

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD MEETING

November 17, 2009

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

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

A Planning and Zoning Commission public hearing and an Executive Session were held prior to the meeting. At 7:41 p.m. Chairman Mucchetti 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, 10/13/2009 and 10/20/2009. Extension granted thru 10/20/2009 (56 of 65 days of extension used thru 10/20/2009). Public hearing closed 10/20/2009. Draft Resolution of Denial requested 11/4/2009. 35-day action period ends 11/24/2009. For action.*

Chairman Mucchetti opened the discussion by referencing the draft resolution of denial prepared by the Agent, and noted that it should be labeled as “plenary” in the heading at the top of the page.

Mr. McChesney said he had reviewed the minutes on the item and asked if they become part of the record. The Agent said they do, and noted that if Mr. McChesney felt there was something from the minutes that needed to be translated into the resolution of denial, that should be done.

Mr. Katz complimented the Agent on her concise and detailed document. He suggested minor changes to the language of the resolution, page by page. On P.1, paragraph (3), "... to support the property owner's right to use their easement on Second Lane..."

Mr. McChesney felt it important to insert the fact that representatives of the Mamasasco Lake Association spoke on behalf of their members at the public hearing. Mr. Katz agreed.

Mr. Katz proposed additional language to P.2, paragraph (2): "...due either to construction or poor maintenance of installed systems."

Mr. McChesney asked that (in paragraph 2, last sentence) the words "in perpetuity" be added to the requirement that the owners do annual or semi-annual clean out of check dams and a hydro-works chamber.

Mr. Katz added minor editorial changes to P.2, paragraph (3).

The Chairman noted that section (4) was left as presented.

On P. 2, paragraph (5), **Mr. Katz** proposed the following wording be added at the end of the last sentence: (...creating a piped watercourse over a 2200 ft. section, eliminating a natural watercourse, its habitat and its function." The Agent stated that the water was not piped for 2200 ft., but that the piped section is from the edge of the property above the house, to the opening of the channel that goes down the hill. Changes to language were hammered out amongst the Board members.

Mr. Fossi asked that the accuracy of the length of the watercourse (listed as 2200 linear ft.) be checked. Dr. Autuori agreed, saying that 2200 ft. is almost a half mile. The Agent agreed to check the numbers.

Mr. McChesney asked about including the record of the two previous denials, in case this went to court.

The Agent said that the complete record of previous denials is not in the current record, but she did not feel that was critical. She said it was important that this was considered to be a better alternative than the previous applications that were denied.

The Chairman noted that descriptions of the previous applications were referenced in the staff report. She asked the Board if they wanted to add language as guidance toward a prudent and feasible alternative.

Mr. Walsh said the regulations don't indicate that this is necessary. However, he felt that it had already been included in paragraph (3), which mentions that the size of the house could be reduced and a part of the house could be elevated. He said there was

also testimony from Mr. McCoy indicating that there could be an alternate location for the house on the site.

Mr. Katz made some minor additional changes to P.2, paragraph (1), including the acknowledgement that no additional questions could be put to the applicant about the last revised plans, after the close of the public hearing.

Agent Brosius said that she had spoken to the applicant regarding the Board's discussions and showed him the draft resolution. She asked that the Board allow her to input the proposed changes and corrections to the resolution in bold type so that the Board could review them at the following meeting. This would give the applicant the opportunity to decide how to proceed. He has the option to withdraw the application at any time before a final vote is taken on the resolution, and he may prefer to come back with a new application, as opposed to receiving the denial.

Dr. Gelfman noted that the septic line transects the property. He said that the applicant talked about digging for the pipe by hand, but Dr. Gelfman could not conceive how they could get to the septic site without creating a barrier in the stream. Chairman Mucchetti agreed that this was not clear. Mr. McChesney noted that Dr. Gelfman's concern about traversing rock had been expressed in the minutes of the previous discussion. The Agent asked if the Board wanted Dr. Gelfman's comments from the minutes incorporated into the conditions. Mr. Fossi felt that would be a good idea. Suggested locations [in the document] for this addition were discussed.

Mr. Katz said that the consultant's concern about the two septic crossings could be referenced. The consultant had commented that there may be unanticipated potential negative affects. The Agent said she would include that, as well.

