

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD

June 13, 2006

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

Absent: James McChesney

Also Present: Betty Brosius, Inland Wetlands Agent

A public hearing was held prior to the meeting.

At 8:12 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2006-010-SR-S:** Summary Ruling application in conjunction with 7-lot subdivision for property located on **Bryon Avenue** in the SD R-20 zone. Owner/Appl.: Country Club Development, LLC. Auth. Agent: Donnelly, McNamara & Gustafson, P.C. *Received 2/14/06. Public hearing commenced April 4, 2006, continued 5/9/06, continued with extension granted to 5/16/06. Public hearing closed and item tabled 5/16/06. Draft Resolution of Approval requested 5/23/06. Tabled June 6, 2006. 35-day action period ends 6/20/06. For action.*

(Note: Mr. Fossi recused himself from the discussion on this item and left the room. He did not return until 9:10 p.m., during the Planning and Zoning Commission meeting.)

Chairman Mucchetti referenced the draft resolution prepared by the Agent, for review and comment.

Mr. Katz motioned to approve the draft, with modifications. Dr. Autuori seconded the motion to approve, to open the matter for discussion. The Planner confirmed that the Board was looking at the draft with additional revisions in bold/underline, added on 6/13/06.

Mr. Katz referenced condition #6 on page 2, regarding reference to the construction of the sidewalk. He wished to clarify that this was the “interior” sidewalk for the

subdivision, and not a sidewalk on Bryon Avenue. The Agent agreed to add the word “interior” to define the sidewalk.

In item #6, language added in (a) of that condition, Mr. Katz requests eliminating the words, “Although not a wetlands concern...” On the last page under condition #14, it references a bond to be kept in place for two years, but under the sub-paragraph (b) of condition # 8, it refers to three years for monitoring of plantings. The Agent suggests that there should be separate bonds for the mitigation landscaping and the work needed for the construction of the detention ponds and the remediation of the stream channel. The language in item #14 can be clarified to require separate bonds.

Lastly, under “Reasons,” he suggests a change in the sentence, “...it will not have a detrimental effect on the wetlands or watercourses and will in fact improve existing conditions,” to state that it “may” in fact... because there is no certainty that it will.

The Agent had one additional correction, to add a requirement for an approximate 20-foot easement along the stream channel, to provide the opportunity for maintenance of the stream channel (removal of debris, and removal/monitoring of invasive plants that may return). She has spoken to the applicant, who concurs with this condition. **Chairman Mucchetti** questions and confirms that the easement will be in favor of the proposed homeowner’s association for the development, and referenced in the Maintenance Agreement.

Mr. Katz adds one more change in (e) of item #8 on the second page, “The applicant shall import suitable typical fieldstones from other sources...” He suggests stating that, “The applicant shall use fieldstones...” since it is possible that suitable stone may be found on the site.

Mr. Katz modified his motion to approve, to include the revisions. Dr. Autuori modified his second, and the Chairman called for a vote. The motion passed, 7-0-1, with Mr. Fossi recused.

NEW ITEMS

2. **#2006-056-SR-SP:** Summary ruling application for regulated activity in connection with rear yard expansion adjacent to existing watercourse and wetlands on property located at **41 Remington Road** in the RAA zone. Owners/Appls: Nicholas & Kathleen Lang. Auth. Agent: J.F.M. Engineering, Inc. For receipt / schedule walk to determine significance.

The Chairman referenced a new application to be added to the agenda, for receipt. The Agent explained that this is a combination of a summary ruling application for wetlands in conjunction with a special permit for filling and grading of land.

Dr. Autuori motioned to receive the application, seconded by Mr. Walsh. The motion passed, 7-0 (Mr. Fossi had not returned to the meeting).

The Chairman suggested June 18, 2006 for the walk. There was some resistance to adding another walk to that date, because it is Father's Day. It is possible that there may not be a quorum for the walk; the Agent will check to see if the Special Meeting, where there will be no decisions, can be held without a quorum. Alternate dates were discussed, but there are conflicts with the holiday and vacations. It was finally decided to add the item to the June 18th schedule for site walk.

BOARD WALKS

To Re-schedule:

#2006-048-SR: Plenary Ruling application, **Wilton Road East** (Burchard) because site has been flagged and marked. The Board added this site walk to the June 18th schedule.

Other walks for June 18, 2006 include:

#2006-050-PD: Summary Ruling application, **311 Peaceable Street**, Grossman

#2006-051-SR: Summary Ruling application, **Tanton Hill Road**, Kessler

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

- Letter from a resident on Tanton Hill re the Kessler application

MINUTES

Mr. Katz motioned to approve the minutes of 5/30/06, seconded by Mrs. Willis. The motion passed, 7-0.

Hearing no further discussion, the Chairman adjourned the meeting at 8:23 p.m.

Respectfully submitted,

Betty Brosius
Inland Wetlands Agent

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION

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

Absent: James McChesney

Also Present: Betty Brosius, Director of Planning

A public hearing was held prior to the meeting.

At 8:24 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2006-010-SR-S:** 7-lot subdivision of land located on **Bryon Avenue** in the SD R-20 zone. Owner/Appl.: Country Club Development, LLC. Auth. Agent: Donnelly, McNamara and Gustafson. *Received 2/14/06. Walked 3/12/06. Public hearing commenced 4/4/06, continued 5/9/06, continued with extension granted to 5/16/06. Public hearing closed and item tabled 5/16/06. Tabled 5/23/06 with motion to deny on table. Tabled June 6, 2006. 65-day action period ends 7/20/06. Continue discussion/action.*

(Note: Mr. Fossi recused himself from discussion on this application and was not in the room. He returned at 9:10 p.m., for discussion of item #2.)

