

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD

June 20, 2006

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

Also Present: Betty Brosius, Inland Wetlands Agent

A public hearing was held prior to the meeting.

At 7:32 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#2006-050-PD:** Summary Ruling application to dredge pond and remove island located at **311 Peaceable Street** in the RAA zone. Owner: Matt Grossman. Appl./Auth. Agent: Nazzaro, Inc. *65-day action period ends 8/10/06. Received June 6, 2006, walk scheduled for 6/18/06. For action.*

Chairman Mucchetti recognized the applicant, Gene Nazzaro, who represents the homeowner, Grossman, in presentation of the application.

Mr. Nazzaro explained that the pond-dredging activity is intended to restore the pond to its original condition and depth, except that there would be removal of the 10-foot diameter island in the center. The removal of the island would allow the pond to be deeper in its center. Without removal of the island, the grading at the bottom of the pond would have to be shallow, unless the entire pond were to be made larger in diameter.

The water feeding the pond comes from Peaceable Street, from runoff, and from springs within the pond. The 4-foot wide channel from the street to the pond is filled with 10-15 feet of sediment, and it is thick with [invasive] phragmites plants. An outlet from the pond goes to the swampy area to the east and north. The inlet needs to have two sediment basins, made from fieldstone, to trap the sand from the road, and the channel should be lined with natural stone to slow the flow of water before it reaches the pond.

It is not a difficult pond to de-water or to excavate. There are some surrounding trees to be removed, including 5-6 white pines that are choked out or dead, and one large willow covered with invasive vines, and one ash. The excavated material would be about 2-feet thick in the spoils area, and a berm would be built parallel to Peaceable Street inside the property line, for planting and privacy screening. Rocks around the man-made island would be relocated for use around the edge of the pond, in clusters.

Mr. McChesney asked about the history of the site. Mr. Nazzarro does not know when the pond was built. According to the map furnished by the Agent and used on the site walk, the pond is significantly different in shape now than when the map was made. Mr. Nazzarro says the lot has changed, because the original house was demolished to build the new house in the same location. He posted a site map (the septic plan) prepared by engineer Steve Trinkaus for the new house. He points to the location of the current pond, and describes the direction of flow that feeds it. The pond will include an aerator as part of the remediation.

Mr. McChesney asks if this is a “re-claiming” of the pond that is there. Mr. Nazzarro says yes, but the island prevents grading for depth and he wants to remove it. Mr. McChesney points out that the catch basins in Peaceable Street are filled with sand and debris. Mr. Katz asks about other water feeding the pond, and Mr. Nazzarro says there are also springs supplying water.

The Agent points out a subdivision map distributed to the Commission, showing the area where the pond is located. The subdivision map was filed in 1982 for the Pinchbeck’s, and it shows a significant area of wetlands. It is likely that there is a source of groundwater that feeds the wetlands from underneath, in addition to runoff from the road. The Agent says the Board should understand that the removal of the trees adjacent to the pond and the replacement of vegetation in that area would be done within a wetland and not uplands; this is part of the wetlands application, in addition to the pond dredging. The re-landscaping of that area would be important.

Mrs. Willis asks about the sediment basin in the channel, and whether it could be cleaned from Peaceable Street. Mr. Nazzarro says it can be reached from the area shown as the “spoil area” on the map, on the Grossman property. If the sand is consistently removed by hand, it might not be necessary to use machinery for future cleaning. Mrs. Willis asks about stones in the channel. Mr. Nazzarro proposes to line the channel with varying sizes of fieldstone, to slow the flow but not to uniformly riprap it, and to prevent more debris from getting into the pond. Mrs. Willis is also concerned about grassing to the pond edge and wants plantings planned for the pond edge.

Dr. Autuori states that he was not on the site walk, and is basing his questions on the plans. He asks about the island, and how it was made. Mr. Nazzarro says it was probably man-made as an aesthetic feature. Dr. Autuori asks whether it might be a good idea to leave it to provide additional shoreline for wildlife habitat. He asks about the status of the wildlife in the pond. Mr. Nazzarro says the pond is not deep or

healthy enough to support fish. There are frogs and probably turtles. Dr. Autuori says these are stressed species, and he is concerned about the removal of the island and shoreline habitat. Mr. Nazzarro says if the island remained, then the pond would have to be made wider. Removing it would allow grading for depth, without widening the pond.

Mr. McChesney says these would be good points if this were the only portion of the wetland, but the wetland area is very large. Dr. Autuori's concerns would be more meaningful if this were a smaller wetland and pond system. Mr. Nazzarro agrees, and says if the pond is deeper and colder, there will likely be more wildlife.

Mrs. Willis asks if there are geese on the pond, and the applicant says there are not. The tangle of growth provides a buffer around the pond, uninviting to geese.

