

APPROVED / REVISED  
MINUTES  
INLAND WETLANDS BOARD MEETING

October 9, 2007

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  
Linda Caponetti, Recording Secretary

*A Show Cause Hearing was held at 7 p.m., prior to the Planning and Zoning Commission meeting, which was held prior to the Inland Wetlands Board meeting.*

*At 9:01 p.m. Chairman Mucchetti called the regular Inland Wetlands Board meeting to order, beginning with the "Pending Items."*

**Show Cause Hearing (7:02 p.m. to 7:38 p.m.):**  
**CEASE & DESIST AND ORDER TO SHOW CAUSE**  
Violation of Wetlands Permit #2007-115-WV  
80 & 90 Spring Valley Road  
Owners: Richard C. Szentkuti and Cynthia M. Szentkuti

**Agent Brosius** explained that a Cease & Desist was issued because of a wetlands violation, observed when the Wetlands Inspector, Aimee Pardee, went out to the site in response to a development application from owner, Richard Szentkuti. The property was originally 90 Spring Valley Rd., but that lot was divided and the property now consists of two lots at 80 and 90 Spring Valley Rd.

The observation of Ms. Pardee was that the site had been substantially disturbed, and the disturbance was in violation of the wetlands permit that had been issued for 90 Spring Valley Rd. and also the building permit which was applied for at 80 Spring Valley Rd. She issued a violation, after which Mr. Szentkuti began erosion control measures. Engineer John McCoy of JFM Engineering, who applied for the original wetlands permit for the previous owner but was not hired by new owner Richard Szentkuti until after the violation had occurred, was brought in to supervise the stabilization of the site. Work then proceeded at a much quicker pace, but, there was substantial disturbance to almost the entire property, the Agent said. She stressed the need for restoration and a mitigation plan, and stated that all work should have

ceased, except for that connected with the stabilization of the site with hydro-seeding and erosion control measures.

**Chairman Mucchetti** noted 1) the order to Cease and Desist, dated Oct. 3<sup>rd</sup>, 2) a project status report from Mr. McCoy, dated Oct. 2<sup>nd</sup>, 3) a copy of the Resolution of Approval, which had been granted for the property in June 2007, and 4) a copy of Section 13 of the wetlands regulations, which spells out the Commission's ability to enforce the Wetlands Regulations.

The Chairman described her own observations upon walking the site, and asked the Commission if they had also had a chance to walk it.

**The Agent** said that the Show Cause was scheduled to enable the builder to explain his position.

**Mr. Katz** asked if the violation applied to the foundation of the house. The Agent said that the foundation is not a wetlands violation, even though it had been determined that there was no building permit and no zoning permit issued. The citation, however, is only for the wetlands disturbance along the driveway of the lot where the foundation is being applied for, and for disturbance on the lot to the north where the previous wetlands permit was issued.

**Mr. McChesney** wanted to see maps that would show what had been approved and what exists now.

**Mr. McCoy**, who had designed the original division of the property and the wetlands plan for the north parcel, distributed maps of the preliminary restoration plan. He stated his intention to "fast track" the project, so that the wetlands, especially, could be restored before the end of the year, including plantings.

**Mr. McCoy** said that he had been out to the site about a week ago. The disturbances were ceased. He saw the beginnings of some soil erosion control measures, he added. Pointing to the map, he identified swaths of clearing at the site, where most of the vegetation is gone, including a portion of the wetland, which he is advising the owner to restore. There is also a portion of the upland between the two wetlands which is disturbed. The cleared areas are raked, and the stumps are gone, and the boulders are gone. There's a dirt swale running to the peak of the ravine, which was installed for sediment and erosion control measures. There is strong silt fence installed every 75' up the hill, and some at the foot of the hill. In the ditch, they have installed stone check dams rather than filling it in. This way, it will divert some of the water away from the wetlands and into the ravine. Until the area is stabilized, that is a benefit, to prevent erosion. Ultimately, he will suggest that the ditch be filled. The erosion controls have been staked, except for one small area, he said.

Mr. McCoy went on to say that, as of that morning, about 60% - 70% of the site is hydro-seeded. The idea is to get some vegetation growing on the hillside, he said,

“since the soils are susceptible to erosion and it’s a pretty big area.” Ultimately, he may be removing some of this vegetation to put in more wetland specific vegetation.

There is still potential along the driveway for concentrated flows, which would end up out on Spring Valley Rd., so they will be concentrating on that area now, with additional silt fencing. They constructed two sedimentation basins.

He detailed a preliminary planting plan which he and soil scientist, Mary Jaehnig, had created, again stating that he hoped to be able to get the area stabilized as soon as possible, to “catch the season.” If he missed that opportunity, he didn’t feel much restoration work would be accomplished on the site before spring.

**The Chairman** asked if the wetlands markings had been removed, and by whom.

**Mr. McCoy** said that he had not removed them, nor did he think that the prior owner had.

**Mr. Szenkuti** was asked if he had removed the markings, and he said that they had not seen all of the markings. He stated that some of the wetlands had not been marked. He also said that they had been given permission to go into the buffer area on parcel 90, but, that the contractor “got a little too aggressive” in cutting when asked to cut around that area and also the front bank. Mr. Szenkuti stated that they encountered a problem with the wetlands coming up to the left side of the property when he attempted to have the old overhead power lines in that area removed. The utility companies refused to attempt it until some of the trees that were leaning on the lines and toppled over on each other were removed. Once again, the cutting went too far, he said.

**Mr. Szenkuti** admitted that they had “unfortunately” intruded into the wetlands and the buffer. They are taking all the steps they can to move as aggressively as possible to correct the situation, he said, and asked for the Board’s cooperation.

**Mr. McChesney** asked Mr. McCoy if he thought that his restoration plan for the northern side would be effective in controlling the flow going down to the small watercourse.

