

APPROVED / REVISED  
MINUTES  
INLAND WETLANDS BOARD MEETING

October 13, 2009

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

Absent: Peter Chipouras  
Rebecca Mucchetti, Chairman

Also Present: Betty Brosius, Inland Wetlands Agent  
Linda Caponetti, Recording Secretary

*Public hearings were held prior to the meeting. The Planning and Zoning Commission regular meeting was held prior to the Inland Wetlands Board meeting.*

At 9:36 p.m. Vice Chairman Walsh called the meeting to order.

**PENDING ITEMS**

1. **#2009-047-PR:** Plenary Ruling application as required by Section 7.6 of the Inland Wetlands & Watercourses Regulations for the Town of Ridgefield for regulated activities within the wetlands and upland review areas for piping and reconstruction of watercourses in conjunction with the development of a single family residence on property located on **Second and Third Lanes** in the RA zone. Owner: Wayne E. Wood and The Estate of Charles F. Dean, Jr. Auth. Agent: John F. McCoy, VII, P.E. *Received 6/16/2009. Walked 6/28/2009 and 9/27/2009. Public hearing commenced 7/21/2009. Extension granted thru 10/13/2009. Continued public hearing 9/1/2009, 9/8/2009, 9/22/2009 and 10/13/2009. (49 of 65 days of extension used thru 10/13/2009).*

**Vice Chairman Walsh** noted that the public hearing had been continued to October 20, 2009, (its final extension), and there was no discussion.

2. **#2009-084-SR:** Summary Ruling application under Section 7.5 of the Inland Wetlands and Watercourses Regulations for the Town of Ridgefield for drainage and discharge into wetlands on property located at **161 Spectacle Lane** in the RAA zone. Owner/App.: Tom Sturges. *Walked 9/27/2009. 10/6/2009 Agent authorized to retain soils scientist (fees paid by applicant) to re-flag wetlands boundary. 65-day action period ends 11/26/2009. Update report c/o Agent Brosius.*

**Vice Chairman Walsh** asked the Agent to give an update on the status of the soil scientist review.

**Agent Brosius** said the applicant paid the fees on 10/7 for the Board's consultant expert, and Cynthia Rabinowitz re-flagged the wetlands on 10/8 in the presence of Wetlands Agent/Inspector Aimee Pardee. The surveyor, Frank Walsh of RKW Land Surveying, was working on the update to the survey on Friday, 10/9, and it is expected that the new map will be ready for continued discussion with the applicant on 10/20/09.

[Note: The item will be added to the site walk schedule for 10/18/09, as suggested by the Agent at the meeting on 10/6/09.] There was no further discussion.

3. **Water's Edge Way #2009-062-PR:** Distribution of Revised Plans. Agent suggests schedule site walk.

**Vice Chairman Walsh** pointed out the new maps received for the application, and the Agent suggested a site walk so that the Board could note the proposed detail of work relative to the site conditions. Mr. Walsh said the consultant wants to be sure the Board understands what is proposed for the upland review area as it pertains to the driveway. "In particular, the driveway," Agent Brosius said. Specifically, the width of the driveway, she added. She intended to call the applicant to determine if wetlands flags are visible on either side of the access drive.

**Mr. McChesney** asked if the location of the septic had changed. The Planner said it had not, but, "the piping to the septic system was relocated out of a wetland area." Mr. McChesney noted a comment about the septic field itself and a requirement for 50-foot distance to the watercourse. The Planner said that the issue, which will be discussed at the public hearing, had been resolved by the applicant and the Health Department.

By unanimous consensus, the Board agreed to add the item to the 10/18/09 site walk schedule.

## **NEW ITEMS**

4. **#2009-090-REV(IW):** Revision to Plenary Ruling Application under Section 11.9 of the Inland Wetlands and Watercourses Regulations for the Town of Ridgefield for modification of approved plans on property located on **Lot 39, Wilton Road East** in the RA zone. Owner: Colonial Road Associates, LLC. Appl./Auth.Agent: Environmental Design Associates, P.C. / Richard Kent. *65-day action period ends 12/17/09. For receipt and schedule walk.*

**Vice Chairman Walsh** noted the application for revision of the previously approved wetlands permit.

**Mr. Katz** asked if the application involved the replacement of gabions with boulders. The Agent said, yes, in certain small portions of the driveway. She felt it was appropriate for the Board to walk the site to gain a better understanding of what is proposed and what has been done to date. She briefly explained the changes, and suggested a site walk for 10/18/09.