The Chairman confirmed that there is a motion to deny and a second, on the table. The Planner posted several maps on the bulletin board, showing the proposed road design, the slightly curved road design, and two concept plans for roads on the east and the west sides of the property.

Dr. Gelfman stated that he supports the motion to deny the proposed plan because it is not appropriate, and he thinks the plan with the road entering the site on the eastern side is much better. Contrary to what the Commission heard about this application during the public hearing, Dr. Gelfman doesn't feel that the applicant can reproduce the type of units that are on Bryon Avenue. He thinks this stands alone and that the private

access road is okay, similar to the plan on Main Street. By putting the entrance to the east there is an opportunity to preserve much of the existing vegetation and stone wall on Bryon Avenue, thereby preserving the aspect that most residents on Bryon Avenue now have. And the road to the east with the interior lots will be more compatible with the lots to the south. It will provide the privacy that the developer would like. He is opposed to the plan presented and in favor of the denial of that plan.

Dr. Autuori references the subdivision regulations and the requirement for the streets to be consistent or harmonious with the existing streets [the Chairman identifies this as Sec.1-3(c)] where there is also mention of maintaining the health and safety of those citizens. The principal issue for him is the location of the present proposed street where it enters and exits Bryon Avenue. He cites an article from "Science News," Jan. 7, 2006, volume 169, entitled, "Bright Lights, Big Cancer." It describes the effects of bright lights at night on melatonin production, breast cancer and other issues. Lights are a problem.

In this particular instance there is one family who will be affected by cars from seven residences and possibly accessory uses, all of which, at night, will be shining their lights at the Lowe's residence when they are leaving. This represents not just a devaluation of property, not just a traffic hazard, but this is a real risk in fact because of this tremendous increase in light and photons going in the windows, and it will adversely affect the health of this family or people who will occupy this house in the future. He says the Commission is a land use agency and it doesn't talk about individual people, but the house is there right now, and thanks to the agreement of the Commission with the zone change, there are now seven houses that will take dead aim at that family with very dire circumstances, for whoever occupies the house. He thinks the road should, in spite of the need to remove the large tree, come out opposite Greenfield Street on the west side. It's consistent with what it says in the subdivision regulations for safe streets, and harmonious relation to other streets. But his real concern is the danger to health and safety of the occupants of that house. The applicant has had many opportunities in this lengthy hearing process to consider this, and hasn't done so.

The Planner cautions the Commission about accepting the article from Dr. Autuori because the hearing is closed, but Dr. Autuori's personal remarks are certainly part of the record. Dr. Autuori points out that the subject of the article is also something about which he has personal knowledge and studies as a PhD biologist and physiologist, and this should be acceptable. The Planner will check with counsel about the admission of the article to the record. Dr. Autuori says that he talks about this subject frequently in his job as a professor at the university, regarding the effects of light on decreasing melatonin and the importance of the hormone melatonin as an antioxidant that also seems to have a suppressant effect on certain forms of cancer, including breast cancer. He says this information is from his own expertise, and the article being put in the record is not necessary.

Mr. Katz says he has a couple of criticisms about the present layout, and he will address his remarks based on the subdivision regulations in Sec. 1-3, “Basic requirements for Commission approval,” the introduction under which is, “No plan for the subdivision of land will be approved unless...:” and one of the points is that, “The proposed streets are in harmony with existing or proposed principal thoroughfares shown in the development plan of the town as now or hereafter amended especially with regard to safe intersections with such thoroughfares, and so arranged and of such width as to provide an adequate and convenient system for present and prospective traffic needs.” He says he focuses on the word, “convenient,” because as laid out, there is absolutely nothing “convenient” about this road system for these people. It is a severe inconvenience, not because of melatonin, which may or may not be a factor, but because in order to accommodate that road, a wall and fence would have to be constructed on other properties, which would physically and visually disrupt the neighborhood into which this proposed subdivision intends to be placed. And it’s not fair to inconvenience, contrary to the regulations, existing neighbors in order to accommodate a road when a wall and fence needs to be built to make it work.

Secondly, Mr. Katz says that Sec. 4-31 of the subdivision regulations encourages and allows the Commission to undertake the preservation of existing features, like the streetscape, and it mentions preservation of trees. He says this plan interrupts that streetscape, and what the neighbors have been looking at. This Commission has an obligation under its own regulations to preserve existing features, and this would severely compromise that. So for those two basic reasons, he says, he is opposed to the way this is laid out. He does not know which alternative is better, although he favors the west because there is an alignment there with the 3-way stop, and there is a regard for existing structures if the road system is maintained in a 4-square intersection. He acknowledges that the engineers have said this is not the preferred alternative, but with the minimum number of cars that would be entering and exiting the site, that doesn’t seem to be nearly as prime a consideration as the preservation of that neighborhood. The proposed layout does not preserve the existing neighborhood, and it is one of the finest neighborhoods in Ridgefield and nobody should transgress it.

Mrs. Willis says she agrees with the things that have been said. She thinks the west entrance may work, but the schemes that were presented by the applicant were intentionally not meant to persuade the Commission that they were the ideal design, and something better could be designed with some more work. She would like to see the applicant come back with something else.

Mr. Walsh says he is taken aback with the conversation at the table, and the conversation from two weeks ago. He references earlier discussions in January 2006 when the Commission originally voted on the application. He says nowhere in the minutes [of the previous application] does he see anything about the subdivision layout being a problem. It was denied because the wetlands were denied. He does acknowledge that Dr. Autuori had a major concern with the application access road, but Dr. Autuori was more concerned with taking a tree out on the eastern side, which very much concerned him on a future layout. This applicant did everything the

wetlands Board asked him to do, and that was to have zero increase in peak runoff. And to Dr. Gelfman's points made tonight about the vegetation in the streetscape, Mr. Walsh says that the designs for the proposed road and the alternate with the slightly curved road go a long way toward preserving the vegetation on Bryon Avenue. Most of the neighbors will only see the vegetation, especially with the addition of the materials in the Studer Designs plan for detention areas, as well as keeping the existing natural vegetation along the street.