Mr. Katz asks if it is the intent to extend the lawn to the edge of the pond, because there is a now a natural transition of uplands, wetlands, and then the pond. Mr. Nazzarro says the upland edge by the driveway will be left alone, where there are pine trees. Grasses will be planted next to the pond, but not as a lawn to be mowed. Mr. Katz says there is a large area with leaves to the west of the pond; Mr. Nazzarro says this is construction access and it will be planted with a variety of grasses when the land is re-graded.

Chairman Mucchetti asks Carol Stoddard of the Conservation Commission to read its letter of June 20, 2006. The Commission recommends planting and re-planting the shallow side of the pond with water-sensitive species, and a buffer to prevent the lawn from going to the water's edge. Mrs. Willis asks the applicant to identify the shallow side; it is the side closest to the house.

Mr. Fossi agrees that the trees should come down because they are dead and covered with invasive species. But he is concerned that there is a large area of wetlands around the pond, and the edge should be delineated to prevent the encroachment of the lawn into the wetlands. There is about 30 feet of wetlands between the driveway and the pond.

Chairman Mucchetti asks if the pond is entirely within the ownership of the applicant. The Agent says the map shows it is within the property lines. Mr. Nazzarro references the engineer's map, showing the location of the pond.

The Chairman confirms that there are no more questions, and **Mr. Katz** makes a motion for the Agent to draft a favorable resolution.

Dr. Gelfman reminds the Board that there are three members who have not walked the site, and motions for the item be tabled, seconded by Mrs. Willis. The Chairman clarifies that there is no second to Mr. Katz's motion to approve, and the motion dies. The applicant confirms that members can walk the site individually.

Mrs. Willis asks if the owner would be willing to do the planting that the Conservation Commission recommends, and Mr. Nazzarro believes that they would. In any case, the site will be seeded as soon as grading is done, with blue grass, red fescue, and rye (quick-growing grasses). Mrs. Willis asks if rubber mats will be used to access the site; Mr. Nazzarro says that they can be used at the edge of the pond if needed, but once the machine is in place near the island, it will not have to be moved in order to do the dredging. Trees on the opposite side of the pond can be taken down at the ground level, without need to de-stump. The spoils will need de-watering on the site before removal, and will be stock-piled temporarily. The job will take about four days from start to finish. Disturbance from machinery will be limited to the construction access.

Chairman Mucchetti asks for a vote on the motion to table, and it passes, 9-0. The application will be listed on the July 5th agenda for further discussion.

2. **#2006-056-SP-SR:** 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: JFM Engineering, Inc. *65 day action period or set public hearing ends 8/17/06. Received 6/13/06. Walked 6/18/06. Determine significance.*

Chairman Mucchetti asks the Agent to speak to the item. The Agent says the disturbance in the wetlands involves filling, resulting from grading and filling in the backyard. According to the engineer's plan, the filling of the stream is proposed to be remediated and restored. The Board may want to consider holding a public hearing on the wetlands application simultaneously with the hearing for the Special Permit application for filling and grading, so the remediation plan can be discussed at the same time.

Mr. McChesney motioned to schedule a public hearing for July 11th, seconded by Mr. Walsh. Mr. Katz asks about the basis for the public hearing, and the Agent explains that a public hearing is justified since the application was submitted in response to a notice that a permit was required for the illegal filling activity; no formal Show Cause hearing was required because the applicant agreed to comply, but the significance of the work done without a permit warrants a public hearing.

Chairman Mucchetti suggests that those who did not attend the site walk visit the site before the public hearing. The motion to schedule a public hearing for July 11 passes, 9-0.

3. **#2006-051-SR:** Summary Ruling application for regulated activities within upland review areas to construct a single-family residence on property located at **Tanton Hill Road** in the RAA zone. Owner/Appl.: Gabrielle Kessler. Auth. Agent: JFM Engineering, Inc. *Acknowledge withdrawal.*

Mr. Katz motions to acknowledge the withdrawal of the application, seconded by Mr. Slavin. The motion passes, 9-0.

The Agent explains that the property owner is out of town and will return in September. The applicant is expected to resubmit a new application for receipt in July, and can be re-scheduled for a September public hearing.

NEW ITEMS

There were no new items.

BOARD WALKS

There were no new walks scheduled.

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

There was no correspondence.

MINUTES

Mrs. Willis motioned to approve the minutes of June 6, 2006, seconded by Mr. Slavin.
The motion passed, 9-0.

Hearing no further discussion, the Chairman adjourned the meeting at 8:03 p.m.

Respectfully submitted,

Betty Brosius
Inland Wetlands Agent

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION

June 20, 2006

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

Also Present: Betty Brosius, Director of Planning

Public hearings were held prior to the meeting.

* Mr. Fossi was present for all items except #1, which was discussed at the end of the agenda.

At 8:04 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. Tabled 6/13/06, motion to deny and second remains on table. 65-day action period ends 7/20/06. Continue discussion/action.*

Note: Chairman Mucchetti asked that Item #1 be discussed at the end of the agenda following all other items, to allow Mr. Fossi to leave the room at that time. He has recused himself from discussion and decision on this application. Discussion on this item began at 8:15 p.m.