**Dr. Autuori** motioned, seconded by Mr. Mische, to acknowledge receipt of the application and to schedule the site walk for 10/18/09. The motion passed, 7-0.

#### **BOARD WALKS**

The following items were added to the **October 18, 2009** site walk schedule:

- **#2009-084-SR:** Summary Ruling Application, **161 Spectacle Lane**, Sturges.
- **#2009-062-PR:** Plenary Ruling Application, **Water's Edge Way**, Hearing.
- **#2009-090-REV(IW):** Revision to Plenary Ruling Application, **Lot 38, Wilton Road East**, Colonial Road Associates, LLC.

The following item was previously scheduled for site walk on **October 18, 2009:**

- **#2009-085-SR:** Summary Ruling **Sewer District 1** in the Town of Ridgefield, WPCA

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

There were no requests for bond release or reduction.

#### **CORRESPONDENCE**

**Vice Chairman Walsh** pointed out the following correspondence:

- *The Habitat* newsletter, from the Connecticut Association of Conservation and Inland Wetlands Commissioners.

**Mr. Katz** noted an important article about a 2009 court case, Unistar Properties, LLC v. Conservation Commission (Putnam, CT), where the court clarified the Wetlands agency's purview over reviewing the impact of proposed activities on animal and plant habitats. Mr. Katz urged fellow board members to read the article.

#### **MINUTES**

**Mr. Mische** motioned, seconded by Mr. McChesney, to approve the minutes of September 29, 2009. The motion passed, 7-0.

Hearing no further discussion, the Vice Chairman adjourned the meeting at 9:40 p.m.

Respectfully submitted,

Linda Caponetti  
Recording Secretary

APPROVED / REVISED  
MINUTES  
PLANNING AND ZONING COMMISSION MEETING

October 13, 2009

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

Absent: Peter Chipouras  
Rebecca Mucchetti, Chairman

Also Present: Betty Brosius, Director of Planning  
Linda Caponetti, Recording Secretary

*Public hearings were held prior to the meeting.*

At 9:08 p.m., Vice Chairman Walsh called the meeting to order.

**Mr. Katz** motioned, seconded by Mr. Fossi, to deal with item #4 first, since the applicants were present for the discussion. The motion passed, 7-0. The remaining items on the agenda were handled in order.

**PENDING ITEMS**

1. **#2009-072-SP:** Special Permit under Section 9.2 required by Section 3.3 of the Ridgefield Zoning Regulations to permit a major home occupation in the residence located at **23 McKeon Place (Turner Hill)** in the RAA zone. Owner/App.: Judith Martinelli. *Received 9/1/2009. Walked 9/13/2009. Public hearing commenced and closed 10/6/2009 and draft Resolution of Approval requested. 65-day action period ends 12/10/2009. For action.*

**Vice Chairman Walsh** noted the draft resolution of approval from the Planner.

**The Planner** added suggested language, recommended by the Zoning Enforcement officer, to condition #5, as follows: “All vehicles owned by or under the control of the resident occupants of the home, and vehicles owned by the employees of the business shall be parked on the premises at McKeon Place... “ All agreed to the changes.

There was a short discussion as to the appropriateness of requiring the vehicles to be parked on the applicant’s property “at all times” vs. only “during the operation of the

business.” The Planner felt strongly that the former was an unrealistic, unauthorized and unenforceable requirement. The Zoning Enforcement Officer (ZEO) cannot be responsible for enforcing parking on Saturdays, Sundays, and when the business is not in operation. The responsibility of the Commission applies to addressing the operation of the business, and general parking outside of the business hours is beyond the scope of the application. Some of the Commissioners felt that anything less than that was unfair to the neighbors and wasn’t far reaching enough.

**Dr. Autuori** suggested a minor change to the language of the resolution to include, not only vehicles owned by the employees, but operated by the employees. He felt that “owned” by the employees would allow them to borrow a car or rent a car. The Planner and others were in agreement changing the language to say “owned or under the control of the employees” in the condition.