Mr. Katz said he had no objection to allowing the applicant the extra week of consideration. However, he was concerned that the applicant may think that if certain conditions were met, the application would automatically be approved. This is an inherently bad piece of property for development, Mr. Katz felt, and that won't change.

Dr. Autuori referred to the Mamasasco Lake Association's comments that they are concerned with the many streams flowing down into the lake. He felt an application which came back with all the conditions met and provision for rip rapping of the streams would be a significant improvement over current conditions, and it could be positively received. Mr. Katz did not agree.

Mr. Fossi agreed with Dr. Autuori. "I do think a lot of what's being put in place there will benefit Mamasasco Lake," he said. He commented on the degree of erosion and undermining of the bank on the Third Lane side which the Board observed on the site walk. This had nothing to do with the property owner, he said, adding that, if they could get some of the house out of the wetlands, he would be inclined to support the application.

The resolution will be further modified as per the discussion, with a final draft to be prepared for review and final action to take place at the meeting on 11/24/09.

2. **Election of Officers (IWB).** *For discussion.*

Chairman Mucchetti explained the procedures required for election of officers.

Mr. Katz motioned to nominate and elect the slate of officers currently in place (Rebecca Mucchetti as Chairman, and Patrick Walsh as Vice Chairman). The motion was seconded by Mr. Fossi, and the vote was 9-0 in favor.

There was unanimous consensus that the current Chair, with assistance from the Vice Chair, was doing an excellent job of running the meetings and conducting the Board's business.

NEW ITEMS

There were no new items.

BOARD WALKS

There were no Board walks to be scheduled.

REQUESTS FOR BOND RELEASE/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

Chairman Mucchetti pointed out the following correspondence:

- New plan sets from engineer Steven Trinkaus, for the Water's Edge Way application.
- Comments from Alan Pilch of the Conservation Commission, with review of the new plan sets for Water's Edge Way.

MINUTES

Mr. McChesney motioned, seconded by Mr. Fossi, to approve the minutes of November 4, 2009. The motion passed, 8-0-1, with Mr. Chipouras abstained.

Hearing no further discussion, the Chairman adjourned the meeting at 8:06 p.m.

Respectfully submitted,

Linda Caponetti
Recording Secretary

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION MEETING

November 17, 2009

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

Also Present for the Regular Meeting: Betty Brosius, Director of Planning
Linda Caponetti, Recording Secretary

An Executive Session was held with Commission Counsel from 7 p.m. to 7:30 p.m. as noted below. A public hearing was held at 7:31 p.m., prior to the regular meeting, and a second (continued) public hearing was held at 8:07 following the Inland Wetlands Board meeting. At 8:27 p.m., Chairman Mucchetti called the regular meeting to order.

EXECUTIVE SESSION – Litigation: Eureka v. PZC, and Martinelli v. PZC

Note: Attendance at the Executive Session included eight of the nine Commissioners (Mr. Chipouras did not attend), Commission Counsel Thomas Beecher, and Planner Betty Brosius. The Planner took minutes for the Executive Session.

Chairman Mucchetti called the meeting to order at 7 p.m. and asked for a motion to go into Executive Session. **Dr. Autuori** motioned, seconded by Mr. Walsh, to enter into Executive Session. The motion passed, 8-0.

At 7:29 p.m., Chairman Mucchetti asked for a motion to end the Executive Session. **Dr. Autuori** motioned, seconded by Mr. Fossi, to end the Executive Session. The motion passed, 8-0.

The doors were opened to allow the public to enter, and **Chairman Mucchetti** asked for a motion to authorize counsel to pursue settlement for the litigation of Martinelli v. PZC (re the home occupation at 23 McKeon Place), as per discussions held during the Executive Session. **Dr. Autuori** made the motion, seconded by Mr. Fossi, and the vote was 7-1-0 in favor, with Mr. Mische voting against and Mr. Chipouras not part of the session.

No motions were made and no actions were taken for the Eureka matter.

PENDING ITEMS

1. **#2009-071-A:** Proposed Amendment to the Ridgefield Zoning Regulations, **Section 3.5.F and 3.5.G.**, Maximum Lot Coverage and Floor Area in the Residential Zones and **Section 3.6.C**-Lot Coverage Exceptions. Commission initiated. *Public hearing closed 11/4/2009. For action.*

[Following lengthy discussion of the proposed amendment...]