Chairman Mucchetti asked the Planner to post the maps on the bulletin board, including the proposed plan, the modified plan showing the slightly curved road at the intersection with Bryon Avenue, and two concept plans for entrance roads at the east and the west sides of the property. The Chairman notes that the matter comes back to the table with a motion to draft a resolution of denial, and a second. The item was tabled to allow Mr. McChesney (absent for the previous meeting) to listen to the tapes and to read the minutes.

Mr. McChesney thanked the Commission for tabling discussion, to allow him the opportunity to contribute his comments on the application. He has listened to the tapes and read the minutes. He had some recent photographs of the site, which he circulated to the Commission to refresh their memory of the site conditions. He complimented the Planner on translating the comments on the tape into comprehensive minutes.

Mr. McChesney had a prepared statement, from which he read excerpts to state his opinion on the application. His feeling is that everybody's minds are made up, and he's probably not going to change opinions, but at least this gives him an opportunity to make some statements:

In spite of all the negative comments in trying to justify a denial, I don't think they are valid. This subdivision does meet the regulations in spite of John's [Katz] interpretation, and I think Patrick [Walsh] made some very good statements relative to that particular side of it, and I'm not going to repeat what Patrick said.

The main issue is the road cut. There were very few comments about the subdivision layout as such. I think the layout is good, it makes a nice layout in a quiet neighborhood, no back doors will face Bryon Avenue, only two corner lots with sides facing Bryon Avenue, and that's no different than other corners facing Bryon Avenue, which is Fairview and Greenfield. The house facing on Bryon Avenue is like others on the south side. The special permit application is yet to come, and modifications can be made then regarding the house design and exact locations.

Currently the houses are 60 feet from the pavement, as opposed to 40 feet that the houses from the north side are from the pavement, so these two houses facing Bryon Avenue, that are going to be close to Bryon Avenue, are really set back further from the houses on the north side. In addition, the spacing between the two houses on Bryon Avenue and the property lines are approximately 140 feet, whereas the houses are on the north side are 40, 60 and 80 feet separating, so the housing on the south side is very similar to what exists there now today in the area where the houses have been built, and I'm thinking very specifically to what was formerly Dr. Sheehan's and the two houses further to the west.

As I said earlier, the main issue is the road cut. Yes, lights will face north, but between the houses, and swipe across either house when cars pull out and turn. However, night traffic out of a residential area is usually minimum. It's not a recreation center, it's not a mall across the street, it's not a school, and I don't think the light is going to be an issue.

The neighbor across the street seems to be agreeable to working out some kind of shielding arrangement. He has 7-foot hedges on each side of his property now, on each side of the house, and other houses along the north side of the street also have hedges between the houses. So there are hedges now separating the various houses.

There was a 6-foot hedge in front of his house that he has recently cut down to about 4 feet, and what is being proposed here, apparently the neighbor has reached a tentative agreement with Reed [applicant, Whipple] to put in some kind of screen to shield the house from the lights, but I think the neighbors are probably going to be happier to see the screening there, to shield the play yard in the front from the neighborhood.

Besides that, Dr. Sheehan's house, which I guess is now the church house, has a huge hedge in front of it so that that house is separated from Bryon Avenue. So we have precedent on Bryon Avenue for hedges, both between houses and between the road and the houses. If an agreement is reached between the property owner and the applicant for some shielding, it's not going to be unusual for that particular street.

The light as a health issue is kind of a red herring, and I don't know if it's... my only comment regarding the lighting is that there's an awful lot of lighting on I-95 and the Mass Turnpike, and I haven't heard of any people dying of cancer at the end of either one of those roads.

The west road cut is not a good solution. Admittedly it is opposite Greenfield, but we would have to cut down a tree, and you know this Commission in terms of trees – we have always been concerned about large trees – and that tree, in my opinion, is probably the largest tree in the whole community, at least in that particular neighborhood community. And to talk about moving or having a road come out to the side of that, we have all been exposed to the problem of paving under drip lines, and that has been a constant complaint of the Commission before, and I can't imagine removing that tree, or coming out with a road cut without damaging the roots or going into the drip line. In addition, when you read the regulations, they don't propose having off-sets unless there is at least 200 feet from an intersection, so you certainly wouldn't want to have a road up there that's off-set by 20 or 30 or 40 feet from that intersection. That's why I think the concept of using the west end of the lot as a road cut is not the ideal solution.

The east end requires removing more trees than the center cut, which is what's on the proposed map. And these trees that will be cut down there are not only in the town right-of-way but also in this particular property, whereas in the center cut, the amount of trees to be taken down is either zero or minimum. In addition, I think that by putting a roadway in on the east side, we are asking for some problems with the drainage ditch which I can't predict at this point, but I suspect may create some problems, and in my opinion that would not be very desirable.