**Mr. Katz** said he was sensitive to the policing issues that the Planner raised, and agreed that the ZEO can’t be responsible for enforcing parking after 5 and on weekends, but he argued that this is a permanent situation, and the approval would pertain to a business in the residence, not just a business between the hours of 8am and 5 pm. He says that the jurisdiction of the Commission is 365 days a year. The Planner disagreed with the argument about the Commission’s jurisdiction outside of the business operation.

Mr. Katz continued, saying that the applicant came to Planning and Zoning for a Special Permit because of one additional one employee, with a single new vehicle to be parked. The permit application deals with the addition of that one extra employee. But now, we are looking at “an approval which talks about a lot more vehicles than just the one that brought them to the table for the Special Permit” and he says that seems to “countermand the specificity” of what came up in the discussion at the public hearing, which indicated that we shouldn’t be so worried about the number of vehicles because they were asking for only one more, and one more employee. He says that now it seems the Commission is broadening its jurisdiction over the other vehicles that exist on the property, for this residence, employees or not. He feels that this expands the scope.

**Mr. Fossi** said that it was clear in testimony at the public hearing that the applicant had enough room on their property for all the vehicles they own and all the vehicles of their employees, and that they were in agreement to parking them all on their property. He did not feel it was over-stepping the Commission’s jurisdiction to ask that they keep all the vehicles on their property in respect of the neighbors who complained about them being parked outside the property.

**The Planner** asked for clarification, “during business hours,” and Mr. Fossi agreed.

**Dr. Gelfman** asked if the Commission had approved this business prior to the current application. The Planner said that it had not come before the Commission until now.

Dr. Gelfman said he thinks the business is not appropriate for Turner Hill, and if they had come to the Commission he would have voted against it.

**The Planner** stated that testimony from the applicant and evidence in the physical structure of the home points to the fact that the previous owner had conducted a business in the home, as well. She said there are undoubtedly many such business in town, and perhaps in Turner Hill. The Commission needs to consider whether this particular business, as presented, is appropriate for this particular location.

**Dr. Gelfman** said that the fact that neighbors are disturbed by the business warrants closer examination by the Commission to determine its appropriateness. He said that the Commission needs to look at the special circumstances, and the circumstance in this particular case is the location on an accessway to three other homes, off the cul-de-sac.

**Mr. Katz** highlighted in the regulations what he thought was Dr. Gelfman's area of concern. In the criteria for approval for a Special Permit, he quotes from Sec. 9.2.A.5, "Suitable Location: The location, size, nature of operation, and intensity of the proposed use or uses in relation to the size and location of the site shall be... appropriate, in harmony with, and all that." He notes that this is a modest house on a small lot, and it has a small driveway off an accessway. The Commission acknowledges that the driveway can hold the cars of the residents and the employees. He asked Dr. Gelfman what, specifically, in the regulations, allows the Commission to separate out those circumstances in Turner Hill from the same set of circumstances elsewhere, where there are small-lot neighborhoods.

**Dr. Gelfman** said, "I would say it's the aesthetics of Turner Hill," noting that it is a special development, with homes close together on small lots. It is a cluster development, which was an experiment on the Commission's part. It works to a degree, but where it doesn't work is that the neighbors are chafing each other about issues such as open space, but he thinks the aesthetics are important. He looked at the small driveway and imagined what would be going on there every day.

**Mr. Katz** said he would like to vote against granting the Special Permit, but can't see the legitimacy in doing so if the regulations quite specifically say what the Commission can look at and what it can't. If this homeowner had four children with cars... there will be two cars in the garage and the rest will be in the driveway. It won't look good, but does it look any worse than someone else down the street who has the same number of cars in his driveway? This could exist without any regulatory oversight at all.

**Dr. Gelfman** said he was making a judgment about something brought before the Commission that he had physically seen and witnessed.

**Dr. Autuori** asked the Planner to clarify the use "as of right" for the business. He asked if one employee for the business would have been an "as-of-right" use.

**The Planner** stated that the Special Permit is only about the one extra employee. If the Special Permit application is denied, she continued, the applicant will still conduct the business with one employee with a zoning permit issued by the Zoning Enforcement Officer.