Chairman Mucchetti noted Mr. Mische's spreadsheet of the options and proposals.

Mr. Mische passed out copies of the spreadsheets where he compared calculations of lot coverage for the old regulations, the regulations adopted in 2007, the numbers proposed by Mr. Mose, the numbers proposed by the Planner (with suggestions from Planimetrics) and “Yet Another Option”, which is his own proposal.

Mr. Mische said that he created this comparison sheet because he was concerned that, with these changes, the Commission was “going to take a step back and [it was] going to actually allow larger structures than [it] had under either the old regulations or the current regulations.”

The Chairman thanked Mr. Mische for the “enormous amount of work” he had done.

Mr. Walsh said if the changes were no greater than those proposed by Mr. Mose, then any revisions would be acceptable under the proposed amendment.

Planner Brosius agreed, saying that what was before the Commission was the current regulations and a number of proposals which were bigger than the current regulations. Any of the proposals could become the final proposal, she said. If the changes were less than those in the maximum proposal [the original amendment], that would be acceptable. She asked Mr. Mische for an explanation of the percentages. He clarified the numbers, pointing out some areas of particular concern to him with Mr. Mose's allotments.

Dr. Autuori again brought up the issue of setbacks, explaining why he feels they are so important.

Mr. McChesney stressed that lot coverage could include more than one building.

The Chairman summarized, saying that the Commission was looking at the current regulations, the proposal by Mr. Mose, recommendations from Planimetrics, and Mr. Mische's proposed numbers.

Mr. Katz asked Mr. Mische what his numbers accomplished that the Planimetrics numbers did not. Mr. Mische said that his numbers allow less coverage and less floor area.

Mr. Fossi asked Mr. Mische if he also allowed for the 140% rule, which he said he did. Mr. Fossi questioned why he would leave that in.

Mr. Mische said that his numbers did not constitute a proposal. They were presented so that everyone could look at the numbers and see their impact. He said, under his plan, if the 140% rule was left in, wherever it stops, there will be a step in the ability to develop a property. He feels that will encourage people to subdivide to get a smaller plot to take advantage of that. Mr. Mische said he felt it was in everyone's best interest to not make the regulation so complicated that people need to hire an architect or engineer to do the calculations in order to build a house.

Mr. Fossi felt that everyone would agree that the regulations adopted in 2007 are detrimental to owners of large plots of land. He felt that the right balance was somewhere between the Planimetrics, Mr. Mose's proposal, and Mr. Mische's numbers. It seemed to him that the straight line created by Mr. Mose's numbers was the fairest. He said, while everyone is sensitive to over-development, he would want to reward people with larger lots to encourage them to build large estates and not subdivide.

Mr. Fossi said he understood Dr. Autuori's concern with setbacks. He noted that topography also factors into this issue, citing the visibility of all the buildings on the McKeon's field property. He said he did not want to "over complicate" this issue, and said his preference would be for the Planimetrics proposal.

After some discussion, the Commission agreed that it was unlikely that homeowners with very large pieces of land would squeeze their home up against the front boundary of their property.

Planner Brosius addressed the straight line graph in Mr. Mose's proposal. Glenn Chalder of Planimetrics stated that there would be a waiver of the line if the percentages were not descending, she said. She added that Mr. Mose found the Planimetrics proposal acceptable.

Mr. Mische asked the Commission what its intention was in approving the new regulations, where the coverage and the FAR taper off, if now they approve a regulation that does not taper off. With the Mose proposal and the Planimetrics proposal, the FAR is flat at 6%, he said. Coverage actually increases with Mr. Mose's proposal.

The Chairman said that, during deliberations, it was brought to the Commission's attention by Mr. Mose that the line flattened out with the larger lots. The Commission was aware of it, but opted to address the issue at a later time.

Mr. Mische asked what the Commission favored.

Mr. Fossi said that it wouldn't be long before the Commission would be looking at the FAR on lots where it is clearly unfair. "We have the exact opposite problem on the smaller lots," he said.