The road cut is all that is planned. While I don't know what will happen as a result if this is turned down, but I suspect that two or more road cuts might result, be it accessways or driveways. Nearly all the trees on the south side are in the town right-of-way, and other than for the planned road the streetscape will remain as is. In winter the view will be blocked by trunks, but will be no different than what the

neighbors now see in the way of side, front and back yards on the existing properties on Fairview, Greenfield and Bryon Avenue.

I suspect a turn-down [of this application] will result in an appeal which I don't think we will win, and would therefore be a waste of time and money.

Other layouts may be possible, but no one here has even suggested a better subdivision layout. I know that's not our business, but sometimes constructive hints are helpful. All the comments so far have been negative.

Thank you for giving me the opportunity to talk, and let's vote.

Dr. Gelfman says the Commission is presented with two alternatives to the main plan. One comes directly out and one to the side of the neighbor. Mr. McChesney confirms that he favors the "off-set lollipop" that comes out to the side, between the two houses across the street.

Dr. Autuori says he is not sure there is a lower cancer rate for people driving on I-95, but that is not relevant to this discussion. He stands by his comments made at the previous meeting, and corrects a detail in the minutes – there is approximately 40 feet between the Lowe's house and the house to the east, and 70 feet between the St Mary's rental houses that would be opposite the alternate east road entrance to the site.

Dr. Autuori references the hand-out from the Planner, at the table that evening. (The Planner identifies it as chapter 21.12 of Robert Fuller's book, "Land Use Law and Practice," dealing with Commission actions on subdivision applications.) Mr. Katz notes that it is not statutory, but the Chairman points out that case law is referenced in the text.

Dr. Autuori reads the paragraphs on reasons why a Commission cannot deny a subdivision, including inadequacy of the adjacent road, restriction on access, etc. But he says that nowhere is there any provision in the chapter that says a Commission cannot deny a subdivision based on legitimate health and safety reasons, pertaining to one or more members of the public. He recognizes that Mr. McChesney is an engineer by profession and he respects his opinion, but he disagrees with the comment that the light issue is a red herring. Dr. Autuori says that we know that bright lights have a deleterious effect on biological species and the biological rhythms of various species including humans. Melatonin is the hormone that he mentioned the previous week.

Dr. Autuori asks if the article he presented at the previous meeting, entitled, "Brights Lights, Big Cancer," can be submitted to the record. The Planner says that the article should not be submitted after the close of the public hearing, but Commissioner Autuori's comments in discussion, based on his own expertise, are admissible.

Dr. Autuori says there was a new study out last week on the color and intensity of light, and its effects on alertness, melatonin secretion and so forth, and it is now clear from

this article that blue light is far more stimulatory, more arousal-provoking, and people subjected to blue light appear to be aroused, pepped up. If subjected to these lights at night, it affects sleep. Head lights on the newer cars are far more “blue” than in the past. If we approve this layout, with the direct hit to the Lowe’s property or even with the slight curve, we would be approving something with a significant impact to those neighbors. And we have to be cognizant to changes in the automobile industry and these lights may get even worse. The central issue he sees is a very real health issue which has to do with light, but also with noise, exhaust, etc. But the principal issue is a tremendous increase in light hitting the Lowe’s house, and even with a hedge and a wall, some of the light will go over into the windows and the house.

The Commission is here to protect to not only the Lowe’s but all the people, including the people who will occupy that house now and into the future. He says the Commission has adopted a new regulation for lighting with good reason, and his concern is a narrowly focused public health issue concerning the Lowe house and its occupants. That is his basis for not supporting this application.

Regarding the tree on the west side, the applicant testified that they could avoid paving over the drip line of the tree. Dr. Autuori believes it may still be possible to bridge the roots of the tree. Sadly, the difference between saving a tree and saving the health of a few people who would be impacted by the lights is difficult, and he has to side with losing the tree and saving the people.

Mrs. Willis asks about Sec. 4-11 in the subdivision regulations, and reads, “The location, arrangement or design of streets shall be such as to cause no undue hardship to adjoining properties.” She says this is one thing that makes her favor the eastern access, and possibly designing the access so there is a protected buffer of the stream channel.

Mr. Katz says he doesn’t recall where the Commission recently spent as much time as it has on this application discussing neighborhoods, and responsibilities under state statutes, especially in such a concentrated form. He observes that Dr. Autuori has integrity and expertise on the lighting issue, but he points out that the volunteers mentioned in the article about cancer stared at a brightly lit wall for nearly 90 minutes in order to achieve the diminution in melatonin levels that were alleged to have contributed to some statistical increase in breast cancer.

Mr. Katz’s rationale for drafting a denial of the application was based on his interpretation of a lack of having met a certain specificity in the regulations that he cited. With regard to Mrs. Willis’s reference to 4-11, he says he zeroed in on that several weeks ago until he realized that the interpretation of the word “adjoining” simply doesn’t meet muster in this situation. The properties that are negatively impacted are not adjoining this property in any instance, and if the Commission is going to be interpretive about certain linguistics, and if the language is taken at face value, he doesn’t find that there is any offense to adjoining properties.

