

APPROVED / REVISED  
MINUTES  
INLAND WETLANDS BOARD MEETING

October 17, 2006

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

Absent: Michael Autuori

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

*A public hearing was held prior to the meeting.*

At 7:46 p.m. Chairman Mucchetti called the meeting to order.

**PENDING ITEMS**

1. **#2006-048-SR:** Plenary Ruling application to conduct regulated activities in upland review area for construction of a single-family two-bedroom residence. Property located on west side of **Wilton Road East**, north of intersection with Split Level Road in the RA Zone. Owner: Earl A. Burchard. Auth. Agent/Appl.: Richard E. Kent, ASLA, Environmental Design Associates, P.C. *Received 5/23/06, walked 6/4/06. Raised to Plenary Ruling June 6, 2006. Public hearing commenced 7/5/06, continued to 9/5/06 with granted extension, continued to 10/3/06 with granted extension. Public hearing closed and item tabled 10/3/06. 35- day action period ends 11/7/06. . Draft Resolution of Denial requested 10/10/06. 35- day action period ends 11/7/06. For action.*

**The Chairman** informed the Commission that the draft resolution was not ready, and suggested tabling the item for one week.

**Mr. McChesney** motioned, seconded by Mr. Slavin, to table the item. The motion passed, 8-0.

**NEW ITEMS**

There were no new items.

## BOARD WALKS

There were no new walks scheduled. The following scheduled walks were noted.

- The Board scheduled a site walk for item **#2006-106-SR: Summary Ruling, Tanton Hill Road**, Kessler, for October 22, 2006, as noted in #3 above.
- The Board re-scheduled the site walk for **20 Peaceable Street, #2006-103-SR**, from October 15<sup>th</sup> to October 22<sup>nd</sup>.

## REQUESTS FOR BOND RELEASE / REDUCTION

- **#2005-063-REV-SR:** request for bond reduction, **Temple Shearith Israel, 46 Peaceable Street**, IWA recommends \$30,000.00 reduction. (see memo dated 10/17/06)

**Mr. Katz** motioned to reduce the bond as recommended by the Agent. The motion was seconded by Mr. Fossi and the vote was 8-0 in favor.

- **#2005-166-PD:** request for release of \$1,000.00 bond posted for pond dredging, **143 Wilton Road West**; Owner: Robert MacAvoy. IW Inspector recommends full release (see memo dated 10/16/06).

**Mr. McChesney** motioned to release the bond as recommended by the Wetlands Inspector. The motion was seconded by Mr. Katz and the vote was 8-0 in favor.

## CORRESPONDENCE

**The Chairman** pointed out the field report submitted to the office by Kate Throckmorton of Environmental Land Solutions, pertaining to the on-going wetlands restoration and mitigation work at **11 Old Stagecoach Road**. She commented on the thoroughness and detail of the report.

## MINUTES

**Mr. Katz** motioned, seconded by Mr. Walsh, to approve the minutes of 10/3/06. Mrs. Willis and Chairman Mucchetti offered some minor corrections. The minutes were approved by a vote of 8-0, with the corrections.

Hearing no further discussion, the Chairman adjourned the meeting at 7:55 p.m.

Respectfully submitted,

Linda Caponetti  
Recording Secretary

APPROVED / REVISED  
MINUTES  
PLANNING AND ZONING COMMISSION MEETING

October 17, 2006

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

Absent: Michael Autuori

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

*A public hearing was held prior to the meeting.*

At 7:56 p.m., Chairman Mucchetti called the meeting to order.

**PENDING ITEMS**

1. **#2006-091-A:** proposed Commission-initiated amendment to the Ridgefield Zoning Regulations, Section 410.0-Corporate Development District, to modify items 5a and 5b, floor area ratio and open space ratio requirements. *Public hearing commenced 10/17/06. For action.*

**The Planner** reminded the Commission that there must be a statement on the records to indicate that the proposed amendment is consistent with the Plan of Conservation and Development. By consensus, the Commission agreed that the “reasons” in the preamble to the proposed amendment, as well as additional comments in the Planner’s staff report, contain the language to support the amendment.

**Mr. McChesney** motioned, seconded by Mr. Fossi, to approve the proposed amendment to the zoning regulations. The motion passed, 8-0.