Regarding the lights and traffic effects on the Lowe residence, Mr. Walsh says that he is very concerned about the street emptying out directly opposite that home. He thinks the design with the slightly curved road goes a long way to alleviate that fear because it splits the entrance between two houses. The plan with the road to the west will affect homes opposite that entrance. Anywhere the new street ultimately comes out will affect one home or another. The lights from seven lots in the evening will affect the people along Bryon Avenue, no matter what plan is implemented. He acknowledges that at the present, there is absolutely no light because there is no development, but the applicant (contrary to what Mr. Katz has said) meets every provision of our subdivision regulations, from 4-1 all the way to 4-31. To deny this now, after telling the applicant implicitly [in the first application] that the Commission had no problem with the road design in January 2006, is unfair. The message was that he just needed to fix the wetland problem with zero increase in runoff, and he came back with an application that satisfies the wetland board. When the Commission had an opportunity to tell him in January, it didn't tell him to make it a four-way intersection or some other plan. The plan meets all of the subdivision regulations, and for that reason Mr. Walsh does not know how or why it should be denied at this time.

Dr. Gelfman says he remembers that the Board rejected the inland wetland application for the property, and then did not really discuss the subdivision, because there was no point in it. He says he doesn't mean to slight the impact on the Lowe's property – that is his primary objection – but he was trying to point out that by moving the access to the east, it produces the least offensive light exposure because it comes out between two houses that are rented dwellings. On the west side, in addition to the Garbin property, you have the wetlands that are extensively involved. He says that from the beginning that he thought the access opposite the Lowe's property was not acceptable, and he was presented his reasons for the east entrance as ancillary to that.

Mr. Walsh says the reasoning [of Dr. Gelfman] goes to his second point: If the Commission moves the entrance to the east, then it falls between two rental properties, and the point is, as it stands right now, there is absolutely no light going to the north side of Bryon Avenue, and no matter what the Commission does, there is going to be light there. So if the Commission considers the proposed road design with the alternate curved exit, it also comes between two properties. On the east, it is also between two properties. In any case, there is going to be light to the north on Bryon Avenue when it hasn't been there at all, ever, in the past. There will be a detrimental effect from light, but it doesn't mean that the application doesn't meet the requirements of the subdivision regulations.

Dr. Autuori says that if the three potential egress points are considered, the worst is obviously the one that hits directly across the street, toward the Lowe's. If it is shifted slightly, then it is slightly better, but there are still only 40 feet or so between those houses. If the road is placed on the eastern side, between the rental houses, the distance there is also about 70 feet. If the road exits opposite Greenfield Street, it is significantly greater distance between houses because it faces the existing street. Under the proposed configuration, any cars would have to swing out of the road, and there would be sweeping light toward the houses across the street, as the cars turn. If the cars exit opposite Greenfield, at least some of them may go straight, and therefore not aim their headlights, but the bottom line with Greenfield is that is already a street, and from visual inspection, there is significantly greater distance between the houses at that location, on the corners of the street intersection, with a street between them. No matter what, the present proposed location for the road is the worst.

Mr. Katz again references the subdivision regulations. He agrees with much of what Mr. Walsh says regarding the 100% increase in ambient light now not emanating from the south side of Bryon Avenue; it is irrefutable. There isn't any, there will be some, it is a significant increase. But he says that the regulations are in place to minimize that 100% increase, and it's very specific. It talks about "convenience." It doesn't say whose convenience, but there is an implication that it's to be the convenience of those entering and exiting the proposed subdivision, and there's a lot of logic to that. But it's an amorphous "convenient" – that's the word they use, and there's nobody who can convince him that the placement of this road, producing what's already been testified to as an agreement with the across-the-street neighbors and the developer, that a wall and possibly a fence on top of that, will be built, which would change the character of that neighborhood forever, it wouldn't just be an inconvenience to the individual neighbor, there would be a wall where there is no wall, a barrier where there is no barrier between neighbors. He doesn't think that's the intent of the regulations, 1-3(c).

Mr. Katz quotes also from Section 4-31 of the subdivision regulations: "The commission may require that existing features which would add value to the development or to the town as a whole..." of which each of these sides of Bryon Avenue is a piece of the town as a whole, and where instructed the Commission may require a sensitivity to features which enhance the town as a whole, and that are extant at the inception of development, and if, in the Commission's judgment should be preserved through the development. The Commission has the caution to require that. He doesn't think there is a remarkable transgression of the intent of Ridgefield's subdivision regulations – that is not what he is suggesting – but in the two particulars of Sec. 1-3 and 4-31, he finds enough within these regulations to deny the proposal before the Commission, or to modify it sufficiently so that the problems that exist no longer do. He is not sure that the Commission, at the table, can solve those problems.

Dr. Autuori refers to the regulations, Sec. 1-3(c). He also states that, when the Commission considers the concept of an "environmental impact," it often looks at just water and air, whereas there are many more things to consider. Subsection (c) says,

“...especially with regard to safe intersections with such thoroughfares.” It refers to safety, and “safe intersections” is not just a matter of the likelihood of car accidents. Safety has to do with the totality of human health and safety, including exhaust fumes and light pollution, which become very important. He brings this up to tie the idea of health and safety into the intersection issue, vis a vis the light problem that he mentioned before, per Sec. 1-3(c).