Mr. Katz then references the entirety of the proposed subdivision as it is going to fit into this neighborhood. He says he has spent a lot of time out there and has done a lot of tree counting on the property lines. He says it pains him to admit that he recognizes there is a subdivision here that in some configuration is going to meet all of the Commission's regulations, and therefore will require an approval, although to some it may be a shoehorn of a modest offense unto a wonderful neighborhood. But we will probably grow to like it at some point.

Mr. Katz says that the more "morphs" he makes to the potential road cut, eliminating the proposed road, the more destruction to the neighborhood he sees. The tree on the west side is a very valuable asset to the entire neighborhood, no matter what direction you approach it from. It is an amenity that would be a serious shame to sacrifice, no matter what the wetlands implications. He doubts the tree could be saved under almost any engineering plan for a road at that location.

With potentially two additional entrances, the property is chopped up more. The road on the east side will be flared out and almost twice as wide as what is proposed in the center. Trees will fall. If the Commission can agree to the proposed plan with the curved alternative, not because of cancer, but because of less light impacting any individual home, which is an opportunity but not a requirement that the Commission has, it makes a more attractive road. The straight "lollipop" road is ugly. The curved alternative can be accomplished, with a slight change in the location of the detention basin. If that can be conditioned in an approval, he will vote to approve the subdivision, remembering that it is the subdivision that is being approved and not the homes on the land. He says he has been persuaded by having time to regurgitate all the information, and this is probably the best thing that the Commission is going to get for this neighborhood. Something will happen here, and this plan is probably the best, with road shifted to the right.

Dr. Gelfman says he drove in the neighborhood this morning, looking at this area and other subdivisions in the area. He notes that it was Chairman Mucchetti who originally suggested the idea of an eastern access into the site. He says there is 70 feet between the two houses opposite the eastern access, and only 40 feet between the houses opposite the road in the center, even with the alternate curved design. He doesn't think the trees at the eastern side are particularly distinguished, and this would be a better access to this separate, new neighborhood. It is closer to High Ridge, and it would attract the bulk of the traffic to turn right toward High Ridge and not left to Greenfield. It would obviate a number of problems posed by the proposed access. Nevertheless, he says he will abstain from voting because of privileged information he has learned about the project.

Hearing no additional comment, **Chairman Mucchetti** asks if the Commission is ready to vote. **Mr. Katz** asks if the privileged information Dr. Gelfman mentioned is the privileged information to which some of the others are also privileged? Dr. Gelfman has no idea who knows what. Mr. Walsh says that if several Commissioners have heard the same thing, it is probably not "privileged." Dr. Autuori says he is not

aware of any other information. The Planner cautions the Commission that their discussion, action and vote must be limited to the information presented in the application and testimony at the public hearings, including maps and other documents in the file, and should not include any information that is not in the public record.

Chairman Mucchetti asks Mr. Katz if he is withdrawing his second to the motion to draft the denial. Dr. Autuori, as the maker of the motion, says he is disturbed because of the difference between this discussion and the previous meeting. Mr. McChesney says it is not unusual for a motion and second to be made, and then to have the Commission change its mind as a result of discussion on the application, so he sees no reason not to proceed with the motion on the table. Mr. Katz is free to vote as he pleases. Mr. Katz notes that the maker of the motion has declined to withdraw his motion, so he will withdraw his second, and it leaves the motion dead on table unless there is another second. Mrs. Willis seconds the motion to draft the resolution of denial, which brings it back to the table.

Dr. Autuori asks about the Planner's remarks about considerations for the discussion and the vote. The Planner repeats that "alleged" information should not be a part of any discussion on this application. Dr. Autuori is disturbed because he was prepared last week to vote, and delayed any action to allow Mr. McChesney to contribute to the discussion. Now there is a full Commission, except for Mr. Fossi who has recused, and it disturbs him that something has come up in the intervening period that may convince some of his colleagues that they can't vote.

The Planner notes that one of the things she distributed at the table this evening (and the Commission can receive advice and information from staff) is a copy of the chapter entitled, "Agency Resolution and Subdivision Applications" from attorney Robert Fuller's book on land use law, regarding the Commission's responsibility and limitations in making decisions on subdivision applications. This is not privileged information, it is commonly accepted procedure in the State of Connecticut on how Commissions should conduct themselves in a Planning and Zoning capacity. The chapter emphasizes (and the Planner is concerned about this issue), that the Commission, regardless of whether its action is to approve or to deny the application, must come up with reasons that are clearly supported by its own regulations. The Planner, in drafting a resolution, will need to be specific as to the subdivision regulations that are not being complied with by the applicant and the plans that were submitted to the Commission.

Dr. Autuori says he brought up the point about the safe point of access, and that safety is more than just traffic. It runs the full gammit relating to human health, and environmental health. He also noted in referencing Fuller's chapter and the list of things that should not be used to deny a subdivision, that nowhere is there reference to not using public health and safety reasons to support a denial. He wonders if he is being told now that public health and safety is not something to be considered. The Planner says absolutely not. Mr. Walsh references Sec. 1-3(a) of the subdivision regulations, that pertains to Dr. Autuori's concerns, "The land to be subdivided is of

such character that it can be used for building purposes without danger to health or the public safety.” Dr. Autuori says this particular proposal poses a danger to health and public safety.

