

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD MEETING

May 18, 2010

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

Absent: Peter Chipouras

Also Present: Betty Brosius, Inland Wetlands Agent

A public hearing was held prior to the meeting.

At 8:16 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, continued to 4/20/2010, continued to 5/4/2010, continued to 5/18/2010. 35-day action period ends 6/22/2010. For action.*

Chairman Mucchetti noted that the public hearing was closed. She said that the Board, as discussed in the hearing, would ask its technical consultant, Terri Hahn of LADA, to support her recommendation for the use of flocculents for sediment control. Chairman Mucchetti asked the Board if discussion should proceed.

Mr. McChesney acknowledged that the Board intended to ask for additional technical clarification from its consultant, but felt that the Agent's suggestion to require modification of the plans by condition in the resolution was acceptable, and discussion should continue.

Mr. Katz said that the review of this application has been "tortuous [for him] since Day 1," and the Board has seen it progress from many different levels of production and professionalism. It proves the value of the Board's position in its ability to go out

and hire a technical professional expert to refine the specifics of the project. As little as two weeks ago, he might not have been inclined to approve this application, but he is now prepared to make a motion for a favorable decision, with conditions, pending a resolution by the Board of the issues of flocculents or no flocculents.

Mr. Katz's motion was seconded by Dr. Autuori, to request the Agent to draft a resolution of approval for the application with conditions, to be finalized pending the receipt of additional information from the Board's consultant.

Mr. Katz's says the defense of his position is simple, and it comes from his close examination of how the particulars ensconced in the application will damage either the wetlands on the property, or with any degree of certainty, will impugn the current status of Lake Mamasasco. This is not a consideration of how the development will restore the lake, but it is a question of how anything they have heard will suggest that the lake will be damaged. There has been no such evidence.

He refers to 10.2 in the regulations, and does not find any lasting or significant damage to the wetlands. There are some boulders and a stream channel that will be disturbed and altered, but all testimony from both the applicant's and the Board's professionals is that the stream improvements will decrease the amount of erosion that could negatively impact the lake in the future, and does today. There is a small filling of wetlands at the house, but it does not exceed the 8% maximum impervious coverage guideline for Lake Mamasasco [in the appendix of the wetlands regulations]. It is under that threshold.

Wherever possible, pervious pavers will be used, and the wetlands that will be filled or altered are part of an active stream that will be piped. The stream channel improvements will decrease the negative erosion in that stream. There doesn't seem to be anything in 10.2 that rises to the level of permanent negative impact on the wetlands, and because there is no certainty that any damage will occur to the body of water across the road, he can't see the rationale to deny the application. The disturbance is aesthetic, and that is not a reason to deny.

Chairman Mucchetti asked what conditions Mr. Katz would recommend.

Mr. Katz says he would like to include the recommendations of Terri Hahn [consultant, LADA] that have not been "fleshed out" in revisions to date. The use of flocculents (or not) can be determined pending receipt of additional comment from the consultant. The Chairman reminds the Board that Mr. McCoy did not want to add the flocculents, but he acquiesced to the consultant's recommendation and subsequently included them in the plans.

Mr. Katz feels that the activities should be bonded to the highest extent possible, and that the Board's consultant should be hired [at the applicant's expense] to monitor the on-going work, throughout the project. He also feels that the applicant's engineer has

done a remarkable job on the project, taking it from an impossible situation to a well-engineered plan for approval. Mr. McCoy also needs to be a supervisor on the job.

Dr. Autuori says that he would like to add a condition for a Conservation Easement for any part of the project that is not intended to be disturbed. The natural environment should remain as natural as possible. The Agent says that an easement should be a defined area rather than a blanket statement. The property owner testified that he would be willing to have an easement for the area to the east of the house, including the septic area, once it is built.

Mr. McChesney is concerned that the drainage maintenance agreement be properly worded, and he is concerned that any buyer knows his liability and responsibility for maintaining the drainage structures. The Agent reminds the Board about the water's Edge Way application approved a few months earlier; the attorney for that project suggested that the maintenance agreement be filed on the land records with a copy of the approved resolution attached. It would then turn up in any title search that is completed for the sale or refinancing of the lot. Mr. Walsh believes that success of the maintenance plan will also be dependent on enforcement.