**Mr. McCoy** said that this secondary drainage area and the undefined area it drains into will provide the water storage they need. They will create pockets, or depressions, which will store the water that will eventually re-establish the wetlands.

**Mr. Katz** asked if Mr. McCoy was working in conjunction with soil scientist, Mary Jaehnig. Mr. McCoy said that he was. He then asked what the Board is specifically being asked to do or approve.

**The Chairman** said that Section 13 of the Wetlands Regulations offers them many options.

There was some discussion regarding what fees were imposed, and what fees were paid.

**Mr. Walsh** said that it is very important to distinguish between the two lots. It seemed to him that a building permit had been applied for on parcel B, but it seemed that the bulk of the clear-cutting was on the other lot, parcel A. Mr. Szenkuti attempted to explain.

**Agent Brosius** asked Mr. Szenkuti if he was aware that a wetlands permit had been issued for parcel A when he purchased the properties, and also if he was in possession of the site map which delineated the wetlands. He said that he was. She asked if it were true that he had diverted the water flow from the northeast corner of the map toward the ravine. After persistent questioning by the Agent, Mr. Szenkuti finally admitted that they made a swale through that area. The Agent asked him when that was done, in relation to when he was informed that there were violations on the other part of the property. He said that was done before anyone even came to the property.

**The Agent** directed the Board to Sec. 13 of the regulations, and explained the options. These included suspending or revoking the permit that had been issued. Mr. Walsh asked what the time frame was. The Agent said that they had 10 days to make their decision. They could continue the Cease and Desist order, revise it, or lift it. She suggested that the Board include this site on their site walk schedule, and review the mitigation plan in reference to the property itself before rendering the decisions at the following meeting.

**Mr. Katz** suggested that the Board was actually dealing with two lots now, although the original permit was granted for one lot.

**The Board** agreed that no further work would be permitted on the site, except that which is necessary to stabilize the site.

**Mr. McChesney** referenced the fact that Mr. McCoy's site plan was preliminary, and asked that he furnish a more complete and up-to-date plan at the next meeting. One thing that does need to be on the plan before the required sign off by the Zoning Enforcement Officer and the Wetlands Inspector, is that the erosion and sedimentation controls be shown on the plan, the Agent added.

**Mr. Walsh** asked the engineer if he was satisfied that the stone check dams will be sufficient to stop the flow from any severe weather and prevent further erosion on the ravine. Mr. McCoy said he was not. The ravine is susceptible now, he said, and, with any additional flow added, it is likely to be more susceptible. However, he felt that all the debris in the ravine would slow the water down, which is preferable to letting it cascade down the hillside.

**The Chairman** asked if one of the options open to the Board was to revoke the permit for the Summary Ruling application while the remediation plans were developed, and then add the remediation as part of the plan.

**The Agent** said that this is very complicated, because the original permit was for minor disturbance in the URA in connection with the septic system on parcel A. If the Board revokes that permit and then subsequently approves the remediation plan, they may actually be approving a permit for the second lot. She suggested they wait until the plan for parcel A comes in for the building of the house, and then take another look at it with an eye toward whether or not it is in compliance with the remediation plan.

After a few more questions from the Board, the Agent said that she would like to review the matter with counsel to make sure that they are proceeding in the appropriate manner.

**The Chairman** noted that penalties can be levied, with fines of not more than \$1,000 for each violation.

A site walk was scheduled for October 14, 2007, and the item was added to the agenda for October 16, 2007.

## **PENDING ITEMS**

1. **#2007-074-SR:** Summary Ruling application for disturbance in upland review area for construction of in-ground pool and house addition on property located at **4 Weir Farm Lane** in the RAA zone. Owners/Appls.: Bruce J. and Nicole Doyle Walker. Auth. Agent: Douglas MacMillan, AIA. *65-day action period ends 8/23/2007. Received 6/19/2007, walked July 1, 2007, tabled 7/3/2007 for additional information. Granted 65-day extension for action received 7/24/2007. Extension ends 10/27/2007. Acknowledge withdrawal.*

**Dr. Autuori** motioned, seconded by Mrs. Willis, to acknowledge the authorized agent's withdrawal of the application. The motion passed, 9-0.

## **NEW ITEMS**

2. **#2007-114-SR:** Summary Ruling application to excavate and grade upland review area and wetlands in conjunction with replacing bridge with new expanded bridge on property located at **545 Ridgebury Road** (aka Dlhy Court) in the RAAA zone. Owner: Town of Ridgefield. Appl.: Edward Tyrrell. *65-day action period ends 12/13/2007. For receipt and schedule walk.*

**Chairman Mucchetti** noted that this application was reviewed a few years ago, it was withdrawn, and now it is back with additional information to address the previous concerns of the Board.

**Mr. Katz** motioned, seconded by Mr. Slavin, to acknowledge receipt of the application, and to schedule a site walk for October 14, 2007, as suggested by Chairman Mucchetti. The motion passed, 9-0.

3. **#2007-118-SR:** Summary Ruling application for activities within the upland review area in conjunction with new single family residence construction on 1.247± acres of land located at **115 Golf Lane**. Owner/Appl.: Bruce Meier. Auth. Agent: Frank G. Fowler III, PE, LS. *For receipt and schedule walk.*

**Dr. Autuori** motioned, seconded by Mr. Fossi, to acknowledge receipt of the application and to schedule a site walk for October 14, 2007, as suggested by Chairman Mucchetti. The motion passed, 9-0.