Mr. Katz says he is in no way gain-saying his belief that Sec. 4-31 in particular is transgressed by this subdivision, to the degree that preservation of existing features, including streetscape, is not something that has been maintained in the presentation before the Commission. He suggests, however, that alternatives to this plan are more detrimental to that streetscape than the proposed plan might be, and there must be a way to access this subdivision that the Planning Commission would have to accept, and he is trying to go with the least of those damaging probabilities.

Secondly, if Robert Fuller can be cited, then you can also cite *Crescent Development vs. Planning Commission*, where the State Supreme Court said the following, “Where a planning board has approved a subdivision application subject to changes in the proposed roads and accessways, the Supreme Court noted that practical effect of the defendant’s action was to approve a modified subdivision.” Changing the road to the one on the right, or to the middle, or whatever, is the purview of the planning commission in the approval of a subdivision.

Mrs. Willis says she doesn’t know how you can compare the plan for the road in the middle with the one on the right [east]. The road in the middle is a fully-developed plan. The concept plan for the east entrance is clearly drawn to be less than appealing to the Commission. She does not see how the Commission can make such a humungous modification of the proposed plan [to change to either the east or the west alternate] and approve the subdivision, because clearly these two plans still need a lot of work.

Mr. Katz says that acting as a wetlands board, a wetlands proposal for this property was approved with considerable input from the Board’s own consultant. The wetlands approval is an amalgam of expertise from the applicant as well as the Board’s own consultant. It seems that it would not be responsible to gain-say all of that, and while a Commission acting on a subdivision must act entirely independent from the wetlands board, it cannot act until input has been received. If the wetlands board says no, the Commission can still approve it. But a lot of time and money has been invested in approving a wetland layout for this property that is going to be developed. If the road is shifted to the east, then an entirely new wetland configuration would have to be designed for this property before it could go forward. This is not good for the Commission or the community. There is a plan that several sets of experts say will work, and he thinks the Commission needs to respect that, and to modify the proposal in ways that will accommodate those wetlands particulars. He believes that the slight shift of the road to the right [as presented by the applicant] will accommodate that. He is not sure that the shift to the eastern side of the property would be better for the community.

Mrs. Willis is mystified by what has happened, because it was Mr. Katz who asked the Inland Wetlands Agent if the wetlands application were approved, could the Planning Commission still deny the subdivision, and it was made clear that this could happen. There are two separate boards, and regulations, and it was possible to approve one and not the other. At that point, it was clear that there were many who were opposed to the central access, and if something else were approved by Planning, then the applicant would have to modify the wetlands application.

Mr. Katz says he can clear up the mystery. He agrees with the separateness of the board and the commission and the decisions made by each. The Planner interjects that this issue is covered in the hand-out from Fuller's book on page 470, and reads from that page about planning commissions approving subdivisions even though wetlands permits have been denied, and states that the inverse is also true. Mr. Katz emphasizes this doesn't mean that regardless of what the wetlands board decides, either favorably or unfavorably, their report can't be considered by the planning commission. It can't be controlling but it can be considered. He is making the point that the wetlands approval was based on the recommendations and review of professionals hired by both the applicant and the wetlands board, and that the process was issued to the planning commission in the wetlands board decision. He appreciates that fact that he would have voted differently the previous week, but his visits to the site, and review of the maps and reports has convinced him that the Commission is not going to do better than the plan presented.

Dr. Autuori says he is now considering the eastern entrance because it can save the tree on the west, but at the last meeting the Commission looked at planning versus the wetlands issue, and it was clear that the applicant could re-design the wetland plan to accommodate either the western or the eastern egress. He agrees that the wetlands plan was workable, and he endorsed it because it did not increase runoff and may have in fact increased retention of runoff. But just because there is a workable plan, and just because it took so long to get to the point to where the Commission could finally focus on the wetlands and runoff and finally approve the plan, there was a considerable amount of distraction from discussion on the access and egress to the property. He says Mr. Katz made a statement about "harming the community" if the Commission tossed aside the wetlands plan that was approved. Dr. Autuori disagrees with Mr. Katz and feels that there is a better plan on either the east or the west. He wonders what has really changed from the previous week's discussion, and he is puzzled. Some of the comments from the previous discussion were directing the applicant to come back with a better design, and the engineers could adjust it because most of the existing information is already there to support the engineering. He is convinced now that Dr. Gelfman's desire to use the eastern access, and to save the tree on the west side, may be a better plan. It would shift traffic to High Ridge. He has jumped back and forth from the east to the west all along, but he has never supported the central approach between the two houses.