Dr. Autuori agreed with Mr. Fossi's desire to encourage the development of large estates or compounds, as opposed to subdivisions. He also preferred the Planimetrics plan over the others.

Mr. McChesney motioned, seconded by Dr. Autuori, to adopt the amendment with the suggested changes by Planimetrics for the Lot Coverage portion (as discussed in public hearing). The Planner noted that this plan includes the part of the amendment that eliminates the 140% rule. The motion passed, 8-1, with Mr. Mische opposed. [Note: The amendment will become effective on the date of publication of the legal notice, 11/25/09.]

Mr. Mische and Mr. Mose were thanked for their efforts.

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. Walked 9/27/2009. Public hearing commenced 10/13/2009, continued to 11/10/2009 and to 11/17/2009. 65-day action period ends 1/21/2010.*

Chairman Mucchetti noted that the public hearing had been closed and asked for discussion on the application.

Mr. Fossi said that, in his 27 years in the building business, this was the most incredible thing he has seen in the town of Ridgefield. In a sense, he felt the damage had already been done. The trees will be dead because of the fill, there will be sinkholes, he said, but, there is nothing to be done at this point. Wetlands are not affected, he added. He suggested approving the special permit, as presented, requiring that the applicant submit an A-2 survey proving that the 1-to-3 contours are met, that water has not been diverted onto neighboring properties, and that there are proper erosion and sedimentation controls in place. The plan needs to be discussed at a pre-construction conference with staff, Mr. Katz added. Mr. Fossi added the condition that the Health Department must be satisfied, as per their memo.

Mr. Fossi doubted that a large enough bond could be posted to ensure that these conditions would be met. He was against posting a bond. The Planner agreed.

Dr. Gelfman said he preferred placing a bond. The bond would be for the protection of the neighbors, not for the completion of the project. The Planner noted that the primary purpose of the bond is to ensure that the Town can finish the job. In this case, unless there were some public health or safety issue, the Town would not be finishing this job.

Mr. Katz said the Town will not sign off on the project until Mr. McGoey presents the A-2 survey certifying that he has met the conditions laid out.

Dr. Autuori felt a bond was necessary to protect the neighbors in case material from the job was allowed to impact their properties. He said the bond would allow the Town to hire a contractor to go in and push back the material with silt fence, for example.

Mr. Fossi did not feel it was the Commission's responsibility to get involved in what would most likely be a civil matter.

Mr. Mische asked how the Commission could ensure that the job would be done to the appropriate standards.

Mr. McChesney said an enforcement officer could issue a Cease and Desist and fines could result for failure to comply.

The Planner noted that the Citation Ordinance is the fine ordinance. There are also outstanding permits on the property, she said. "Those issues will not be resolved until this issue is resolved."

Dr. Gelfman asked if the bond wouldn't motivate the applicant to do the job properly. The Planner said she did not think so. This is an enforcement proceeding for a project that was done without permits, she said. Requesting a bond may delay the job's completion, because the homeowner will have to come up with additional cash, and everything the homeowner needs to do for the permit is expensive.

Dr. Autuori illustrated what he felt was the distinction between a normal civil matter involving encroachment and this case, which has come before the Commission and is being given their "seal of approval." He urged the Commission to place a bond sufficient to allow the stabilization of the sedimentation and erosion controls.

Mr. Mische asked if a timetable was being imposed.

The Planner said the draft resolution would include a timetable from the commencement of the work, which would not begin until the Health Department issues were resolved. At that point, a completion time could be imposed.

Mr. Mische said the job was "begging for a sequence." There has to be some way to keep the project moving forward, he said.

Mr. Fossi agreed with Dr. Autuori that a reasonable bond for erosion and sedimentation controls would be appropriate because the Town would be burdened with that job if the homeowner refused to do it. Mr. Fossi said that now may not be the time to begin the job and impose a completion deadline, with winter approaching. The site is stable now, he said, and beginning the work now might result in

destabilization and “a mess.” Mr. Fossi said he would add to his motion the stipulation that work begins in the spring. He suggested a three month completion schedule.

The Chairman said that the bond issue was not raised during the public hearing, and asked if it could be raised now. The Planner said it could, because it is authorized in the statutes as well as in the zoning regulations.