Mr. Walsh feels the Commission is taking huge liberties with the language in the regulations. There is no question that the proposed street is in harmony with the proposed principal thoroughfares throughout this town. Mr. Katz asks if it is convenient? Mr. Walsh says it is. Mr. Katz asks if it is convenient for the people across the street, and what in the regulations says we can't consider that? Mr. Walsh says there is no street that's going to be convenient for the properties across the street. Mr. Katz says there is a difference between a street that would intrude because it exhibits a 100% increase in ambient light and has required the neighbor and the developer to get into an agreement for a wall that would change the neighborhood into which the applicant wishes to fit this development. Mr. Walsh asks, if the neighbor is agreeing to it, why should the Commission care? Mr. Katz says he cares, because it affects the Town of Ridgefield. This is a neighborhood that's existing now in a way that shouldn't be interrupted. Mr. Walsh says that the Commission should go back to Mr. Katz's first point, that someone else should buy this land. Unfortunately, whether the Commission likes it or not, the neighborhood will be affected by the development. Mr. Katz says his objection is the fence that is required by the inconvenience of the location of the proposed road. Mr. Walsh doesn't know that a fence is required; the testimony was that a fence was agreed to – there is a difference.

The Planner points out that the fence is a private agreement between the neighbor and the developer, and not a part of this subdivision. The fence could be built regardless of what happens with the subdivision, as a separate matter. It was a part of the public hearing discussion, but is it not a part of this subdivision.

Chairman Mucchetti agrees with Mr. Walsh. She feels that the Commission is taking huge liberties with the subdivision regulations, and convenient liberties. She thinks the neighbors affected by the nearby Mulvaney Court subdivision would have appreciated this kind of support from the Commission, because the issues that were raised by the neighbors who came out in considerable numbers for that proposal were not unlike those who came out for the Bryon Avenue public hearing. They were concerned about drainage and the number of homes. And if you go into the Mulvaney Subdivision, and come out on High Ridge, every car that comes in the evening, with lights on, comes right across the street from a home that is every bit as close to the road as what exists on Bryon Avenue. She thinks that if the Commission had these kinds of concerns, it should have been brought up and discussed in January [for the previous application]. She looked at the minutes and the resolution of denial for that application, and there is nothing about challenging the access point. The denial refers to the denial of the summary ruling application, and the technical review by the Board's consultant that challenged the storm analysis and the need for a 25-year design which the applicant

brought back this time to the Board and the Board found in favor of the revised application this time. The denial of the previous subdivision application listed only three points. One was that the land to be subdivided is of such character that it can be used for building spaces, and Mr. Katz put that on the table as challenging, and another point is that proper provision is made for water drainage and sewerage. And those items were addressed. When the applicant came back and re-filed, they addressed the items that were listed in the resolution of denial, and nothing that the Commission is putting on the table tonight was included in that. She thinks that, in approving the wetlands application, and then denying the subdivision, the Commission is taking liberties with the authority it has as a planning commission. She sees no difference in the impact to this neighborhood and the impact to the Mulvaney Court neighborhood. She cautions the Commission to make sure in looking at the subdivision regulations, not to look for the odd word that they can conveniently manipulate. In a denial, the Commission must be sure that this is such a negative impact to the Town of Ridgefield that it can't possibly have its support. She doesn't find that to be the case.

Dr. Autuori recalls that Mulvaney Court was restricted with where the access had to be – there was no other option. This is anything but restrictive. There is a large area of frontage from Greenfield toward High Ridge. In reference to Dr. Gelfman's remarks about what the Commission did previously with the first application, he agrees that the overriding issue was the water management, and the applicant responded to that issue and did an excellent job, and the [Inland Wetlands] Board approved the wetlands application. But he recalls questioning the access opposite the house across the street. Chairman Mucchetti confirms that his remarks were in the minutes for that first application. Dr. Autuori says, just because they didn't make a big deal about the access, because the wetlands issues needed so much work, doesn't mean that the Commission is now foreclosed from discussing issues that have come to their attention. Frankly, he says, whether they considered such issues with the Mulvaney application or any other, the Commission has evolved and there is much more knowledge today about what "safety" means. When he looks at the word "safety," whether it's health and safety or whether it's a safe intersection, he doesn't look at it in the narrow sense. He looks at it with total ramifications with what safety has to do with the human population that the Commission is supposed to protect. If light shining in the window has a definite deleterious effect on human health, that is a safety issue, just as getting run over by a car is a safety issue. Effects on hormonal changes and effects on aging may be long-term effects, but they are perhaps equally devastating safety issues. The very fact that the Commission knowledge evolves give it not only the right but the obligation to bring these issues up, even if it didn't do it in the past. He is not bringing up these issues because he does not want to see the property developed, but he wants to see it with a different layout that has the least impact on the existing human beings who live across from that property. Right now, it's not there.

Mr. Katz says there is a bifurcation of the application – it's a zoning application, it's a planning application, and it's a wetlands application. To bring up Mulvaney is a red herring because there are other subdivisions that might have been approved by the Commission that could have been improved with further scrutiny and adherence to the

regulations. To bring up the wetlands denial [of the first application] isn't a red herring, because it was an accurate denial based on the potential effects to wetlands. And there should be no implication that when an application is extended in its presentation to this Commission by submitting a second application, that the Commission doesn't have the right to further examine, and to further hone its thinking, and to further look at the regulations. It is unnecessary to harbor the criticism that certain Commissioners are looking at the regulations to find reasons to improve subdivisions, which is what he is doing. He says that if he zeros in on certain particulars, and Dr. Autuori zeros in on others because of his expertise in other areas, so be it. The words in the English language have certain meaning, and specificity in the English language is something that needs to be improved upon, so that there is not a loose interpretation of the regulations. Looking at this, we can't go into the zoning particulars, because that's not where the application is at this point. The Board has approved the wetlands, but that does not mean that the Commission can't improve the subdivision part of the application. The reasons that he is bringing to the table may be considered by some to be a mis-interpretation or an exaggeration of the regulations, but he is quoting them for the record, and as he supports the two reasons he is going to vote against the proposed subdivision plan.