### **BOARD WALKS**

The following new site walks were scheduled for October 14, 2007, as noted above:

- **#2007-114-SR:** Summary Ruling **545 Ridgebury Road**, Town of Ridgefield
- **#2007-118-SR:** Summary Ruling **115 Golf Lane**, Meier

The following site walk was scheduled for October 14, 2007 as a result of the Show Cause Hearing:

- **#2007-115-WV:** Wetlands Violations at **80 and 90 Spring Valley Road**, Szenkuti

The following site walk was noted as previously scheduled for October 14, 2007:

- **#2007-111-SR:** Summary Ruling **86 Limekiln Road**, Sandolo

### **REQUESTS FOR BOND RELEASES/REDUCTION**

- **#9993-SR:** request for release of \$7,500.00 balance on bond posted for bridge construction at **293B Old Branchville Road**. Owner: Ronald Paltauf.

**Chairman Mucchetti** asked Agent Brosius to explain the bond release request, and Agent Aimee Pardee's letter to the Board. The Agent said that the Town Engineer had reviewed the applicant's engineer's report on the status of the bridge construction and noted a list of unfinished work. The Town Engineer recommends no release of the bond until the work is finished. By consensus, the Board agreed.

### **CORRESPONDENCE**

#### **Chairman Mucchetti noted the following correspondence:**

- Announcement and invitation for an Environmental Retreat to be held at the Leir Foundation on Friday, November 2<sup>nd</sup>, sponsored by the Ridgefield Clergy Assoc. and the Ridgefield Action Committee for the Environment.
- Article about the decline of sugar maples and syrup production resulting from the affects of global warming.

### **MINUTES**

There were no minutes to approve.

Hearing no further discussion, the Chairman adjourned the meeting at 9:05 p.m.

Respectfully submitted,

Linda Caponetti  
Recording Secretary

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MINUTES  
PLANNING AND ZONING COMMISSION MEETING

October 9, 2007

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  
Linda Caponetti, Recording Secretary  
Francis Collins, Esq., Commission Counsel (for Item #1)  
Thomas Beecher, Esq., Commission Counsel (for Item #1)

*An Inland Wetlands Board Show Cause Hearing was held prior to the meeting.*

At 7:39 p.m., Chairman Mucchetti called the meeting to order.

**PENDING ITEMS**

1. **#2007-042-REZ-A** [Submitted prior to 5/1/2007, adoption of new zoning regulations]  
(1) Petition to amend the text of the zoning regulations of the Town of Ridgefield to revise certain sections of the Housing Opportunity District (HOD) regulations, to permit residential development under Sec. 8-30g of the Connecticut General Statutes, and related amendment to the Comprehensive Town Plan and (2) petition to change the zoning map of the Town of Ridgefield from CDD to HOD and related amendment to the Comprehensive Town Plan, for 153± acres of land located at **616 Bennett's Farm Road**. Owner: Eureka V, LLC. Appl./Auth. Agent: J. Casey Healy, Esq. *Received 5/1/2007. Public hearing commenced 7/10/2007, continued to 9/4/2007 and continued to 9/18/2007. (5 days to set public hearing plus 21 days to continue public hearing to 9/4/2007 plus 14 days to continue public hearing to 9/18/2007 =40 days of 65 day extension used). Public hearing closed 9/18/2007. Discussion held 9/25/2007. 10/2/2007 next discussion date set for 10/9/2007. 65- day action period ends 11/22/2007. For discussion.*

[Note: The Commission reviewed this item in the presence of its legal counsel from 7:39 until 9:00 p.m., then discussed the remaining agenda items after counsel left the meeting. The Commission then adjourned temporarily while the Inland Wetlands Board meeting was held, and returned to this item at 9:06 p.m. for continued work session, following of the completion of the Inland Wetlands Board meeting.]

**The Chairman** confirmed that Mr. McChesney had familiarized himself with all the prior discussions, listened to the tapes, and was up-to-date and ready to comment on the item.

**Attorney Fran Collins** reminded the Commission that Statute 8-30g (g), states that, on appeal, the burden is on the Commission to:

- 1) Show the reasons cited for their decision, supported by sufficient evidence in the record. The Commission must also prove that such sufficient evidence is the basis for their decision, and that the decision is necessary to protect substantial public interest in health, safety, or other matters which the Commission can legally consider.
- 2) Prove that such public interest clearly outweighs the need for affordable housing.
- 3) Show that the public interest can not be protected by reasonable changes to the affordable housing development.

If these conditions aren't satisfied, the court has the power to revise, modify or remand the Commission's decision, he said.

He then proceeded to offer answers to questions which were raised earlier, (based on his discussions with Attorney Beecher.)

- 1) If the proposed HOD regulation was modified as an overlay zone and left the underlying zone unchanged, would it be subject to the statutory rules for the petition submitted by the intervener? The opinion of counsel is that it would not be. The petition was specific to the zone change and not the regulations.
- 2) Must the zone be changed? Mr. Collins said, "Not necessarily." The overlay zone has been discussed and is a viable option (an overlay zone text amendment).
- 3) Can the text amendment be modified and approved? The attorneys feel that it can.
- 4) Can the affordable housing use be changed to age restricted affordable housing? The court will have to decide if that change is "reasonable," he said, adding that, if sufficient evidence can be found in the record which supports that use, it may be possible.
- 5) Does the Plan of Conservation and Development and the zone change need approval if changes are made to the text amendment? Mr. Collins said, "Not necessarily." It is up to the Commission, if it chooses to deny them, to present reasons from the record which support the protection of the public interest.
- 6) On the 22a-19 intervention, do the wetlands regulations apply? The attorney's answer is, "No." This is not a wetlands application, Mr. Collins said.
- 7) Can all of these three applications be denied under 8-30g because there is no full site plan application? Their answer is, "No."

**Mr. Collins** said that he and Mr. Beecher were available to answer any questions remaining about the sewerage of the site.