Mr. Walsh says he has read the minutes of the previous meeting and has listened to the spirited debate and feels it comes down to the simple question: Does this application

meet the regulations or not? It is not whether the eastern or western or central or curved access point is best. It's whether it meets the regulations. Nothing has changed in his mind from last week to this week, and this application, whether individual Commissioners like it or not, meets every aspect of the regulations. He understands that Dr. Autuori does not think the application meets Sec. 1-3(a) of the regulations, and that is a good argument, but he has had an opportunity to read the article mentioned by Dr. Autuori on the Internet, and the type of light and the intensity and the time of exposure of the study participants is difficult to equate to the 7-lot subdivision. He is not a doctor nor does he have expertise in this field, but it is difficult to relate the article to the subdivision layout, especially if there is screening for the house that is going to be affected. He wonders why the Commission could not also require additional screening on the house to the east of the Lowe's as well, if the road is curved slightly to the east. Perhaps that can be part of the approval.

Chairman Mucchetti says she doesn't feel that Dr. Autuori's argument meets the standard of health and public safety either. The study was not geared toward the light from headlights that would shine for seconds as the light sweeps around when a car turns the corner going out of the subdivision. She feels that this subdivision meets the standards of the regulations, and if a denial were challenged in court, the argument about the health effects of the lights would not succeed. Based on the lengthy discussions the Commission has had on lights, specifically for 901 Ethan Allen Highway where Dr. Autuori supported taller lights and this was not considered a risk, now this subdivision layout seems to be a problem. The Ethan Allen Highway site has many lights shining on many people for a long period of time, and that didn't concern Dr. Autuori. Dr. Autuori says that is a different situation. Chairman Mucchetti says she does not think Dr. Autuori's position on the lights is strong enough under the standard that needs to be met in Sec. 1-3(a). Obviously Dr. Autuori feels strongly about this issue, but she disagrees with the argument.

Dr. Autuori says that the Ethan Allen Highway proposal dealt with two different treatments of light for the project, and the plan ultimately approved by the Commission ended up giving less illuminance to the ground. He also says that the cancer/light article was not admitted to the current record, so the article is not the issue specifically. He appreciates that others read it, but there is lots of literature that talks about the deleterious effects of light at night, and he was simply speaking from his own expertise about lights, and not to the specific article.

Mr. McChesney says there has been a lot of discussion and it has gone around in circles. He says the debate should be closed, and a vote should be taken.

Chairman Mucchetti says there is a motion on the table to draft a resolution of denial and it has been seconded. The vote on the motion is taken, and it fails, 2-4-2. Commissioners Willis and Autuori voted in favor, Commissioners Katz, McChesney, Walsh and Mucchetti voted against, and Commissioners Gelfman and Slavin abstained.

In coming to his conclusion to abstain, **Mr. Slavin** says he understands that reasons stated for denial have to be very specific, and he has not heard the words yet for that support. He feels that he can't vote yes or no without knowing what those who proposed the denial are using as the basis of support for the denial. If the reasons are specific and strong, then he could support it, but he hasn't heard that yet.

Mr. McChesney says the two weeks of discussion has covered reasons for a denial, and those reasons would have to be drawn up very specifically. But the motion to draft the denial has failed, and he now proposes a motion to draft an approval for application, based on the slightly curved road design at the center of the property, proposed as an alternate by the applicant. The motion is seconded by Mr. Katz. Mr. McChesney says he feels this is a good subdivision and it meets the regulations.

Mr. Katz says he cited Sec. 4-31 in the previous discussion. He says that unlike the requirements stated in Sec. 1-3, the language in 4-31 is "permissive," in that it allows a Commission "to require that certain existing features which would add value to the development or to the town as a whole, including, but not limited to, trees watercourses, ridge tops or ridge lines and similar irreplaceable assets, shall be preserved through harmonious design of the subdivision. The Commission may make reasonable modifications in standards for layout of streets and lots to accomplish such purposes..." but the lead sentence in 4-31 says the Commission may, not the Commission shall, where as 1-3 uses the word "shall." He feels that it is incumbent upon the Planning Commission in any community to preserve such assets, but in very close and further examination of this particular street, a different layout from the one for which the motion was made and seconded would not only fail to achieve that, it would more incredibly interrupt it. He recognizes that this will be subdivided property in the new zone created by the Commission, and it seems to him that the "may" in the regulation is achieved most particularly by the modest shift of the road to the right. It doesn't do as well as no road at all, but that is not possible, and hence the change in his vote.