2. **#2006-101-REV:** revision to Special Permit to allow 4 temporary and portable field lighting units on practice field located in the RA zone at **10 East Ridge, East Ridge Middle School**. Owner: Town of Ridgefield. Appl.: Ridgefield Youth Football. Auth. Agent: Donnelly, McNamara and Gustafson, P.C. *65-days to schedule public hearing ends 12/7/06. Acknowledge receipt of withdrawal.*

**The Planner** stated that the applicant was having serious difficulty locating a light. She added that the new proposed regulations might allow something like this on a temporary basis, but, under the current regulations, it would more than likely not be permitted. The Commission was in agreement that the application had come in much too late for any resolution before the close of the football season this year. Mr. Walsh asked that the Planner flag this section in the proposed revisions to the zoning regulations, for when it is discussed again, as he felt it was particularly important.

**Mr. Katz** motioned, seconded by Mr. Walsh, to acknowledge the withdrawal of the application for temporary lights. The motion passed, 8-0.

3. **#2006-102-REV:** revision to Special Permit to allow 4 temporary and portable field lighting units on practice field located in the RA zone at **66 Prospect Street, (Old High School)**. Owner: Town of Ridgefield. Appl.: Ridgefield Youth Football. Auth. Agent: Donnelly, McNamara and Gustafson, P.C. *65-days to schedule public hearing ends 12/7/06. Acknowledge receipt of withdrawal.*

See above discussion (under Item #2).

**Mr. Katz** motioned, seconded by Mr. Walsh, to acknowledge the withdrawal of the application for temporary lights. The motion passed, 8-0.

## **NEW ITEMS**

4. **#2006-110-REV:** revision to Special Permit to construct a 5 bay vehicle repair addition to the existing Ridgefield BMW building located at **746 Danbury Road** in the B-2 and RAA zones. Owner: Eric Erhardt. Appl./Auth. Agent: James M. Hancock. *65-day action period ends 12/21/06. For receipt and schedule walk.*

**The Chairman** pointed out the new application and suggested adding the item to the site walk schedule for Sunday, 10/22/06.

**Mr. Katz** motioned, seconded by Mr. Slavin, to acknowledge receipt of the application and to schedule a site walk for 10/22/06. The motion passed, 8-0.

5. Request for determination of suitability of a proposed use for the MCDD zone, c/o Planning Director. Re: Health & Wellness Center for **901 Ethan Allen Highway**. For discussion.

**The Planner** explained that the office had received a request for consideration of a Health and Wellness center in the MCDD zoned land at the above address. She and Zoning Enforcement Officer Richard Baldelli questioned whether or not this proposed use actually meets the definition of a medical office set forth by the Commission when the MCDD zone was established. Because the Commission is allowed to interpret and discuss the intent of its own regulations and because it was somewhat unclear as to whether or not the proposed use could be seen as primarily

fitting the definition of a medical office, the owner, Dr. Lipton, was invited to come in to discuss in detail the activities proposed at this site.

**Dr. Lipton** gave a lengthy presentation, explaining that, in the medical field, as insurance covered services are being limited, there has been an outgrowth from both the physical therapy and fitness industries of what we now call conditioning, health and wellness centers. These centers incorporate licensed, certified providers who provide covered services that are reimbursed by insurance. They also provide services that are not traditionally covered by insurance, but which enhance the overall effectiveness of the therapies. He gave examples of each. He explained that his particular health and wellness center is part of a national movement away from the traditional physical therapy arm to these types of services. There is also a movement from what would have been traditionally thought of as gym services towards this, as well.

He quoted from the definition agreed upon by the Commission for approved uses for medical offices: "... used for investigation, prevention, treatment, and/or alleviation of human diseases and other physical or mental ailments and/or medical conditions....by practitioners licensed in the state of Connecticut." The applicants feel that they have met these criteria by providing practitioners who are licensed and certified by the state, such as a certified nutritionist, and a licensed massage therapist. To distinguish this facility from a traditional gym, Dr. Lipton noted amenities which would typically be associated with a traditional gym, like large bathroom facilities with sauna, steam room and whirlpool, and add-ons, such as a juice bar. These types of services would not be part of the center's offerings because his facility is a small structure focused on the individual therapies which are anticipated.