Mr. Mische is amazed that the project has come so far, to be considered for approval, when one considers earlier plans. He agrees that success of the plan is all about oversight of the process of construction, and language requiring inspections and a reasonable frequency of reporting will be essential. The office staff should determine the need for increasing or decreasing inspections and reports.

The Agent said there are several examples of inspection and reporting requirements on other projects. She reminded the Board that "pre-construction meetings" are often required as conditions of approval, and that would be appropriate in this case. Staff would meet with the engineer, the town's consultant, the owner and the contractors, prior to any work being commenced on the site. Mr. Mische is concerned that the project proceeds in controlled increments, with regular inspections.

Mr. Walsh said he realized after the second public hearing that the public's concern was with the potential for damage to the lake, and not with the impact to the wetlands on the site. He notes that the plans show 95% of one of the wetland areas shown on the map (#4) to be eliminated, and 30% of the total wetlands on the property will be gone. That is his concern with this application. But engineer McCoy testified that the property, even if there were no maintenance to the drainage systems installed as part of the work, would remain stable even ten years from now, and there would be no impact to the lake. He agrees with Mr. Katz that there has been no scintilla of evidence presented to suggest that, if this project is built as designed, there will be a detriment to the lake. The resolution and conditions can adequately address that, if the Board's consultant is hired for oversight along with the applicant's engineer.

But Mr. Walsh says it still all comes back to the issue of the elimination of wetlands, which gets into the language of 10.2. He disagrees with the analogy of fill versus

pervious pavers – it is all fill. 10.2 speaks to the environmental impact on the property, and 30% of the wetlands will disappear. The catch-all to that is whether there are any prudent and feasible alternatives to do anything on this site. He believes that this is the fourth application/design he has seen for this property, with different house and septic locations.

The difference between the short-term and long-term impacts has been laid out by the engineer in his description of the activities that cause temporary disturbance, which are rather minimal. 10.2d speaks to the permanent loss of wetlands.

Dr. Gelfman said that he is still against this project. First, it is “operator dependent.” If John McCoy is not the engineer, and Wayne Wood is not the contractor, then this project will not occur in the way that it is presented. These people may last through the project, but they may not, and it may be sold to someone else. This has happened on other projects in town. This is in the same category as other similarly difficult projects in town.

Dr. Autuori addressed Mr. Walsh’s point about wetland #4 being 95% gone with the implementation of the project. It is necessary to consider the existing function of the wetland, and what will be the impact if it is eliminated. These wetlands are part of a stream channel that conveys water, and there is an existing erosive condition in the stream, which is part of a larger erosive pattern in this area. This project would make the conveyance of the water much less likely to continue its erosion of the land. This lot is small, but there is a need to balance decisions for change, if the change will improve the existing conditions. There is no proof that the lake will be harmed, and it may indeed be helped. There is change, but the function of the stream is not negatively impacted.

Mr. Katz said he thought a lot about 10.2d of the regulations, especially the first part: “Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity...” We have discussed what those losses are. But then it goes on to say, “...including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit...” He thinks the word “mitigation” is controlling, because even though all of the existing, pleasing natural features of the land will be disturbed, there is mitigation proposed in this area, and the erosive condition will be eliminated as the stream is piped and directed into an improved channel. 10.2d would seem to support a denial of the application, but when the end result is mitigation that offers long-term enhanced protection of the watercourse, then the protection of aesthetics becomes editorial, and not legislatively defensible.

Mr. Mische said that he read 10.2d carefully and agrees with John; at first it would seem impossible to approve the application. But reading further in that paragraph, he sees the words, [mitigation measures which may...] “prevent or minimize pollution or other environmental damage...” he considers that there is harm to the lake that will

be mitigated by the proposed work and the measures put in place. He hates the idea that a wetland will be eliminated, but looking at the larger area concerned, it is served better by allowing this to go forward, than it would be if nothing were done.

Chairman Mucchetti asked if there were any more comments. Dr. Gelfman asked if it would be possible to name Mr. McCoy as the engineer to supervise the project. The Agent said that previous applications had named the “design engineer” and there has been no issue with that language to date. She will check with counsel if needed.

There being no further comment, the Chairman called for the vote. The motion to draft the resolution of approval passed by a vote of 7-1, with Dr. Gelfman voting against. The resolution will be prepared for action for June 1st or soon thereafter.