**Dr. Autuori** feels that once they come in for a Special Permit, the circumstances are different. The applicant has to be willing to “give to get.” He recounted the details of the public hearing, as he understood them. He felt that the Commission basically indicated they would grant the Special Permit for the extra employee if the applicant would agree to keep all the cars on their property. He asked the Planner about her concern with the time limit on the prohibition of parking outside the applicant’s property.

**The Planner** said, “I’m concerned about the legality of your authority to regulate where cars are parked during non-business hours.”

**Dr. Autuori** felt that a condition for parking cars on the property at all times would be something that the Commission would be giving for the benefit of the neighbors, in exchange for giving the applicant what he wants.

**The Planner** felt that would be an indefensible position in court, if appealed. The Town would have to defend the position that, because the neighbors didn’t like where the residents were parking their cars, we imposed a condition that would regulate where they have to park their cars all the time, regardless of business hours. She cannot understand how that would be defensible.

The Planner was adamantly opposed to creating this burdensome restriction. She gave an example of neighbors calling the office on Monday morning to complain to the office that the applicant had cars parked in the cul-de-sac on the weekend. How is the ZEO supposed to determine whether there is a violation if the evidence is no longer there? It is a burdensome condition that would cause far more problems than it would solve. Dr. Autuori was in favor of it, but said it was not “a deal breaker” for him if the restriction pertained to business hours only. He felt it was legitimate to “give the neighbors something in return” for approving the business, because the Special Permit request was not as-of-right.

**The Planner** repeated her earlier statement, to clarify that the use is “as-of-right”, and the one extra employee is the issue for the Special Permit.

**Mr. Mische** asked for clarification as to the working hours of the two employees. He says that the information with the application states that there are two part-time employees.

A short discussion took place, with the Planner explaining that the regulations did not distinguish between part time and full time, but related only to how many people

were employed “on the premises.” She also said that it would be difficult to track or monitor hours of employees, to know if they are part-time or full-time. She thinks the Commission needs to narrow the focus of what they are being asked for, which is to allow the one additional employee. The applicant is asking for the Special Permit because she feels that there are times when two employees on the site are needed.

**Mr. Mische** said that the number of hours an employee spends at the business “shapes the intensity of the use...in terms of what the neighbors have to put up with.” He acknowledges, however, that what the neighbors brought up are “past sins” with parking issues. The regulations are clear and the resolution is clear that the Commission wished to regulate when they can operate the business and where the cars can be parked. Outside of the business, it would be the Police department’s job to regulate parking on the streets. He thinks the conditions cover the business use, but he is uncomfortable with the transition from part-time to full-time employees. The two part-time employees add up to one full-time, 40-hour employee.

**The Planner** said that the applicant’s request is clear. “What she’s asking for is having two employees on the site.” The Commission is being asked to add one more employee car, she said: “two cars... that don’t belong to the family... that belong to the business.” That is how this would be enforced. She would be allowed to have two extra cars on the site. The applicant is not claiming to have a shifting of hours, where one employee leaves and the other takes their place.

**The Planner** repeats again that, if the Commission did not grant the Special Permit, the business could still operate under a zoning permit within the regulations, allowing as-of-right, one employee at a time to be “on the premises,” and the applicant could maintain the two part-time employees as long as they were not there at the same time. The Special Permit issue is one extra car, one extra employee.

**Mr. McChesney** said the fact that the employees were temporary was academic. That was correct, the Planner said. Mr. McChesney says they could be temporary employees, working 14 hours at the same time, so that there would be two cars there.

**Dr. Autuori** asked the Planner for the exact wording pertaining to this issue in the regulations. The Planner read the regulation [Sec. 3.3.B.1.b]: “Not more than one (1) non-resident person shall be employed on the premises.” “On the premises” she said, means “on the property.” She gave specific examples to illustrate.

**Dr. Gelfman** noted that the application for one additional employee equates to an intensity of three employees working at the business at one time. He did not feel the site was appropriate for that intensity of use, and he would vote to deny the application.

**Mr. Mische** wanted clarification about the need for the Special Permit with the request for two part time employees. The Planner stated that the Special Permit would not be required if the two employees didn’t overlap.