**Mr. Beecher** said that he had explained that the fact that there is no site plan makes it impossible for the Commission to use any details about sewerage or who will pay for it as a part of their argument. **The Chairman** now understood that that part of the decision is premature at this point. She thanked Mr. Beecher for his clarification of the issue of sewerage.

**Mr. Katz** had several questions. He asked Attorney Beecher if it were not true that the issue of who pays for any sewerage upgrade was in fact not for consideration by the Commission; that it was for the WPCA to decide. Mr. Beecher said that was correct. Mr. Katz confirmed with the attorneys that the Commission need not spend time discussing what was said (or not said) at a public hearing regarding the funding stream for the sewerage. He continued by asking, if the Commission were to plan on the HOD overlay zone, does “the record” needed to provide sufficient evidence referring to the public hearing process or to any of the discussions about the application of concern? After some discussion, it was determined that the record refers to “the public hearing process and data that was gleaned from ...testimony that occurred” during that specific process.

**Dr. Gelfman** said most of the evidence relating to the age restricted housing being equal to the corporate district came in preceding public hearings. Could that information be incorporated into this record, he asked.

**The Planner** said that the Commission had not requested that preceding information be incorporated into the record. She specifically mentioned calculations made by Mr. Al Garzi, which are not part of this record.

**Dr. Gelfman** asked if there were not some reference to that prior information.

**The Chairman** said that there was. Some of the information that the interveners submitted and some of the applicant’s previous rebuttal to that information was reintroduced as part of this record.

**Mr. Katz** asked if personal knowledge accumulated through years of experience on the Commission could be used as evidence. He specifically referred to the assessor’s statement that age restricted housing can become a rate-able equivalent to corporate development.

**Mr. Beecher** said that, generally, you want to have your evidence come from your evidentiary hearing, where the Commission is hearing from the applicant and everyone involved how they feel about the application. Pertinent information may even be inserted, he said. Since Commissions don’t typically have counsel present at meetings, they are not held to perfect standards. Therefore, he did not think that later

discussions where the Commission fleshes out the information would be thrown out in court. It is considered by the court.

**Dr. Autuori** thought that there was some legal precedent saying that Commissioner's can use their personal experience in making decisions. There is some basis for that, Mr. Beecher said, however he cautioned against presenting information that hadn't come out previously, because the applicant's attorneys would argue that they had not had the opportunity to cross examine the commissioner on this information coming out of the deliberation stage.

**Mr. Katz** said that it seems that the specifics of what will be reviewed positively by a court (or not) have to do more with an overall denial of an application than with a modification. He believes that it is in everyone's best interest to be willing to compromise. He asked if it is not remarkably difficult to deny a zone change and a POCD rewrite by citing specifics which are related to the health and safety of a populace. He then proceeded by saying that, if a denial were followed up with an approval of a zone overlay which would address the Commission's concerns and yet allow the applicant to have a satisfactory economic outcome, would that not make the denial of the zone change and POCD almost superfluous?

**Mr. Beecher** said that, if Mr. Katz is asking if a flat out denial is problematic from an appeals standpoint, the answer is, "Yes, it is." But, if he is asking if, in the spirit of achieving something that protects both sides, (as Mr. Katz is proposing), the risk of an appeal is minimized, the attorneys said that they can't answer that.

**Mr. Walsh** said he is not concerned whether or not there will be an appeal, saying that it is probably already written. He is concerned about winning the appeal, he said. He stated that his understanding of what Mr. Collins said is that the Commission has to apply the analyses to all three parts of the application. For example : 1) there has to be sufficient evidence in the record to deny a zone change, 2) that zone change denial has to be related to public health and safety, or something else which the Commission can consider, and 3) there have to be no alternatives to that zone change to protect those interests. Then, this criteria must also be applied to the application to modify the Plan of Conservation and Development, and to the text amendment.

**Mr. Walsh** felt that Mr. Katz' approach has merit, he questioned whether or not it would be sustainable on appeal.

**Mr. Beecher** reluctantly added the warning that there is pending litigation pertaining to this property in the federal courts. That said, he urged the Commission to concentrate on the job at hand.

**Dr. Autuori** asked what the Commission is actually looking at: three applications, or one application with three parts.

**The Planner** said that there is one application for a zone change and another for a text amendment, and a POCD amendment which applies to both. Technically, this is actually three applications, she said.

**Dr. Autuori** asked the attorneys why it would be problematic if the Commission were to deny the zone, but did something that granted a legitimate affordable housing development.

The attorneys repeated what had been said earlier regarding the need for the Commission to go through all the criteria of the 8-30g requirements for each application, approval or denial.

**Dr. Autuori** commented that the POCD is more philosophical in nature. Would it be easier to deny what would amount to a request for a change in philosophy for the future of the Town of Ridgefield, he asked, than to deny a specific change in regulation that would allow affordable housing? He asked the attorneys what would be wrong with saying that the Commission does not feel that a change to the POCD is warranted, and that it would be inconsistent with the philosophy and the direction that the Commission sees for the Town of Ridgefield, but, the Commission does acknowledge the need for affordable housing and will try to “let it happen.”

**Mr. Beecher** answered, saying that these may all be very valid points and true philosophical statements, which can be inserted into the record, but, unfortunately the problem that “we all struggle with” is that the State of Connecticut says that an affordable housing applicant doesn’t need to have a zone change, or the POCD modified, or the boundaries modified, and can merely come in with a site plan application and come into a zone where residential may not be allowed. Logic would say that the Commission could simply deny all three of these applications and wait for the applicant to come back with a specific site plan. But, that is not what the law tells them to do, he said, so the logic goes out the window and they have to deal with “what the law has forced upon them.”

**The Planner** said that Mr. Katz had asked Mr. Ranelli if he thought the balancing test needed to be applied to all three applications, and he answered that it did.