**The Chairman** asked if a member of the public could come in off the street just to exercise, without using any of the other services. She also asked if there were membership fees.

**Michelle Maturo**, a fitness instructor and manager of the business, said that there is a part of their business which will consist of people who will be coming in by referral from a physician, and also another aspect of the business involves people who could have a membership to use the facility.

**Mr. Katz** asked how that was different from a typical gym.

**Ms. Maturo** said that it was more specialized, with "one-on-one" work with her.

**Mr. Katz** replied that this does not distinguish it from any other fitness facility, because that type of service is available almost anywhere.

**Dr Lipton** said that this operation was appointment based, as opposed to walk-in based.

There was discussion which concluded that this “by appointment only” feature distinguished the center from a typical gym.

**Mr. McChesney** wanted to know if the referrals would be made by a physician.

**Ms. Maturo** said that she and her nutritionist are attempting to gain recognition in the medical community and are speaking with doctors and building that part of the business. She felt that they have gained a good reputation in this field through their work with Danbury Hospital. She gave a specific example of a patient with high cholesterol who was helped significantly by their nutritionist.

**Mr. McChesney** again tried to ascertain whether or not people would be coming to them by referral through a physician, or by just finding them in the Yellow Pages.

**Dr. Lipton** said he felt it was safe to say that there would be a proportion of self-referral and word of mouth referral, but not general advertising to the public.

**Dr. Gelfman** asked if the center was certified for cardiac rehab. Ms. Maturo replied that it is not.

**Mr. Walsh** felt that this proposed business does not meet the definition of “medical uses” (see above quote) as adopted by the Commission at the request of the current owners in conjunction with the establishment of the MCDD zone, because of the fact the spinning instructor, Michelle Maturo, is not licensed by the state of Connecticut. He stated that the Commission relied heavily on that definition, making sure that it was going to be a medical facility. He and the Commission assumed that the individuals who would be practicing there were going to fit this definition, whether they are MDs, nurses, physician’s assistants, or dentists that are licensed by the state of Connecticut.

**Dr. Lipton** questioned whether the definition required that the provision of services within a practice be provided exclusively by registered practitioners, licensed in the state of Connecticut, or whether it required simply that there needed to be some practitioners licensed by the state within the practice. Mr. Walsh interpreted it to mean that all practitioners in the business needed to be licensed by the state. Dr. Lipton explained that even within his own practice there are practitioners who are not so licensed. He added that a proposal for a physical therapy practice would soon be coming before the Commission. Within that physical therapy practice, there will be some practitioners providing services who are not licensed by the state of Connecticut. Mr. Walsh asked if in fact there would be any professionals providing services at the proposed center who were licensed by the state of Connecticut, and Dr. Lipton answered that the certified dietitian and the registered massage therapist were licensed by the state.

**Mr. Katz** agreed with Mr. Walsh that this use didn’t appear to fit the definition of what the Commission had planned for the corporate development of this district. Any

fitness facility can hire any of these licensed individuals, he felt. He didn't see what would make this center any different from any other fitness business. He said that perhaps the term rehabilitation should have been included in the definition for uses fitting the MCDD zone, but, as currently written, this use does not, in his opinion fit the definition. Calling it a "glorified gym," he was concerned that they were stretching the definition of permitted use to the point where any gym-type facility could conceivably apply for approval to operate in the zone. He said that the definition may need to be revisited.

**Dr. Lipton** stressed the appointment-only aspect of the business. He also said that, if you look at the physical building, it in no way has the look of a gym, but rather resembles the look of a physical therapy office. He added that appointment businesses and one-on-one services are aimed at health and wellness, not fitness. He stressed it was not just the occasional presence of licensed professionals at the site, but the fact that they were going to be practicing out of the center, that made it different. They receive referrals, they accept insurance, and it's a one-on-one service. An open gym does not answer the professional character of the center.

**Dr. Klarsfeld**, co-owner, mentioned that other health clubs do not accept insurance, and that this is a distinguishing point.

**Mr. Katz** mentioned massage therapists who accept insurance. Dr. Lipton added that they are open access, they have significant part of their business that is walk-in, and they appeal to memberships.