Mr. Walsh addresses Dr. Autuori's point about the lack of restriction on the access and egress to this property, and he disagrees. He feels that this property is just as restricted as any other piece of property. There is a likely wetlands crossing for the east and the west entrance alternatives, in order to accomplish what some of the Commissioners are trying to do. He says there is no question that the Commission has evolved over time, but wonders how far they have come from January to June of 2006. He looks at the regulations very diligently, and simply because one Commissioner disagrees with another's interpretations of the regulations doesn't mean that any one is wrong or incorrect, or for some reason doesn't believe that this subdivision doesn't meet those regulations. He says the applicant will be hard-pressed to find an improvement that will satisfy every Commissioner, simply by moving the road to the east or the west.

Chairman Mucchetti says that the wetlands board has to look at the impact on the wetlands, and if there is an alternative that doesn't have an impact, we ask the applicant to consider that. If the application had come in with either the east or the west as an alternative road entrance, there would have been wetlands impacts and require the removal of a very significant tree. The Board would have asked the applicant to consider another alternative, and that is the alternative that is currently before the Commission. There was a request to reduce the impact on the neighbors across the street, and the road was shifted. Chairman Mucchetti is frustrated by the process. In approving the wetlands application and then denying the subdivision, the applicant will be required to modify the wetlands approval. If the plan comes in with an entrance from the west, there will be a significant impact to the drainage ditch and wetlands at that location. There will also be greater impact to the east channel with that alternative. The wetlands board must consider these impacts.

Mrs. Willis says that a lot of points were made all along about how the wetlands issues in the first application were great. She also remembers Mr. Katz asking whether the Inland Wetlands Board could approve the wetlands application, and then not approve the subdivision application, and she questioned that as well and knew it would be difficult. But she doesn't believe that it is the vindictive process that she feels the Chairman is hinting at. She admits it will be difficult to solve the wetlands issues with the east or west alternate road plan, but those who advocate those plans are asking the developer to come in with another plan to address that challenge. She feels just about everyone is unhappy with the driveway coming out across from the Lowe's house. She says the Chairman brought up, early in the process, the possibility of shifting the road to the east. The denial of the first application might not have covered all of these issues, but that's basically because the whole wetland problem was so immense that the Commission didn't bother going further.

Dr. Gelfman didn't see an impact with the eastern alternative entrance, which is one reason he favored that. He still doesn't see any impact looking at the map on the board for that plan. And as an Inland Wetlands Board reviewing the current application, he didn't see a reason to deny it as presented, with respect to this design. But from the beginning, he says, he didn't like this design. And as a Planning and Zoning Commission member, he finds it unacceptable.

Dr. Autuori reminds the Commission that it was brought out in the public hearing, that an element of "prudence" with a feasible and prudent alternative certainly can be a human impact. If it requires an eastern exit to impact an upland review area, or if it involves a western exit with a crossing, to save the very damaging effect on humans, that could be considered "prudent," depending on how it's done. All three alternatives are "feasible."

Chairman Mucchetti reminds the Commission that Mr. McChesney is absent and he had asked that no final vote be taken this week, to allow him to participate. She asks if the Commission wants to go forward with a request for a draft resolution to come back to the table. The Planner suggests waiting for Mr. McChesney. Dr. Autuori says that his schedule in the summer is unpredictable, and he has no problem honoring Mr. McChesney's request, but he may not be available on very short notice and he wants to participate as well. If the schedule is changed for one, it should be changed for another, to be fair. The Chairman says the reason the discussion was continued, with a motion to deny remaining on the table, was to give Dr. Gelfman an opportunity to participate.

Mr. Katz asks about the timelines. The Planner says that the 65-day period for making a decision ends on July 20th, so there is time to continue the discussion. Mr. Katz asks if it can be presumed that there will be a meeting when all Commissioners are present? The Planner read Mr. McChesney's comments from the May 23rd meeting.

After some continued discussion about the availability of Commissioners at future meetings, Dr. Gelfman made a motion to table discussion until June 20th, seconded by

Mr. Walsh. The motion to deny the application, with a second, remains on the table. The motion passed, 7-0-1, with Mr. Fossi recused.

2. **#2006-031-SP:** 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/Apl.: 66 Grove Ridgefield, LLC. Auth. Agent: Donnelly, McNamara & Gustafson, P.C. *Received 4/4/06. Public hearing commenced 5/16/06, continued 6/13/06. 65-day action period ends 8/17/06.*

(Note: Mr. Fossi returned to the meeting at the beginning of the discussion on this item.)

Chairman Mucchetti noted that the public hearing was closed earlier in the evening.

Mr. Katz motioned to approve the application, seconded by Mr. Fossi.

Mr. Katz says the concerns have been alleviated in a variety of ways, and the testimony is overwhelmingly convincing that there possibly, if not probably, wouldn't have been much of a risk in the first place, and the proposal for remediation prior to construction, well before occupancy, will promote virtually no risk. Mr. Katz thinks there may have been more sites in Town where the Commission unknowingly granted approvals while there were contamination issues on the property. The fact that they are looking at a non-potable water supply that may have some remaining contamination issues is irrelevant because it is non-potable anyway, it is a non-issue. Stepping onto the curb from a diesel bus is a far greater risk.

Mr. Katz says he is sorry that this application has been brought to the Commission because it is a terrible plan; it is terrible because it is submitted under a terrible regulation. But it meets the regulation, and he moves approval of the application.