**Mr. Katz** asked how the Commission would place itself in jeopardy by simply stating for the record that neither the zone change nor the change to the POCD are necessary to accommodate 8-30g in the CDD zone. He said that the applicant has asked for a change in the POCD that changes its entire philosophical bent, and does not help affordable housing. The POCD is already in favor of affordable housing. He wondered why it wouldn’t be possible to simply state that neither of those changes are necessary to accommodate 8-30g, and the Commission approves a set of provisions which facilitate the construction of that housing.

**Mr. Beecher** said that, if the Commission can justify, based on the record, that what the applicant has brought in is not going to add anything with respect to affordable housing that's not already in the POCD, then "you may have something there."

**Mr. Katz** asked the attorneys how to handle the zone change.

**Mr. Collins** said that there is enough evidence in the record stating that this is the only corporate development zone which is still viable, and, by turning down the zone change in favor of the overlay zone, the Commission is allowing the underlying zone to remain available for that use should the overlay zone never be imposed on it.

He reminded Mr. Katz that the court still requires that all the criteria associated with 8-30g be met, warning that, if the Commission didn't meet what the court thinks is sufficient evidence in the record for the denials, it could wind up approving a text change and losing the other two, because the court would say it didn't sustain its burden of proof. The Commission has to "go through the drill" with the 8-30g review for each of the applications.

**Mr. Katz** said that the Commission would hope then, that because they had developed a set of provisions imposed on the site as an overlay, allowing for affordable housing, that the applicant would see this as giving him sufficient ability to bring in a specific site plan with all the specificity that he said he didn't want to pay for until he had an approval. The Commission would be relying on the applicant being satisfied that this provided him enough opportunity to develop the property, and that he would not then appeal the other two denials.

**Mr. Collins** said that's possible, but, it does not forestall an appeal by the intervener or anybody else.

**Mr. Katz** said he thought the interveners had no authority if they were not applying for a zone change.

**Mr. Collins** said that was for the intervener to decide.

**Mr. Beecher** said that if you go the direction of an overlay zone and can achieve a level of comfort with the fact that what's in the POCD already makes additional changes to it unnecessary to achieve the goals of the applicant, then when you get to the reasons for granting or not granting a boundary change, in conjunction with reasons that you have in your public hearing record, you certainly could also look at the fact that the overlay zone can later be applied to that property, then certainly that is an additional reason.

**The Planner** said that the Commission must prove that the decision to deny changes to the POCD and the zone change is necessary to protect the public interest, and such public interests can not be protected by reasonable changes to the application. Then it follows that if the applicant sees the modification of the HOD regulation to an overlay

zone as a reasonable change, then the creation of the that HOD overlay would serves to protect the public interest.

**Mr. Beecher** said the Commission would have to argue that it was a reasonable modification, and then argue that because it accomplishes the applicant's goals it is therefore not necessary to change the zone or the POCD. He suggested that the Commission start with the text amendment change, and then move on to discussion of the POCD and the zone change.

**Mr. McChesney** stated that the draft talks about a site plan submission with no reference to Special Permit. He asked if this means that they cannot modify the text to include the wording, "subject to Special Permit hearing."

**Mr. Collins** said that he didn't think there was anything requiring a Special Permit, but reminded the Commission that the applicant can come in and not even comply with the regulation.

**Mr. McChesney** sought clarification. He points out that the Ridgefield regulations requires a site plan to go to the Planner.

**The Planner** said the regulation that they proposed referenced a site plan to be approved by the Commission. Site plan approval authority in our zoning regulations is given to the Planning Director, she said. But the proposed language says "Notwithstanding what Section 324 of the regulations says," the site plan is to be approved by the Commission. She cited the Terrar application where the same issue came up, and where they were asked the applicant to modify the submission to add the "notwithstanding" language. This was done, and it has been repeated in this application. **Chairman Mucchetti** pointed out that this issue was the cause of a long discussion at the time of the previous application, and it was resolved.

**Mr. Katz** said the regulation does not say that they shall submit a site plan. It says that the Commission can request one, "and we did," he said, and they submitted one, albeit not a "fleshed out" one. He added that the regulation also stated that, if there is a modification to the application brought in initially, and the applicants say OK to it, that modification has to have a public hearing if the first application had a public hearing, (and it did).

He felt that Mr. McChesney's worry about a Special Permit asks the question, "What can the Commission write into an overlay district that insures that the Town is protected with regard to all the environmental particulars or other particulars that the Commission might want to require, were the Special Permit hearing part of the process?" We can write this into the modified regulation if want, and they can oppose it. But his recollection is that the applicant is not totally against the inclusion of these particulars.

**The Planner** said that the applicant agreed that they would be willing to review the application under some of those standards, provided that the Commission could apply the balancing test to those standards, to the degree that 8-30g requires. She said that, if the Commission were to say that it did not want building on 25% slopes, it needs to apply the public health and safety issues, or some requirement of 8-30g to the use of that standard.

**Mr. McChesney** said that architectural review is part of the Special Permit process. What can the Commission do to insure that there will be architectural review, he asked. The Planner said that the public health, safety and welfare standards would need to be applied to that, as well.

**Mr. Katz** said that it is not his understanding that every particular of a new zoning regulation, an overlay zone, or a floating zone, or anything that is designed to accommodate an 8-30g housing application needs to meet the test.

**Mr. Beecher** said that it doesn't.

**Mr. Walsh** said that, if the Commission attempts to insert a Special Permit requirement into the overlay zone, the applicants can simply choose to ignore it, because this is an affordable housing application. If the Commission wants to have it included and thinks that it will protect the Town's best interest, they can put it in, but the applicant can ignore it. Only at that point, if the Commission decided to deny the application, would they have to answer all the criteria. It is not necessary to do with each and every point, he said.