**The Chairman** asked how is this different from a physical therapy office like Carlson Therapies.

**Dr. Lipton** said the nature of where the industry is going is leading to the blurring of the line between medical and fitness facilities. All medical offices are offering adjunct services and/or products, however, it seems that the dominant use is what we should be considering.

**Ms. Maturo** stresses the rehab aspect of the business, saying that they can pick up where the physical therapy leaves off.

**The Chairman** asked the Planner, since specific medical uses are listed, if it's not listed is it not permitted.

**The Planner** said that the description of medical uses was broad enough, but that the critical language was "certified or licensed by the state of Connecticut".

**Mr. Katz** cited how, in the description of the center provided, the term rehabilitation was not used, but the term fitness was. He saw the business more as a fitness center with a very good overlay of professionals to assist those seeking fitness, lifestyle enhancement, weight management, etc. However, he did state that he is in favor of

many of the services to be offered at the center because they seem supportive of the medical profession.

**Dr. Lipton** explained why his individual training had prompted him not to use the term rehabilitation, but he added that this term could have just as easily been included in the definition. He discussed preventative medicine, fitness, lifestyle changes. He explained how medicine used to focus on the prevention of disease, while it now also focuses on promoting health and wellness. As far as defining permitted uses for the MCDD zone, he reiterated that, in his opinion, the clearest distinction is the fact that this center operates by appointment only.

That distinction was further defined by Ms. Maturo, who said that people who want to come in to use the training center and don't want to be put on a specialized program and just want to do their own thing would be sent elsewhere.

**Mr. Katz** felt that the wording of the definition did not encompass what was being proposed for the site. He said that he was enthusiastic about the concept of having such a facility in town, but that, as written, the permitted use description did not cover this particular use, he felt.

**Mr. McChesney** highly supported the concept of what is being proposed for this facility. He stated, however, his concern with the wording, and was particularly concerned that the Zoning Enforcement Officer would have a problem in the future when an applicant came in for a permit, if the fine line in the definition doesn't allow it to be converted into a recreation center or a health center.

**The Chairman** asked if there wasn't a way to adjust the wording to encompass the proposed use.

**Dr. Klarsfeld** mentioned the size of the space was not adequate for a "Gold's Gym". The Planner explained that it was the use, not the size of the facility, which was in question.

**Dr. Lipton** asked if the discussion at the meeting would be sufficient to qualify the conditions of approval; if added specifications could become the enforceable definition.

**Mr. Katz** said it would at least have to be incorporated into a revised special permit that would include language that would allow the enforcement officer to know exactly what the Commission had approved and what they had not.

**Ms. Willis** attempted to clarify what was meant by walk-in vs. by appointment only.

**Dr. Gelfman** asked Ms. Maturo what exactly was her expertise.

**Ms. Maturo** answered that she had two different certifications: National Academy of Sports Medicine and the Aerobic and Fitness Association of America. Dr. Gelfman questioned her further as to who certifies these organizations and oversees these operations.

**Dr. Lipton** stated that there are three elements to this center, two of which are state certified. This particular element of the center is not something that has any form of state certification. There is no state mechanism for certification of fitness instruction.

**Dr. Gelfman** asked if insurance would cover this.

**Dr. Lipton** said he would be surprised if insurance participated in coverage for the fitness element, but it will cover the dietetic element and the massage therapy element.

**Mr. Walsh** thought that the biggest hurdle the applicants will have to face is the “licensed by the state of Connecticut”. He felt that even though Dr. Lipton might employ practitioners who are not licensed in the state, he himself is accountable for them. Mr. Walsh had reservations because he sees this center as being three separate and distinct areas with no one having to report to anyone else. This points out the distinction between this application and a doctor’s office, he feels.

There was ongoing discussion as to the supervision aspect within a doctor’s office as opposed to a business of this kind; also the liability aspect with regard to who is liable in each of these situations. The Chairman was looking for clarification of the terms certification as opposed to licensure. Since fitness isn’t licensed, was it possible that it is certified? Dr. Lipton said he believed that the state has certification levels that do not require licensure. Certification is achievement of a certain level.

**Mr. Katz** said to Dr. Lipton that he assumes that his medical practice is not going to be the umbrella for this facility.