Mr. Fossi agrees with everything said by Mr. Katz. He doesn't particularly like the plan, but it meets the regulations. He is 100% confident that the experts and testimony brought forth by the applicant show that they have done their homework and that the proposed mitigation will work. It works with radon well, and the Commission's own engineer agreed that this was a situation that was completely safe.

Mrs. Willis feels that she will be in the minority, but she cannot vote to approve the application because there is that shred of doubt about the public safety. She doesn't like the fact that the monitoring wells will have to be abandoned and moved, because the continuity of the database will be lost. She will not vote for it.

Mr. Slavin says he remains uneasy about the application. He heard the testimony of the technical experts, who he respects. He addresses Mr. Fossi's comments about the similarity to radon systems, and points out that halogenated hydrocarbons are

potentially far more dangerous than radon. At the same elevations in the soil they are more lethal. He still has an uncomfortable feeling about agreeing to put children in that kind of environment. He doesn't know how well the soil vapor in the proximity of these apartments would be protected for little children. The testimony seems to have been that the levels are so low that it should provide no residual problem, but there isn't a lot of data to support that, nor is there much data in conflict to refute it. It just seems like it isn't a good thing to support.

Dr. Gelfman agrees with Mr. Slavin. He suspects that Mr. Katz is not correct about there being other sites proposed for high-density housing that has proven to be as contaminated as this site, and required monitoring of wells and all the rest. It looks like the vapor barrier would protect the apartments, but the one clear statement from the experts is that the groundwater contamination still exceeds acceptable limits. The Commission was also told that monitoring vapors from the soil is difficult. For these reasons, he cannot support an approval.

Dr. Autuori refers to his previous comments on the record, having to do with differences in susceptibility to hydrocarbons for children, latent periods and so forth. He admits that the team of experts made a very precise, expert and impressive presentation. They are expert engineers, they know their "stuff," but they admitted that not a one of them is an expert in human health. They explore human health issues based on the testimony of others, CTDEP, EPA, etc. The vapor barrier doesn't impress Dr. Autuori as being very confidence-inspiring. It's the same sort of polyethylene, as far as thickness and strength, that you buy at the hardware store. He was impressed about the applicant specifying round stones in the concrete, but he believes that, practically speaking, they won't all be round stones and there will be punctures and cracks. The bottom line is, it is based on standards established by regulatory agencies (DEP and EPA) and those standards, very legitimately, have to balance the effect on human health on the economic needs of society and so forth. It is always a balancing act – the environmental laws in general do that. In his own particular instance, being in the profession that he is in, not an expert in pollutants and carcinogenicity, but having more than the average expertise, he would feel very uneasy letting children live in that establishment and hope that everything is okay. He is impressed with what they said and the preparation, but he is not convinced of the safety for children. If it was for a development for the elderly, and there was a latent period of 30 years, he would not be as concerned, but that's not what is proposed.

Mr. Walsh says that at the first public hearing on this second submission of the application, the applicant expert's presented a chart that illustrated both the federal and the state guidelines. It specifically elaborated how far below the vapors were on this site. In some cases, the levels were barely detectable. The Commission hired an expert consultant, and he said, "The Town of Ridgefield can be reasonably assured that the environmental conditions of the site will not be detrimental to the health of the occupants of the residential community." Mr. Walsh says that he specifically asked the applicant's engineer at the hearing tonight if the vapor barrier was required for this site to be safe, and he said no. They are proposing the vapor barrier as an extra precaution.

Mr. Walsh wants to rely on the experts' testimony representing both the applicant and the Commission. He feels that the site is safe, and they have taken more than reasonable care to protect any occupants who may live at the site. He is satisfied by the experts and the expertise put forth.

Mr. Katz totally agrees with what Mr. Walsh says and where he is going with his comments. He extends that thought to say that, where the Commission has the privilege to hire expertise on its own, and the purpose is to present data that may be in conflict with what the applicant is presenting (not that the applicant is distorting the truth, but experts can agree to disagree), to gainsay what our own expert says doesn't seem terribly productive. Mr. Katz feels that the risk seems diminimus, and it seems like we are using a baseball bat where a fly swatter would do. The vapor barrier is proposed, and it is not necessary but is added as an extra precaution. It seems beyond the pale of placing anyone at risk by approving this application. Denying it under these circumstances doesn't seem to make sense.

Mrs. Willis points out that the Commission's expert used the words, "reasonably sure." She doesn't think the arguments of those in favor will change several of the minds on the Commission.

Dr. Autuori says again that no one who spoke is an expert in human health. If he were to be convinced about the safety of this site, he would have to hear testimony from an expert like a cancer specialist from Sloan Kettering or someone like that. Testimony from very competent engineers that the site meets certain standards established by DEP and EPA is fine, but it doesn't convince him.

Chairman Mucchetti points out that there was never any discussion by Commissioners about retaining an expert in human health. Bringing it up in discussion now is a little late in the day. Dr. Autuori says he is not gainsaying the Commission's expert, because he did a fine job as did the team, but he personally thinks there are areas that weren't covered.

Chairman Mucchetti says she did not support the application the first time it was presented, but she feels that the testimony from the team of consultants as well as the Commission's consultant was compelling.

Dr. Autuori asks if it would be prudent to delay action until Mr. McChesney is available for the meeting? Chairman Mucchetti says the discussion can be tabled with a motion to approve and a second at the table. Dr. Autuori motions to table, seconded by Dr. Gelfman. The motion passes, 8-0, and the item will appear on the agenda for June 20th.