Dr. Autuori asks if there will be a condition to require the applicant to meet with both the Lowe's and the other neighbor to the east, about screening. There was some discussion about the fact that the applicant offered to provide screening for the Lowe's, but it would be difficult for the Commission to require additional off-site screening for other neighbors when it wasn't discussed as part of the application. Mr. McChesney says that could be voluntarily done by the applicant, but should not be mandated by the Commission. Mr. Walsh agrees that the arrangement with Mr. Lowe should be mentioned in the resolution because it was offered by the applicant, but going further to require screening for additional neighbors would not be appropriate without an agreement from the applicant. Dr. Autuori says that the curve in the road will now cause more of an effect on the neighbor to the east of the Lowe's. He thinks the applicant should be asked to offer screening for this neighbor. Chairman Mucchetti asks Mr. McChesney, as the maker of the motion, what he would support. He would like to limit screening requirements to the Lowe property because that is what the applicant offered. The applicant can go further if he wishes. Mr. Katz points out that

Sec. 4-31 gives the Commission some latitude to require “reasonable modifications in standards for layout of streets and lots to accomplish such purposes, including protective screening.” So, if the Commission cites Sec. 4-31, and requires the applicant to meet with the neighbor to ensure protective screening, the Commission should be on safe ground.

Chairman Mucchetti calls for the vote on the motion to draft a favorable resolution for the subdivision application. The motion passes by a vote of 5-2-1, with Commissioners McChesney, Katz, Walsh, Mucchetti and Slavin in favor, Commissioners Autuori and Willis against, and Commissioner Gelfman abstained.

The draft resolution will come back to the table for discussion and action on July 5th.

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/App.: 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. Public hearing closed 6/13/06, motion to approve and second remains on table. 65-day action period ends 8/17/06. Continue discussion/ action.*

Chairman Mucchetti reminded the Commission that a motion to draft a resolution of approval for this application was made by Mr. Katz and seconded by Mr. Fossi, and the motion remains on the table for continued discussion. The item was tabled to allow Mr. McChesney to read the minutes of the meeting and to listen to the tapes because he was not present at the June 13th meeting.

Mr. McChesney confirms that he has read the minutes and listened to the tapes and feels qualified to discuss the application and to vote. He has listened to the testimony of the experts at the hearing, as well as the written comments of the Commission’s consultant, and he appreciates the input. He does not challenge the expertise of the professionals making those presentations and he has no further comment to add.

Chairman Mucchetti calls for a vote on the motion to prepare the draft. The motion carries, 5-4. Commissioners Katz, McChesney, Fossi, Walsh and Mucchetti voted in favor, and Commissioners Autuori, Gelfman, Willis, and Slavin voted against. The draft will come back for consideration on July 5th.

NEW ITEMS

3. **#2006-059-REZ:** Petition to rezone ±1.891 acres located at **472 Main Street and 25 Prospect Street**, the Ridgefield Library, from DPD and RA zones to CBD zone and change the Ridgefield Zoning Map. Owner: Ridgefield Library Association, Inc. Auth. Agent: Robert R. Jewell, Esq. *65 days to schedule public hearing ends 8/24/06. For receipt, schedule walk and public hearing.*

Chairman Mucchetti says a public hearing must be scheduled for the petition to rezone the library property, but a walk is probably not necessary. The Planner explains that the library currently owns property in three zones; the parking lot is in the DPD zone, the original (1903) library building and additions are in the RA zone, and the Webster Bank building (the old movie theater) is in the CBD zone. The applicant proposes to change the RA and DPD zones to CBD.

Mr. Walsh asks the Planner to provide a list of the permitted uses for each of the current zones to the Commission, for use and information at the public hearing.

Chairman Mucchetti says July 18th is suggested for the public hearing. The hearing can be opened on that date and continued to September if necessary, with an extension.

Mr. Katz motions to receive the application and to schedule a hearing the July 18, seconded by Mr. Fossi. The motion passes, 9-0. Mr. Walsh suggests that this hearing be held prior to the hearing on the 32-lot subdivision. The order of hearings can be determined closer to the date of the meeting.

COMMISSION WALKS

There were no new walks scheduled.

REQUESTS FOR BOND RELEASE / REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE:

- **Chairman Mucchetti** points out a letter received from Toll Brothers regarding materials proposed for the retaining wall on the west side of the property at **638 Danbury Road** (application file #**2005-106-PR-SP**). The applicant is requesting approval of a system called “Sierrascape” for the wall construction. The material gives the appearance of natural fieldstone. A color photograph was circulated for the Commission’s consideration. The Planner clarifies that this is not a change in the size, height or location of the wall shown on the plans, but it is only a request for approval of the proposed material.

Mr. McChesney says the wall is attractive, but unfortunately no one will see it because of the vegetation below. He has no problem with the proposed wall material. Dr. Gelfman asks if the road is above the wall, and the Planner confirms that it is. The wall will be shielded by vegetation, although there is a cleared area for the drainage pipe and easement already installed for the assisted living facility in Phase II at the site.

Mr. Katz motions to approve the suggested “Sierrascape” material for the wall, seconded by Mr. McChesney. The motion passes, 9-0.

MINUTES

Mr. Katz motions to approve the minutes of June 6, 2006, seconded by Mr. Slavin. The motion passes, 9-0.

(Note: Following approval of the minutes at 8:15 p.m., Mr. Fossi left the meeting, and the Commission resumed discussion of Item #1)

Hearing no further discussion (after item #1), the Chairman adjourned the meeting at 9:20 p.m.

Respectfully submitted,

Betty Brosius
Director of Planning