**Mr. Walsh** asks about the prospect of denying the zone. For instance, if the Commission denies the zone change application, then it will create "out of thin air this HOD regulation." He continued, saying that the HOD regulation text change was specifically adapted to a zone that the Commission denied and a zone that no longer exists in the current regulations. He asked the following questions: 1) If we deny the zone change, how do we create the overlay zone without another public hearing? 2) How can we create a text change to a zone that has not been approved?

**Mr. McChesney** pointed out that the applicant's HOD refers to an address, with no reference to a zone.

**Mr. McChesney** and Mr. Walsh went back and forth on this, until Mr. McChesney said that it was a, "Which came first, the chicken or the egg?" dilemma, and Attorney Beecher agreed.

**Planner Brosius** said that the application was for a text amendment to create the Housing Opportunity District, which is a zone, and they had also requested a zone change to change the Bennetts Farm property to the HOD zone. A potential overlay zone is a layer of restrictions placed on the underlying zone, and the zone does not change. If you have an overlay, it would not be a zone change; it would be a layer of

additional restrictions applied to a particular piece of property that the Commission designates for that overlay.

**Mr. Beecher** said, let's say that this is purely an affordable housing regulation that an applicant could seize upon and ask for it to be imposed on their particular property. The 8-30g overlay could be applied to any property within the Town of Ridgefield unless it is a purely industrial zone. There is no need to change the zone. The site plan application follows the application of the overlay to the property. The applicant may or may not come in with the site plan. Why change the zone in advance, if the site plan application never comes in?

**Mr. Walsh** asks if the public hearings that we have had satisfy our statutory obligation to have a public hearing to change our regulations, because we didn't discuss an overlay zone at the hearing, we discussed a zone change and a text change. Do we need another public hearing?

**Mr. Collins** said that Mr. Walsh raises an interesting point. He said he believes the Commission already has the authority to modify the plan submitted by the applicant. Even though some of the details of the changes may not have been discussed in detail, the Commission would probably have satisfied the statute by making reasonable changes to the text part that would at least give you some basis in court to argue that you have followed the law.

**Mr. Beecher** addressed Mr. Katz, saying they he and Mr. Walsh are talking about two separate things. He said that Mr. Walsh is concerned about the initial public hearing required for an amendment to the regulations. He is afraid that you are so far a field of what was the original public hearing topic, that perhaps we haven't satisfied that part of the statute. Mr. Katz is correct in that, if and when we get past the decision making process, then the modification aspect of the public hearing [as provided for in 8-30g] comes into play.

**Dr. Autuori** said that, being practical, it doesn't seem likely that a change to the POCD will pass this Commission, nor will a zone change, but, there is a good chance of a proper modification of the HOD regulation to get somewhere. I think we should focus on what we reasonably can accomplish, he said, and avoid wasting time and effort on the zone change and the change to the POCD.

**Mr. Beecher** cautioned against making assumptions, and suggested that the Commission should deal with the text change application first, and, based on the Commission's consensus there, then deal with how to deal with the POCD and zone change. There may be something you want to do with the POCD to make it consistent with the text change.

**The Planner** asked the Commission to look at the housing section of the POCD, because there is substantial support for the development of affordable housing in general, and substantial background for the Commission to create an affordable

housing regulation and approve an affordable housing plan. Secondly, she said, the applicant was asked during the public hearing if you have to change a zone in an 8-30g, and the answer was that you do not have to. The answer was the same for the question, “Do you have to modify the POCD?” The applicant has asked for that, however, and the Commission has to deal with that. The applicant said the regulation is more important to them than anything else. With any affordable housing application, one of goals is to avoid the creation of barrier that increase the cost of the housing for the potential purchaser. A main barrier to a purchaser, because of the way that financial institutions look at conforming and non-conforming uses, would be the lack of a regulation that makes the development conforming to zoning. The applicant was relating the regulation change to the zone change, because that’s what they were asking for.

**Mr. Walsh** points out that the applicant agreed that a zone change was not necessary, but he asked for it, and the Commission is forced to deal with the application.

**Mr. Beecher** said that, when Judge Pickard reviewed the Terrar application, he did go into the request for the POCD amendment and the regulations changes that accompanied the zone change application. He didn’t just look at the site plan and the traffic. He went on to say that the Commission didn’t get into the proper review of the POCD and zone change applications.

**Mr. Katz** says that was different, because the Commission denied everything. That is not what we are contemplating here.

**Dr. Gelfman** is concerned about denying the zone change, and whether the Commission can arrive at a regulation that will accomplish what they want without a zone change.

**Chairman Mucchetti** says she is looking at Chapter 9 of the POCD and sees places where some additions or modifications might be appropriate.

**The Planner** points out that the Blue Ribbon Commission report, which is in the public record, advocated as one of its primary recommendations the Commission’s creation of an HOD zone to promote affordable housing. Mr. Katz pointed out that zone changes were not necessarily advocated in the report.

**Chairman Mucchetti** says that in the past the Commission has typically denied affordable housing applications, and this is a change because we are proposing to modify what was proposed. Attorney Beecher corrected that statement, saying that the Valeri application was an approval (not a denial) that was still appealed.

**The Chairman** asked the Commission if counsel needed to be present for further discussion. Mr. Katz and Mr. McChesney felt that the Commission needed to start to work on the modified regulation. The Planner pointed out that she could still talk to counsel if needed.

[The Commission returned for further discussion without counsel after a five minute break.]

**Mr. McChesney** asked if the Commission could clear the agenda of all other items before continuing discussion.

**Mr. Slavin** said he was not participating with strong opinion, because he did not anticipate being able to vote. All others disagreed, and said that Mr. Slavin's opinion was important, and he should speak up.

