discussion about the confusion of interpreting the table and concern that the agencies listed as responsible for implementation would also be confused.

Following this discussion, there was unanimous consensus to include the Implementation Table as is, with the intention of modifying it as needed, prior to the final draft. The Planner will ask the consultant to better define the terms “Prime” and

“Continuing” in the draft, and the Commission will consider whether there are better terms and presentation format for the table that can be used for the final draft.

NEW ITEMS

2. **#2008-136-REV(SP):** Request to allow tent and banner to remain for an additional year, conditions #1 and #2 on Adopted Resolution of Approval for a Revision to the Special Permit, on property located at **746 and 748 Danbury Road/BMW of Ridgefield**. Appl.: Ed McGill. Owner: Ridgefield Waterside Properties, LLC. *For discussion/action.*

Mr. Katz motioned, seconded by Mr. Fossi, to approve the temporary tent for a full year beginning in April, and to allow the banner to be posted for an additional year, through June of 2011.

3. **#2010-033-SP:** Special Permit Application under Section 9.2 pursuant to Section 3.4.D.3 of the Ridgefield Zoning Regulations to construct a 3 car garage in the front yard on property located at **304 Old Branchville Road** in the RAA zone. Owners/Apppls.: Thomas and Yvonne Franco. *65 days to commence public hearing ends June 10, 2010. For receipt, schedule walk and public hearing.*

Chairman Mucchetti asked for acknowledgement of receipt of the application and suggested a site walk for April 11, 2010 and a public hearing for May 4, 2010.

Dr. Autuori motioned, seconded by Mr. Chipouras, to acknowledge receipt of the application and to schedule the site walk and public hearing as suggested. The motion passed, 9-0.

COMMISSION WALKS

As noted above, the Commission added the following item to the walk schedule for **April 11, 2010:**

- **#2010-033-SP:** Special Permit **304 Old Branchville Road**, Franco

The following site walks were previously scheduled for **April 11, 2010:**

- **#2010-029-REV(SP):** Revision **900 Ridgebury Road**, Boehringer Ingelheim Pharmaceuticals, Inc.
- **#2010-032-SP:** Special Permit **Gino’s Way, Lot 5**, Sturges Brothers, Inc.

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

Chairman Mucchetti pointed out the following correspondence:

- Minutes of the 3/25/10 meeting of the Route 7 Corridor Study Technical Advisory Committee

The Chairman reminded the Commission about the Conservation Commission Annual Meeting to be held on Wednesday, April 7th, in the Board of Education meeting room at the Town Hall Annex beginning with refreshments at 7 p.m., and followed at 7:30 by a presentation by Dr. Michael Klemens.

MINUTES

Mr. Katz motioned, seconded by Mr. Mische, to approve the minutes of March 9, 2010. The motion passed, 9-0.

Mr. Fossi motioned, seconded by Mr. Mische, to approve the minutes of March 23, 2010. The motion passed, 9-0.

Hearing no further discussion, the Chairman adjourned the meeting at 10:12 p.m.

Respectfully submitted,

Betty Brosius
Director of Planning