3. **#2004-085-REZ-A-SPA-SR: 619 Danbury Road**, request to approve in accordance with Court's decision under Sec. 8-30g of the Connecticut General Statutes for (1) Petition for amendment to the Ridgefield Zoning Regulations to add a "Housing Opportunity Development" (HOD") district; (2) rezone application for 3.675 acres

from B-2 (Light Industry) to Housing Opportunity Development (“HOD”) district; and (3) Site Plan approval application to construct 50 two-bedroom condominium dwelling units located in two buildings on 3.675 acres. Auth. Agent: Matthew Ranelli, Esq. Owner: Terrar, LLC. PD to prepare Draft Resolutions. *For action.*

Chairman Mucchetti points out the resolutions prepared by the Planner, and notes that the applicant’s representative, Matthew Ranelli, Esq., is present for the discussion. The Planner explains that the denials of the applications for the affordable housing development were in front of the Superior Court on appeal, and the judge’s decision was that the denials shall be reversed by the Commission. In response to that order, the three resolutions have been presented. The first would adopt the regulations for the Housing Opportunity Development (HOD) District, the second would rezone the subject parcel to HOD, and the third is a set of conditions for approval of the site plan. The resolutions have been reviewed by the applicant, and he is prepared to discuss the proposed conditions with the Commission, as needed.

Mr. Walsh moves to approve all three resolutions, based on the court decision, seconded by Mr. Fossi. The Planner points out one correction – there is a duplicate paragraph in the resolution of the resolution for the adoption of the regulations (paragraph 3 is not needed if we have paragraph 4). The Planner suggests that the Commission ask Mr. Ranelli if he has any comments, and then act on the resolutions separately.

Mr. Katz objects to allowing the applicant to speak, because it isn’t a public hearing. This is a work session. The Chairman says she is acting on the suggestion of the Planner, and does not see a problem with recognizing Mr. Ranelli. She says it is not unusual with a working meeting to ask the applicant for clarification of items as needed, or if they have something to say. Mr. Katz still objects, and does not see a reason for input from the public unless it is a requirement to get the job done. The Commission needs to vote on this in accordance with the judge’s orders. Mr. Walsh notes that the language of each resolution references the need to respond to the order of the Court. That’s why he made the motion, absent the subsequent clarification and correction made by the Planner.

Dr. Autuori asks if the Planner contacted legal counsel regarding an individual Commissioner’s constitutional right to refuse to vote in favor of something, when ordered by a judge to do so. What concerns him, is whether he is being told how to vote.

The Planner says that the matter was brought up with Commission counsel Beecher, and reads Mr. Beecher’s message: “The result of the court’s decision on this affordable housing appeal is that the court has ordered approvals. However, rather than merely ordering approval of whatever was on the table at the close of the public hearing, the Commission has the opportunity to attach reasonable and normal terms and conditions to the approval. Those reasonable and normal terms and conditions are limited to normal housekeeping issues, such as bonds, and normal fine-tuning of non-

substantial nature, that is, it would not include a reduction in the units.” He is talking about the site plan approval. She also asked Attorney Beecher about the consequences of not adopting these resolutions, and was told that the Commission would be putting itself in a very bad position with the Court if these resolutions are not adopted, and individual Commissioners could also be putting themselves in a very bad position.

Dr. Autuori asks what that means, exactly. Mr. Katz says it means that the Commissioners would be foolish not to vote for it, and Mr. Walsh agrees. The Chairman notes that there was an order to approve. Mrs. Willis asks what happens if there are abstentions, but that question wasn’t posed to counsel. Mr. Walsh says that it is apparent no one likes what is before the Commission, but the reality of the situation is that the appeal was decided in favor of the applicant by a Superior Court judge in the State of Connecticut, and the Commission has been ordered by the judge to approve what the applicant presented, with the opportunity to make some modest modifications and include some standard conditions in the approval. Mr. Walsh says that the Commission is obligated by the Court order to approve the resolutions as drafted.

Mr. Katz says that he will vote for all three resolutions loudly and affirmatively because of his respect for the court system. However, he says that this is a regulatory rape, it is a mean-spirited application, it is a pillage of local regulatory process, and it’s brought forth contrary to the interests of the Town of Ridgefield. He resents the applicant, he resents the application, and he resents having to vote for it, but he will.

Mrs. Willis has a question about loose language and loose interpretation of some of the conditions. She questions language on page two of the site plan approval, under “a,” regarding the applicant “shall consult” the AAC, and “shall consider” their recommendations, and under item #4, the applicant “may present” a revised site plan to save the 40” oak tree. The Commission would never approve such loose language for any other application.

The Planner refers to the Commission counsel’s instructions about “reasonable” conditions. The Commission has the option to approve the maps that were in place at the close of the public hearing, and she says the proposed conditions were based on a reading of the transcript from the 10/19/04 meeting, and certain conditions and changes that were offered by the applicant, with limitations. For instance, the applicant submitted materials selections with the application, but volunteered to talk to the AAC to come up with some reasonable changes. They did not want to commit to expensive modifications, and the law (and the order) would not allow the Commission to demand these changes. The Court has ordered the approval of the application and the Commission can only go so far with its conditions. The applicant did agree to consult with the AAC, and might make some changes voluntarily.

Item #4 is an opportunity for the applicant to submit a revised site plan that would save the very large oak tree on the property, and the Planner admits that the inclusion of this condition is a “long-shot.” The transcript shows that the applicant is not likely to change his plans, and he consistently resisted changing the plans. The Planner feels it

unlikely that the plans will be changed, but this at least opens the door for that to happen. The condition is “permissive” with the use of the words “may submit,” and it suggests that the Commission is interested in the change, but cannot mandate that it happen.

Dr. Autuori says that he still does not have an answer to his question. The Planner says she was told that there could be personal, legal consequences for Commissioners who decided to vote against the adoption of the resolutions. She says she is not a lawyer, and cannot offer specific details about what that means. Dr. Autuori asks about the difference if there were an abstention and not a vote to deny, but the Planner does not have an answer. Dr. Autuori says he would like a clear, legal answer to his question.