NEW ITEMS

2. **#2010-052-SR:** Summary Ruling application under Section 7.5 required by Section 4.3 of the Inland Wetlands and Watercourses Regulations of the Town of Ridgefield for grading and excavation in the wetlands and upland review area on property located at **100 Holmes Road** in the RAA zone. Owners: Nicholas and Marjorie Cotter. *65-day action period ends 7/22/2010. For receipt and schedule walk.*

Chairman Mucchetti asked for acknowledgement of receipt of the application and suggested a site walk for June 6th, and scheduling for discussion at the meeting to be held on June 8th.

Dr. Autuori motioned, seconded by Mr. Mische, to acknowledge receipt of the application and to schedule the site walk as suggested. The motion passed, 8-0.

BOARD WALKS

As noted above, the Board scheduled the following site walk for **June 6, 2010:**

- **#2010-052-SR:** Summary Ruling, **100 Holmes Road**, Cotter

REQUESTS FOR BOND RELEASES/REDUCTION

- **#2002-79-S-PR: Ledges Road**, request for release of \$55,000.00 wetlands bond. *IWA recommends 100% release.*

Chairman Mucchetti referenced a letter from John McCoy, where it was noted that the Board had re-permitted the wetlands activities for the Ledges Road lots, including a requirement for new bonds to be posted by new owners at the time that development is proposed.

Mr. Katz motioned, seconded by Dr. Autuori, to release the bond [issued for the original application] in full as recommended by the Agent. The motion passed, 8-0.

CORRESPONDENCE

Chairman Mucchetti pointed out the following correspondence:

- Case Study about the importance of substantiating Board decisions with expert testimony, supporting the hiring of technical consultants and producing “substantial evidence”

MINUTES

Mr. McChesney motioned, seconded by Dr. Autuori, to approve the minutes of May 11, 2010. The motion passed, 8-0.

Hearing no further discussion, the Chairman adjourned the meeting at 8:47 p.m.

Respectfully submitted,

Betty Brosius
Inland Wetlands Agent

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION MEETING

May 18, 2010

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

Absent: Peter Chipouras

Also Present: Betty Brosius, Director of Planning

*An Inland Wetlands Board public hearing was held prior to the meeting.
At 8:48 p.m., Chairman Mucchetti called the meeting to order.*

PENDING ITEMS

1. **#2010-050-Misc:** Request for designation of Community Sign Board at **143 Danbury Road**, (Pamby Motors) in the B-1 zone, pursuant to Sec. 7.2.C.10 of the zoning Regulations. *Draft Resolution of Approval requested 5/11/2010. For discussion/action.*

Chairman Mucchetti referenced the draft resolution of approval prepared by the Planner.

Mr. McChesney motioned, seconded by Mr. Walsh, to approve the resolution as drafted. The motion passed, 8-0.

2. Sign violations c/o PD. *Draft letter requested 5/11/2010. For review/discussion.*

Chairman Mucchetti referenced the draft letter prepared by the Planner, a response to letter and complaint received from Suzanne Benton of the AAC, relating to perceived sign violations. The Chairman said she had “heavily edited” the letter, suggesting the elimination of paragraphs that describe other actions of zoning enforcement, going beyond the sign violation question.

Mr. Katz defended the letter as is, and recommended no editing, because it serves to educate the recipient about the broad range of zoning enforcement that takes place in the office on a daily basis.

Discussion continued, with the Commission divided on whether or not to issue the letter as written, or with the proposed editing.

Mr. Katz motioned, seconded by Mr. McChesney, to send the letter as written. The motion passed, 5-3, with Chairman Mucchetti, Mr. Walsh and Mr. Fossi voting against.

3. **#2010-049-SP**: Special Permit application, **126 Eleven Levels Road**, recreation area, West Mountain Estates Homeowners Association. Individual site visit on 5/17/10, or group site visit on 5/18/10.

Chairman Mucchetti announced that six members of the Commission (Mucchetti, Katz, Autuori, Fossi, McChesney and Walsh) had visited the site on Monday night, with no more than four members present at one time (not a quorum), and the visit was strictly for visual observation of the tennis court lights. Some observed the lights from the house location where the neighbor had complained about the visibility and glare of lights last summer.

The Planner will seek dates for scheduling site visits for any other Commissioner who wants to observe the property and court lighting at night.

Chairman Mucchetti asked to add an item to the agenda, to discuss meetings attended the prior week by her, Mr. Walsh, and the Planner.