Mr. Walsh asked when was the last time the Town called a bond and what did it cost the Town. The Planner stated her recollection and that it took several years. Mr. Walsh stated that a bond was not appropriate in this case. It will cost the Town more to call the bond and the purpose will not be satisfied, he said. Mr. Katz agreed.

The Planner said that lack of erosion and sedimentation controls are one of the most common purposes for using the Citation Ordinance, which has proven to be very effective.

Mr. Mische thought there were aspects of the job that could and should begin now.

Mr. Fossi disagreed, saying that the neighbors are not complaining, and loosening up the soil now could be problematic.

The Planner agreed with Mr. Mische, saying that, by telling the applicant to wait until spring, the Commission may run the risk of the job not getting done at all. She said the kind of fill he would be bringing in now would not be as susceptible to erosion as the topsoil coming in later.

Mr. Fossi motioned, seconded by Mr. Katz, to ask the Planner to draft a resolution of approval with conditions to include at least the following: an A-2 as-built survey to be provided upon completion of work, to certify the required 1:3 slopes and location of fill; drainage to be directed toward the back of the property and away from neighbors; erosion and sedimentation controls to be installed throughout the process; a pre-construction conference to be required prior to commencement of work; sign-off from the Health Department per letter of 11/12/09, prior to commencement of work; cleaner fill to be installed, seeded and stabilized with final grading.

The motion to draft the resolution of approval passed, 9-0.

3. **#2009-076-A:** Proposed Amendment to Sections **3.2.C.6 and 2.2** of the Ridgefield Zoning Regulations for the expansion of the adaptive reuse regulations and new definition of “streetscape”. Appl.: Donnelly, McNamara and Gustafson, P.C. *Received 9/15/2009. Public hearing commenced 10/20/2009 and continued and closed 11/10/2009. 65- day action period ends 1/14/2010. For continued discussion.*

Chairman Mucchetti pointed out the revised language prepared by the Planner, resulting from the discussion held on 11/10/09. There were some additional

suggestions for wording offered by Mr. Katz, including changing all references to reuse, and a minor modification of 6.b, to say, “property on which the structure is located shall have...”.

There was some discussion about the proposed new definition for “streetscape,” but, the language was left as proposed.

Mr. Fossi motioned, seconded by Mr. Chipouras, to approve the amendment as modified, and including the proposed new definition for “streetscape.” The motion passed, 8-0-1 [Dr. Gelfman was out of the room for the vote].

4. **#2009-096-SP:** Special Permit application under Section 9.2 required by Section 7.5 to permit earth material processing on property located at **48 Peaceable Hill Road** in the RAA zone. Owners: William and Suni Harford. Appl./Auth. Agent: Nazzaro, Inc. Received 10/27/2009. Walked 11/8/2009. Public hearing commenced 11/17/2009. 65-day action period ends 1/21/2010. For action.

Chairman Mucchetti noted that the public hearing had been closed, and asked for discussion.

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

Planner Brosius offered some drafted conditions, including reference to the need to mention screening of soil, which was requested by the applicant. The Commissioners offering the motion and second agreed to include the proposed conditions.

The motion to approve the application with conditions passed, 9-0.

5. **#2009-104-REV:** Revision to Special Permit under Section 9.2.A.7.e of the Ridgefield Zoning Regulations to reframe second story of garage for storage on property located at **963 Ethan Allen Highway** in the B-2 zone. Owner: P.A.R.F., LLC. Appl.: Professional Water Systems. Auth. Agent: Douglas MacMillan, AIA. 65-day action period ends 1/14/2010. Received 11/10/2009, PZC agreed to walk site individually. For action.

Chairman Mucchetti recognized Douglas MacMillan, authorized agent for the applicant.

The Planner gave an overview of her staff report, relating the history of the property and noting that this is a permitted use within the B-2 zone. She also explained that, since the garage was not visible from the street, the application was not referred to the AAC for review.

Mr. MacMillan briefly described the proposed changes, and confirmed that the new space was for storage only, with no proposed increase in the intensity of the use by the contractor.

Mr. Fossi motioned, seconded by Mr. McChesney, to approve the application as presented. The motion passed, 9-0.