“But, we had testimony that says that they do,” Mr. Walsh said.

**Mr. McChesney** motioned, seconded by Mr. Fossi, to approve the application as per the amended draft resolution, including the amended language for the employee’s car, per Dr. Autuori’s comments.

**Mr. Katz** said that he was going to vote against it for a few reasons. He cites “a” in the Special Permit criteria [Sec. 9.2.A.5.a], re ”Suitable Location,” and “b” in the same section, re “Appropriate Improvements,” which states that “The location, nature size, and the architectural design of buildings and appurtenances shall...be compatible with neighboring properties and their uses.” He finds the expansion of the parking area to not be so compatible.

The vote was 3-4, with Commissioners McChesney, Fossi, and Autuori voting in favor, and Commissioners Katz, Gelfman, Mische, and Walsh voting against.

The motion to approve the application failed to pass. There was no further discussion.

2. **#2009-074-SP:** Special Permit under Section 9.2 as required by Section 7.5.D (Table #6) of the Ridgefield Zoning Regulations for filling and grading on property located at **72 Revere Drive** in the RAAA zone. Owners/Appls.: Desmond & Lynda McGoey. *Received 9/8/2009. Public hearing commenced 10/13/2009. 35 days to complete the public hearing ends on 11/17/09.*

**Vice Chairman Walsh** noted that the public hearing had been continued to 11/10/09, and there was no discussion.

3. **#2009-006-MISC:** Joint meeting with VDC/AAC to discuss VDC By-Laws. *(TENTATIVE)*

Due to the difficulty in scheduling this discussion and the late hour of the evening, the Planner suggested (with the AAC Chairman’s agreement) that a discussion be scheduled for 7 p.m. on 10/27/09, prior to the commencement of the AAC meeting and the Commission’s POCD workshop session. All agreed.

4. **#2009-081-SP:** Special Permit under Section 9.2 required by Section 3.3.D.1 of the Ridgefield Zoning Regulations for the Town of Ridgefield to permit construction of an accessory dwelling unit within the existing single-family residence on property located at **26 Pond Road** in the RAA zone. Owners/Appls.: Fred and Nancy Fields. *Received 9/15/2009. Public hearing commenced 10/13/2009. Walked 9/13/2009. 65-day action period ends 12/17/2009. For action.*

**Vice Chairman Walsh** noted that the hearing had been closed, and asked for discussion on the item.

**Mr. Katz** motioned, seconded by Dr. Autuori, to approve the application as presented, with standard conditions to be drafted by the Planner. This would be a final decision. The motion passed, 6-0-1, with Dr. Gelfman abstained.

## **NEW ITEMS**

5. **#2009-091-SP:** Special Permit application under Section 9.2 required by Section 3.6.C (Lot Coverage Exceptions) of the Ridgefield Zoning Regulations for a detached pole barn on property located at **35 South Olmstead Lane** in the RAA and RA zones. Owner/App: Karen Belardinelli. *65 days to commence public hearing ends 12/17/2009. For receipt, schedule public hearing and site walk.*

**Vice Chairman Walsh** asked for acknowledgement of receipt of the application, and the Planner suggested a 10/18/09 site walk and scheduling of a public hearing for 11/4/09.

**Mr. Katz** motioned, seconded by Mr. Mische, to acknowledge receipt of the application and to schedule the site walk and public hearing as suggested. The motion passed, 7-0.

## **COMMISSION WALKS**

The Commission added the following to the **October 18, 2009** site walk schedule:

- **#2009-091-SP:** Special Permit **35 South Olmstead Lane**, Belardinelli.

The following site walk was previously scheduled for **October 18, 2009:**

- **#2009-086-SP:** Special Permit **155 Tanton Hill Road**, Jamieson

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

There were no requests for bond release or reduction.

## **CORRESPONDENCE**

There was no correspondence.

## **MINUTES**

**Mr. McChesney** motioned, seconded by Dr. Autuori, to approve the minutes of September 29, 2009. The motion passed, 7-0.

Hearing no further discussion, the Vice Chairman adjourned the meeting at 9:35 p.m.

Respectfully submitted,

Linda Caponetti  
Recording Secretary