Mr. Mische motioned, seconded by Mr. Fossi, to add the item to the agenda. The motion passed, 8-0.

4. **Discussion c/o Chairman Mucchetti: Meetings of the week of May 10th.**

Chairman Mucchetti mentioned three meetings held the prior week.

The first was the Board of Selectmen's meeting, where the Planner, Mr. Walsh and Mr. Katz were in attendance. The Planner and Mr. Walsh sat at the table with the BoS to explain the process leading up to the present, and going forward to the Public Hearing on adoption scheduled for June 29, 2010.

Planner Brosius said she emphasized the amount of public participation and contribution from Boards and Commissions during the many months of drafting the Plan. She explained that the Plan was an update of the 1999 Plan, with new ideas and goals introduced.

Mr. Walsh noted that Selectman Bodner had raised the issue of Ridgefield being perceived as “anti-business,” and asked if the Plan addressed that. Mr. Walsh said he pointed out that the Commission approves close to “99.9%” of the commercial applications on its agendas, which does not appear to be anti-business. Mr. Walsh informed the Commission that there were few questions from the Selectmen, and that Mrs. Masters said she thought the Plan was very well done.

The second meeting was a “Chairman’s Meeting” that Chairman Mucchetti attended in Weston on Wednesday, for the regional Chairmen of the various Planning and Zoning Commissions (Ridgefield, Weston, Westport, New Canaan, Darien, Fairfield, Wilton and Norwalk).

Chairman Mucchetti said that Darien has reached a level of affordable housing where they qualify for a four-year moratorium, but they described the task of applying to the State for the qualification as long and tedious. Darien is currently buying property to avoid future large-scale applications for housing. Weston and Ridgefield are the only two communities in the group who have not been approached by Avalon Bay developers for large-scale affordable housing applications. Chairman Mucchetti said she was surprised that none of the other communities were informed about the HomeCT program.

The Chairman and others were surprised that Fairfield was unaware of their ability to hire outside consultants for review of complex applications. Most of the chairmen talked about diminished application loads, and decreasing the number of PZC meetings. All of the towns except Norwalk have used Planimetrics for consulting for regulations and POCDs. Wilton has had a problem with ZBA denials of setbacks and other bulk requirements for additions and improvements to historic buildings that sit close to the road, and they are afraid of losing significant historic structures.

Next, **Chairman Mucchetti** described the workshop held by the Route 7 Corridor Study consultants at the Branchville School. The session was attended by property and business owners, two Commissioners and the Planner, two EDC members and residents. All groups agreed that a road parallel to Route 7 on the west side was a good idea, where business and residential development could be accessed off the main highway. Pedestrian crossings from the west to the east (train station) were recommended. Better access to the train station is needed.

[The consultants for the Route 7 Study will exhibit the results of the Branchville and Routes 7/35 workshops at a come-and-go session to be held at the Veteran’s Park School from 4:30-8:30 p.m. on June 17th, where concept plans will be displayed and individual questions can be addressed.]

COMMISSION WALKS

There were no site walks to be scheduled.

REQUESTS FOR BOND RELEASES/REDUCTION

The Planner requested that an item be added to the agenda, for bond release.

Mr. Walsh motioned, seconded by Dr. Autuori, to add the item for discussion. The motion passed, 8-0.

The Planner explained that a \$15,000 bond had been posted by Vinnie Pelliccione for The Ledges resubdivision, for work in Ledges Road. Since the Wilton Bank has now taken over the property and the work in the road has been completed, the bond may be released.

Mr. Katz motioned, seconded by Dr. Autuori, to release the bond as recommended by the Planner. The motion passed, 8-0.

CORRESPONDENCE

Chairman Mucchetti pointed out the following correspondence:

- Announcement for a meeting to be held by RACE, to discuss the Town's "carbon footprint"
- News-Times article about the Brookfield AAC
- Email from the Planner to the Police Commission Chairman, re the Route 7 Corridor Study and interest in a 7/35 traffic light
- Article from "Ridgefield Patch" about the Route 7 Corridor Workshop at Branchville
- Memo from the Planner about continuing review of the pool application for 20 Peaceable Street

MINUTES

Mr. Mische motioned, seconded by Mr. McChesney, to approve the minutes of May 11, 2010. The motion passed, 8-0.

Hearing no further discussion, the Chairman adjourned the meeting at 9:10 p.m.

Respectfully submitted,

Betty Brosius
Director of Planning