NEW ITEMS

6. **#2009-106-REV(SP)**: Revision to Special Permit under Section 9.2.A.7.e of the Ridgefield Zoning Regulations to reface existing Getty signs to “BP” on building located at **242 South Salem Road** in the RAA zone. Owner: Getty Petroleum Marketing. Appl./Auth. Agent: Core States Group. *65- day action period ends 1/21/2010. For receipt and schedule walk if necessary.*

Chairman Mucchetti asked for acknowledgment of receipt of the application and suggested that the Commissioners individually visit the site prior to the meeting to be held on 11/24/09.

There was consensus to visit the site individually.

Dr. Autuori motioned, seconded by Mr. Fossi, to acknowledge receipt of the application. The motion passed, 9-0.

7. **Election of Officers (PZC/APA)**. *For discussion/schedule election date.*

Chairman Mucchetti thanked the Commission for their support during the time that she was absent for meetings in the fall, due to family obligations.

Mr. Katz motioned to nominate and elect the slate of officers currently in place (Rebecca Mucchetti as Chairman, and Patrick Walsh as Vice Chairman). The motion was seconded by Mr. Fossi, and the vote was 9-0 in favor.

Mr. Katz commended the Chairman on the excellent job she has done in leading the meetings of the Commission, and there was unanimous and enthusiastic agreement that the current Chair was doing an excellent job of running the meetings and conducting the Board’s business. It was also agreed that the Vice Chairman had done an excellent job during the absence of the Chair.

8. **Chairman Mucchetti** asked to add an additional item to the agenda, to discuss a letter received from Attorney Robert Jewell re104 West Mountain Road.

Dr. Autuori motioned, seconded by Mr. Mische, to add the item to the agenda. The motion passed, 9-0.

The Chairman explained that this was a request for the Commission to consider the re-subdivision of the property, which is 12.3 acres in size. The Chairman read the letter.

The Planner explained the stipulated judgment entered into many years ago. According to legal counsel, the sequence of events would be as follows: (1) a formal request to inspect the property [It could be added to the site walk for 11/22/09]; (2) at the next meeting, Mr. Jewell would address the Commission, asking for their permission to approach and petition the court to open the stipulation regarding the subdivision of the property. In the discussion, the Commission would have several options. It could agree to allow a subdivision application to be submitted. It could agree to allow subdivision with specific stipulations (such as allowing only two lots). Mr. Jewell's petition would reflect the agreement of the Commission.

Dr. Autuori questioned why the Commission would want to allow for subdivision of this property when the preservation of larger tracts of land has been a goal, and this particular piece of land has a deed restriction saying that it shall not be subdivided. He asked what the rationale would be for allowing this to go to the courts. He asked if it involved a large donation for open space, which would allow the Town to buy land.

The Planner said that this would all be discussed with Mr. Jewell the following week. What would be necessary at this point would be for the Commission to inspect the property. There are two structures on the property. The request for subdivision is to create two lots on which these structures sit.

On questioning by Mr. Katz, the Planner explained that she did not know why the deed restriction was placed on the property. She felt that an inspection of the property was appropriate. Any further discussion should occur with Mr. Jewell. She reiterated that the request is only to allow Mr. Jewell to petition the court.

Mr. Fossi confirmed that a map would be available on the site walk, indicating the proposed subdivision line.

Dr. Gelfman asked if the PZC minutes from when the stipulated agreement was signed were available. The Planner said she had not been able to find them. There is a series of four maps that connect together to form the Eleven Levels subdivision, she said. This lot was originally shown as two lots. There was Open Space included on the maps, so that did not appear to be the reason for the restriction. The Planner believed it had something to do with the original estate and recreation lands. She welcomed commissioners to access the minutes and look for additional information.

Mr. McChesney presented the following scenario: the Commission allows for Mr. Jewell to petition the court, and the court agrees to allow the subdivision; an application comes to PZC for subdivision, and the Commission denies the application.

The Planner said that the Commission would present its reasons for the denial.

Mr. McChesney asked if a reason could be that the Commission believes it should remain open space. The Planner thought that reason would inappropriate if the Commission allowed the petition to go forward.