**Dr. Lipton** said that is it an independent entity and not in any way tied to the other business.

**Dr. Gelfman** felt that the perception would be that anything located in his medical building had an aura of being medically certified. Dr. Lipton disagreed, asking if he meant that by physical proximity, a certain degree of credibility was imparted to a business. He stressed that this was not a medical only building, and that there might be future corporate clients. Dr. Gelfman still felt that the general populace would see this as a medical endorsement of the business.

**Dr. Lipton** concluded that it wasn’t so much the use that was being questioned as it is the compliance with the regulation.

**Mr. Katz** asked Ms. Maturo to find out if her national certification counts in the state of Connecticut. He said if that could be determined, and the rest of the description could be met, he could be comfortable with this.

**Mr. McChesney** confirmed that the doctors intended to be the landlords, and did not intend to sell that portion of the building. He wanted confirmation that any applicant would need to meet the doctors' approval, and that, in essence, the doctors would be screening applicants for the Commission. Dr. Lipton said that was true, and that his understanding was that any applicant would also have to come before the Commission.

**Mr. Walsh** said that that was all well and good as far as the current applicant is concerned, but that the Commission is going to have to contend with this use that's attached to this land.

**Dr Lipton** again noted that the definition states that professionals certified or licensed by the State of Connecticut need to provide services at the facility, but the definition does not say that all individuals at the facility need to be licensed or certified. All medical practices that he is aware of are offering services and even sale of products that may be an adjunct to what they do, but they don't fall within the licensed service provision.

**Mr. Walsh** said that the Commission needs to really look at the definition.

**The Planner** reiterated Mr. Katz' request for the fitness instructor to see if her national license is accepted by the State of Connecticut. She also said that this may, as Mr. Katz suggested, be considered a revision to the special permit. But, in any case, she feels that there needs to be a clear record that clarifies, if the Commission is approving this, that it is under the terms and conditions as discussed at the meeting. She stressed her concern with the enforcement of this; that it wouldn't end up being used as a gym.

**Mr. Katz** cautioned, since this is in a corporate zone, there would be those coming to the facility desiring to use the facility for "lunch hour use of your equipment." That's not the intent here.

**The Planner** said that what they are talking about is a principal use, not an accessory use to another use. She said that this is a stand alone leased space, a principal use, and that this is why it has to be defined very carefully.

Mr. Katz suggested that the applicants bring in the certification, rewrite the description of what they intend to provide and come back to the table.

The Chairman added that they should make their wording very specific.

**The Planner** said that this could be put on the agenda for next week if the applicants are ready. She said that she didn't feel it was necessary to have a revision to a special permit, and that this was more of an addition than a revision; a clarification. She told the Commission that what they are being asked to do is to interpret their own regulations and decide if this proposed use fits. She said that the Commission needs to come up with some language that the zoning enforcement officer can live with, and that the Commission is satisfied will prevent an aberration from the proposed intent for the MCDD zone in the future.

Discussion continued, and the Planner stressed how important the discussion they were having was in terms of dealing with future applications for the MCDD zone.

After the lengthy discussion pertaining to the proposed use for the MCDD zone, the Commission tabled the item pending the receipt of additional information from the landlord and the potential tenant. No determination was made. The item will appear on a future agenda when the requested information has been received.

#### **COMMISSION WALKS**

The Commission scheduled the walk for #2006-110-REV: **746 Danbury Road**, Ridgefield BMW, Erhardt, as noted in item #4, above.

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

- **#2005-063-REV-SR:** request for bond reduction, **Temple Shearith Israel, 46 Peaceable Street**. PD recommends \$125,000.00 reduction. (see memo dated 10/17/06)

**Mr. Katz** motioned, seconded by Mr. Slavin, to authorize reduction in the bond as recommended by the Planner. The motion passed, 8-0.

#### **CORRESPONDENCE**

**Chairman Mucchetti** pointed out the following correspondence:

- Letter from property owners at 7 Old Wagon Road, with complaints about the size of the home being constructed at 12 Old Wagon Road.
- Memo from the Planner to the First Selectman re appointments to the AAC.

#### **MINUTES**

**Mrs. Willis** motioned, seconded by Mr. Slavin, to approve the minutes of 10/3/06. Chairman Mucchetti offered some minor corrections. The minutes were approved by a vote of 8-0, with the corrections.

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

Respectfully submitted,

Linda Caponetti  
Recording Secretary