[The Commission then continued with other items on the P&Z agenda, and then returned to this item after also dealing with the Inland Wetlands Board agenda. Planner Brosius provided the minutes for this item from this point forward.]

**Mr. McChesney** asked the Planner if the overlay zone could apply to just the Bennetts Farm property, and to no other property. The HOD section was removed from the new regulations, because the Terrar development was already approved and under construction.

**The Planner** agreed that this was a good question. The application is a request to modify Section 409 of the old regulations, because it was submitted in April, prior to the adoption of the new regulations on 5/1/07. The new regulations omitted the HOD. The Planner said that in modifying the applicant's submission, the Commission should acknowledge where this appeared in the old regulations, and note where it would appear in the new regulations.

**Mr. Chesney** asks if the Terrar property needed to be included in the HOD regulation. The Planner cautioned that the current administrative appeal of the zoning regulations cited the elimination of the HOD regulations (which were written for the Terrar property) in its complaint. This should be considered when drafting a modification of the Bennetts Farm regulation. There is probably no harm in leaving it there, provided that the setbacks and other requirements are specific to the Terrar property as well as to the Bennetts Farm property.

**Mr. McChesney** feels it should be specific to Bennetts Farm. Terrar is already under construction and it is not necessary to include it.

**Mr. Katz** is in favor of an overlay proposition that would accommodate the needs of affordable housing. He would call the regulations "provisions," as it is defined in the PRD regulations. He says he has talked to the Planner, and they both have ideas about how this could be accomplished. He did not bring his note, but in overview, he is thinking of something that is close to what the applicant proposed, but it would allow only 1.9 units to the acre, for a total of 290 units. He really thinks that 250 is the maximum that the property could withstand, but 290 is more realistic for the applicant, and would stand less chance of being appealed. He would like to age

restrict the development to 55 years and older, but not to restrict children in that regulation. He feels that it is evident that the town does not restrict children from being in town, and any judge ought to be able to notice that. He thinks 70% of the development should be age restricted, and 30% should be market rate without the age restriction. If the applicant agrees to this, then it would come back to the Commission for a public hearing.

Mr. Katz says the document for the HOD would have provisions for the requirements that Mr. McChesney was concerned about for the Special Permit. There is no question that the applicant will ruin the property, but they will ruin it a whole lot less with some of the provisions that the Planner had talked to him about as a concept for this regulation. If there was a document that had some of these issues addressed as regulation, then the Commission could deal with the POCD issue and the zone change request separately.

**Mr. Slavin** says that most of what Mr. Katz said makes sense, but he asks how he arrived at 290 units as economically feasible for the applicant, instead of some other arbitrary number?

**Mr. Katz** says the number represents something between what they want and what he wants, or what he thinks they will settle for.

**Mr. Slavin** asks what is the basis for that number?

**Mr. Katz** says he had to start somewhere. He wants to come up with something that the applicant can accept, and hopefully avoid having the court decide the number.

**Dr. Autuori** says the commission needs to be concerned about where the units are located, and they should not be permitted in the watershed. There are letters in the file from the State Department of Health and Aquarion Water Company, and references the State POCD, and he says that there is sufficient evidence to prove that it would not be acceptable to allow high density development in the Saugatuck watershed. He would go with a density of no more than one unit per three acres in the Saugatuck watershed. He would prefer to see nothing in the watershed, but thinks that the state guidelines must be considered in determining density.

**Mr. Walsh** thinks that the Commission's analysis is started off on the wrong foot from the start. He thinks that if the Commission uses the analysis that the court forces upon them, then they will come up with the correct number of units. They should not be pulling out an arbitrary number, but should arrive at a number by considering the public health, safety and Ridgefield. He thinks that number is closer to 1.75 units per acre. Of all the testimony that was heard, there should be no development in the Saugatuck. There should be no sewer lines in the Saugatuck. It is best for Ridgefield as well for anyone who drinks water from that watershed. He thinks 1.75 units per acre is a reasonable modification. He doesn't care how much

money the developer makes, and the court won't care either. The public health, safety and welfare of the residents is what is most important.

**Mr. Fossi** points out that there are maps in the record showing that the Saugatuck watershed property was never in the area intended to be sewerred by the town. There should be no development in the watershed.

**Mr. Slavin** asks Mr. Walsh how he arrived at 1.75 units per acre. Mr. Walsh says he does not have his research and notes available for tonight's meeting.

**Mr. Slavin** says his concern is exactly what Mr. Walsh started with. He does not see how they can affectively arrive at a number without some rational basis for that number. An arbitrary number is not going to stand the test of the courts.

**Mr. Walsh** says that number of units proposed in the watershed can be determined from the record. The evidence states that no more than 2 units per acre are recommended in the watershed. Of the 153 acres available on the lot, only a portion can be developed, and there will be impervious surfaces to consider. Only so many people can live in the area that is left.

**Mr. Slavin** says that calculation must be defensible. It is going to be hopeless to come up with arbitrary numbers. Mr. Walsh agrees, but says that the text change must be dealt with first. Certain aspects of the text change will dictate how the density is arrived at – for instance, there may be a provision for no development in the watershed, so that land area must be subtracted from the total. And there may be physical and environmental standards as Mr. Katz suggested. The Commission needs to “back into” a defensible number for density, based on looking at the standards in the regulation that is drafted. The number needs to be reasonable to protect the public health, safety and welfare.

**Dr. Gelfman** agrees, and points out the need, for instance, to protect steep slopes and vernal pools. The applicant agreed to avoid the vernal pool area.

**Mr. Fossi** agrees, and says that when standards for steep slopes and storm water management and watershed property are considered, then the site will dictate the number of units that are appropriate. This should be defensible in court.