Mr. Katz said the only protection would be to not agree to the re-opening of the stipulation. He felt that PZC should inspect the property, but he felt it was “very dangerous for commissions like this to try to second-guess and substitute [their] judgment for the judgment that had this stipulation added in.” There was a rationale for that, and we probably won't be able to determine what it was, he said. However, the developer involved was a particularly difficult developer, Mr. Katz said, and the stipulation was “probably eked out at considerable cost to the then sitting Commission.” He would be open to inspecting the property and reviewing the matter, but he was highly opposed to overturning the judgment of the sitting commission at the time the restriction was imposed, and he would not support it.

Dr. Autuori said he agreed 100%.

Mr. Mische didn't think the court would be permitted to overturn the judgment of that Commission. He questioned why this was even being considered.

The Planner said that, if the Commission reviews the information and finds that the reasons for the restriction are no longer a concern, the Commission has the right to make a different decision. She said the property owner has the right to ask the Commission for this, and the Commission has the right to approve or deny the request to petition the court for an amended stipulation.

The Chairman asked if the Commission has the right to decline to walk the property.

The Planner said that would not be advisable, especially if this were to go to court.

Mr. Katz stressed that the Commission had an opportunity it rarely has, and that would be to affect an executive decision. If the Commission allows the restriction to be re-opened, he said, everything after that is handled administratively. If a subdivision came forth that met the regulations, the Commission would have to approve it. The land records dictate that the land is not to be subdivided “in perpetuity.”

Mr. Fossi agreed. If there is no record, he said, he would not “try to guess” why the deed was restricted. He could not think of a compelling reason to second guess the sitting commission. “Perpetuity is perpetuity,” he said. However, Mr. Fossi said he would be open minded enough to walk the site.

Mr. Mische wanted to be sure that walking the site could not in any way be seen as permission to re-open the stipulation.

The Planner assured him it could not. Walking the property simply allows the Commission to be more informed for the discussion that would follow at a regular meeting.

Dr. Autuori said there is a clear record, which states that the land should not be subdivided. For a Commission that is unclear of what the reasons were behind it to open up the restriction, it is setting a precedent that would allow the potential opening up “of almost any language that right now says in perpetuity.” This would be “a horrendous precedent to set,” he said.

Mr. Walsh said that Mr. Bossidy does not need the Commission's approval to file a motion to open up the judgment. True, it wouldn't likely be granted if only one party in the agreement files it, but Mr. Bossidy does not need the Commission's approval to go forward. It may be that things have changed and the restriction is no longer appropriate or applicable on the land records. He could say that it was an illegal restraint of his inalienable right to try to subdivide the property 35 years later. The Commission often goes back and revisits decisions other commissions have made, he said, and decides with an open mind whether to uphold or change those decisions. He felt the Commission should have an open mind to what Attorney Jewell has to say. Opening up this judgment has nothing to do with open space, he said. That is for the Conservation Commission to consider. Opening up this judgment, or permitting a joint motion, would only relate to this specific action and judgment. He said it would be foolhardy to not at least listen to what the applicant has to say. He hoped that some history to the reasons for the restriction could be found.

The Planner said that the subdivision files from the 1960's are no longer available. The minutes are available in the Planning and Zoning Office and at Town Hall.

After discussion, it was the consensus of the Commission to add the item to the walk schedule for November 22nd, and to schedule discussion with Attorney Jewell for 11/24/09.

COMMISSION WALKS

The Commission scheduled the following for site walk on **November 22, 2009**:

- **104 West Mountain Rd and Eleven Levels Road, Bossidy**

The following items had been scheduled previously for site walk on **November 22, 2009**:

- **#2009-101-SP: Special Permit 40 Ritch Drive, Metzner/ Tuohy**
- **#2009-102-SP: Special Permit 76 Minuteman Road, Gasparo**

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

Chairman Mucchetti pointed out the following correspondence:

- Draft copy of the updated Plan of Conservation and Development (for discussion with Planimetrics at work session on December 1, 2009)

MINUTES

Mr. Mische motioned, seconded by Mr. Fossi, to approve the minutes of November 4, 2009. The motion passed, 8-0-1, with Mr. Chipouras abstained.

Hearing no further discussion, the Chairman adjourned the meeting at 9:37 p.m.

Respectfully submitted,

Linda Caponetti
Recording Secretary