Mr. Katz notes that a simple majority is all that is needed to adopt the resolutions. Mrs. Willis says that Dr. Autuori has a right to a more detailed answer. Dr. Autuori is insistent that counsel should offer a more detailed answer. The Planner apologizes that she does not have additional information. Dr. Autuori says he will abstain because he doesn't have an answer. Mrs. Willis asks if this has to be voted on tonight, since there is no answer on abstentions. Dr. Autuori would like to sit down with counsel to get an answer. He would like to explore this matter further. He does not want to be in contempt of court, but feels he has a very legitimate question. The judge ordered the applications to be approved, but can the judge order an individual to vote a certain way?

The Planner apologizes that she can offer nothing more as a clear answer to the question, and suggests allowing the applicant to speak since he is present. The other issue can be dealt with further, after the applicant speaks.

Chairman Mucchetti recognizes Mr. Ranelli, who makes a brief comment. He says that the Planner gave him the resolutions in advance, to make sure that the conditions were agreeable to both sides. He is agreeable to the resolutions as presented. He says that obviously he cannot give any answer or recommendation on the issues that need to be clarified by the Commission's own counsel. Mr. Ranelli says that the applicant has tried to continue this in an orderly way, and it has been a couple of months since the judge's decision, and he is hopeful for an approval so that they can start working on the project. The alternative is that the applicant could submit a request for Development Permits from the Town's land use office, on the basis of the judge's decision alone, but that would not provide the benefit to both parties of having the normal resolution of approval that staff has prepared. These resolutions are a good instrument to insure that this application proceeds in the same manner as any other development in Town. That's why the applicant sent the letter asking the Commission to act on these resolutions. He would appreciate the Commission acting on these applications tonight if at all possible. He also thanks the Commission for the time spent reviewing these items, and also for the time and effort during the appeal process. Although the discussions were not successful in resolving the issues, the Commission and staff's time and effort is appreciated.

Chairman Mucchetti asks if the Commission wants to delay a decision for further word from counsel. Dr. Autuori asks where that leaves those who do not have a complete answer to the question. Mr. Katz suggests that if there are abstentions and there is still a majority in favor of going forward, the point is moot. The Chairman admits that none of the Commissioners like the situation, but the Court has ordered the approval. Dr. Autuori says that is not the issue. The Chairman suggests that Dr. Autuori vote as he wishes.

Chairman Mucchetti calls for a vote. The motion passes, 7-0-1, with Dr. Autuori abstained.

NEW ITEMS

4. **#2006-054-REV:** Revision to Special Permit under Section 312.02E.of the Ridgefield Zoning Regulations to install awnings on property located at **426 Main Street** in the CBD zone. Owner/Apl.: Barry Finch. *65-day action period ends 8/17/06. For receipt/discussion/action.*

Chairman Mucchetti notes the letter from Barry Finch regarding a request for two awnings on the Raveis building. The Planner points out that these are awnings like many others on Main Street. She suggests a condition that the applicant go to the AAC for input, and any substantial changes come back for further review. Also, any signage on the awnings must be in compliance with zoning regulations. The Commission is approving the awnings, but not the signs.

Mr. Katz motions to approve the application, seconded by Dr. Autuori. The motion passed by a vote of 8-0.

5. **#2006-056-SR-SP:** Application for special permit under Sec. 306.0 (Excavation, filling and grading) for expansion of rear yard adjacent to an existing residence, involving the importation of approximately 1,207 cu. yds. of fill at **41 Remington Road** in the RAA zone. Owners/Appls: Nicholas & Kathleen Lang. Auth. Agent: J.F.M. Engineering, Inc. *For receipt / schedule walk / schedule public hearing.*

Chairman Mucchetti asks for a motion to receive the application, suggests a walk for June 18th. The Planner suggests a public hearing for July 11, 2006, when the same engineer is presenting other applications at public hearings. Dr. Autuori makes the motion, seconded by Mr. Katz, and the motion passes, 8-0.

COMMISSION WALKS

The site walk for the special permit at **41 Remington Road** was scheduled for June 18, 2006, as noted.

REQUESTS FOR BOND RELEASE / REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

The Chairman points out the following correspondence:

- Report from Terri Hahn of LADA re inspections at the Toll Brothers site

MINUTES

Mrs. Willis motions to approve the minutes of May 30, 2006, seconded by Mr. Slavin.
The motion passes, 8-0.

PUBLIC HEARINGS

Chairman Mucchetti informed the Commission that the applicant for the Wilton Road East 32-lot subdivision (Landegger) has verbally requested an additional continuation of the hearing that had been previously continued to June 20th. The Planner notes that the item will appear on the agenda to set a new date for the continued public hearing

Hearing no further discussion, the Chairman adjourned the meeting at 9:50 p.m.

Respectfully submitted,

Betty Brosius
Director of Planning

UNAPPROVED/UNREVISED
MINUTES
AQUIFER PROTECTION AGENCY

June 13, 2006

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

Absent: James McChesney

Also Present: Betty Brosius, Director of Planning

A public hearing was held prior to the meeting.

At 9:51 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

There were no pending items.

NEW ITEMS

There were no new items.

MINUTES FOR APPROVAL

Dr. Autuori motioned to approve the minutes of December 13, 2005, seconded by Mr. Katz. The motion passed, 8-0.

Mr. Walsh motioned to approve the minutes of March 14, 2006, seconded by Mr. Katz. The motion passed, 8-0.

Hearing no further discussion, the Chairman adjourned the meeting at 9:52 p.m.

Respectfully submitted,

Betty Brosius
Director of Planning