**Dr. Autuori** says that 8-30g allows the Commission to use “other factors” that they are allowed to consider, such as crowding, light, erosion and sedimentation, air pollution, etc. He agrees with Mr. Fossi, that restrictions could be set upon the site, using these factors that they are allowed to consider, and these factors would outweigh the need for affordable housing. He looks forward to next week's discussion and fleshing out some of the details.

**The Planner** talks about the suggestion for age restriction. She cites the federal law that requires that 80% of a 55 and older development must meet the requirement, and

a 62 and older development must be 100% age restricted. To the extent that the Commission wants to age restrict the development, they must comply with the Federal Fair Housing Law. There was some discussion about percentages and how to divide the development between age restricted, market rate unrestricted, and simply “affordable.” In any case, 30% of all of the units in the development must meet the affordable requirement. Mr. McChesney would like to see all of the 30% affordable units as age restricted.

**Mr. Katz** agrees that his 1.9 suggestion for density is arbitrary and has to be discussed further. He disagrees that air quality and light are not the sorts of things that a judge will consider legitimate. Vernal pools and steep slopes may be considered, but the overlay zone modifications have to be realistic. We have to understand that the modifications must be capable of being upheld in court for legitimate, defensible reasons. The reasons for change must outweigh the need for affordable housing.

**Chairman Mucchetti** points out that the history in the WPCA files shows that the piping [in Route 7] is already at the right size to accommodate the development. The files and records of the WPCA support the sewerage of a portion of this property.

**Mr. McChesney** agrees that there should be no sewer pipes and no drainage in the Saugatuck watershed. There could still be some development there, but under those terms. Dr. Autuori says that this is a defensible argument. He feels that some single family homes in the Saugatuck might be permissible, at a very low density. He prefers no development there at all, but thinks a very low density would be acceptable. This is an ugly law and we have to deal with it, and a low density may be better than allowing nothing at all. As long as potential pollution is eliminated, then it may be permissible. This would not be possible with multi-family units.

**Mr. Walsh** asks why there should be any consideration at all for development within the watershed, especially with subsurface systems.

**Mrs. Willis** says that at maximum there should be one unit per two acres in the watershed, according to testimony in the record, in the Aquarion letter.

**Mr. Katz** says the only real compelling piece of data in the record talking about safety and health in the public water supply watershed is the letter from the State Department of Health, that uses the language that it will bring harm, and the thing that will cause harm specifically cited in that letter is density. That is really the only thing that we have to hang our hat on, as far as the watershed is concerned. There has never been a statement like this, before this letter. These are not “could’ve, should’ve, may.” This is “will” cause harm. It probably then precludes construction in the watershed. We don’t want to ignore that. And we have to look at this in the context of whether it outweighs the need for affordable housing. The court ignores such arguments, as it did in the case of traffic for the Terrar application.

**Chairman Mucchetti** suggests that the Planner work on a draft, based on comments at the table. The Planner says it may take two weeks to finalize the draft.

**Dr. Autuori** asks again about having the entrance off Route 7, to spare other small streets in northern Ridgefield from traffic, but he has no support from any of the other Commissioners. Dr. Gelfman says that the Route 7 access point is much too steep and rocky. Mr. McChesney says it is a ridiculous concept. Dr. Gelfman is concerned about Maple Shade Road. The Planner says these are issues that should be reviewed in the site plan stage, and other issues may be included in the regulations. Mr. Fossi agrees.

There were no votes taken on this item, but the Commission agreed by consensus to request the Planner to begin drafting modifications to the proposed text amendment, based on discussion from the meeting. Discussion will continue pending availability of the draft overlay regulations.

## **NEW ITEMS**

2. **#2007-112-SP:** Special Permit application under Section 9.2 as required by Section 3.3.D.2. of the zoning regulations for display and sale of art at **Garden of Ideas**, a non-residential use in a residential zone. Property located at **34 Craigmoor Road** (with access for the business off **North Salem Road**) in the RAA zone. Owners/Appls.: Joseph H. Keller and Ilsa L. Svendsen. *65-days to commence public hearing ends 12/13/2007. For receipt, schedule walk and public hearing.*

**Mr. Katz** asked if this was a request for a retail use in a residential zone, and why was the application permitted?

**The Planner** explained the provision for a Special Permit for a home occupation that does not meet other zoning regulations. She suggested listening to the application before drawing conclusions. Mr. McChesney agreed that this should be discussed at the public hearing.

**Dr. Autuori** motioned, seconded by Dr. Gelfman, to acknowledge receipt of the application and to schedule a site walk for October 14, 2007, as suggested by Chairman Mucchetti. The motion passed, 8-0. Mr. Katz recused himself from participation on this item.

## **COMMISSION WALKS**

**The following site walk was scheduled for October 14, 2007, as noted above:**

- **#2007-112-SP: Special Permit 34 Craigmoor Road; Keller and Svendsen**

## **REQUESTS FOR BOND RELEASES/REDUCTION**

There were no requests for bond release or reduction.

## **CORRESPONDENCE**

There was no correspondence.

## **MINUTES**

**Mrs. Willis** motioned, seconded by Mr. Slavin, to approve the minutes of September 25, 2007. Chairman Mucchetti offered a few minor corrections on page 7, and Mrs. Willis offered several on pages 4 and 5. The motion to approve the minutes, adding the corrections, was passed by a vote of 9-0.

## **PUBLIC INFORMATIONAL MEETING**

**Chairman Mucchetti** noted that the Board of Education meeting room is not available for the proposed informational meeting scheduled for November 27, 2007, to discuss the issue of limiting/prohibiting office uses and promoting first floor retail uses in the downtown business area. The Planner and staff will seek another venue for the meeting, looking at the schools, the Playhouse, the Town Hall, or the Parks and Recreation facility.

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

Respectfully submitted,

Linda Caponetti  
Recording Secretary