

APPROVED / REVISED
MINUTES
INLAND WETLANDS BOARD MEETING

November 24, 2009

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

Absent: Peter Chipouras

Also Present: Betty Brosius, Inland Wetlands Agent

A Planning and Zoning Commission meeting and public hearing was held prior to the Inland Wetlands Board meeting.

At 9:16 p.m. Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **2010 IWB Meeting Schedule.** *For discussion.* [See discussion under item #3 in the PZC minutes]

2. **#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 referenced a letter received from the authorized agent for the applicant, John F. McCoy, P.E., requesting to withdraw the application. She asked wetlands Agent Brosius to read the letter into the record. Mr. McCoy's letter explained reasons for the withdrawal and included a request that fees be waived if a re-submission of the application was made within 60 days.

Dr Autuori motioned, seconded by Dr. Gelfman, to acknowledge the withdrawal, including the request for waiver of fees.

In discussion of the fee question, Mr. Katz did not feel that fees should be waived because of the expense of time and paperwork needed by office staff to process a resubmission. Mr. Walsh thought that fees had already been waived once in the sequence of applications for this property. Chairman Mucchetti thought that a request for waiver of fees had been made previously but that fees were eventually paid because of the length of time between applications.

The consensus of the Board was to ask for further research on fees that have been paid, and to table any decision on the applicant's fee question.

Dr. Autuori modified his motion to address acknowledgement of withdrawal of the application only. Dr. Gelfman (second to the motion) agreed. The vote on the motion was 8-0.

BOARD WALKS

There were no site walks to be scheduled.

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

There was no correspondence.

MINUTES

Mr. Katz motioned, seconded by Dr. Autuori, to approve the minutes of November 10, 2009. The motion passed, 7-0-1, with Mr. Mische abstained.

Hearing no further discussion, the Chairman adjourned the meeting at 9:20 p.m.

Respectfully submitted,

Betty Brosius
Inland Wetlands Agent

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION MEETING

November 24, 2009

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

Absent: Peter Chipouras

Also Present: Betty Brosius, Director of Planning

A public hearing was held prior to the meeting.

Mr. Katz motioned, seconded by Dr. Autuori, to open the Planning and Zoning Commission meeting prior to the Inland Wetlands Board meeting, and to address item #2, to accommodate the applicant in attendance from the previous public hearing. The motion passed, 8-0. The PZC meeting agenda was completed prior to opening the Inland Wetlands Board meeting.

At 7:41 p.m., Chairman Mucchetti called the meeting to order.

PENDING ITEMS

1. **#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. Public hearing closed and draft Resolution of Approval requested. 65-day action period ends 1/21/2010. For action.*

Chairman Mucchetti pointed out the draft resolution of approval prepared by the Planner, and asked the Planner to note any important details. The Planner stated that the resolution had been reviewed by the Zoning Enforcement Officer, and a condition had been added (#12) establishing time limits for completion of the work and verification of 1:3 slopes on an A-2 as-built survey. A condition requiring a pre-construction conference was also included.

Mr. Mische asked if there were any provisions to do interim inspections of the site. The Planner noted that inspections are routine for all applications while work is in progress.

Mr. Katz motioned, seconded by Mr. McChesney, to adopt the resolution of approval as drafted. The motion passed, 8-0.

2. **#2009-099-SP:** Special Permit under Section 9.2 required by Section 3.4.D.3 to permit a horse barn in the front yard on property located at **259 Spring Valley Road** in the RAAA zone. Owner/Appl.: Nora Suppers. *Received 11/4/2009. Walked 11/8/2009. Public hearing commenced 11/24/2009. 65-day action period ends 1/28/2010. For action.*

Chairman Mucchetti noted that the public hearing was closed and asked for discussion of the application.

Mr. Katz motioned, seconded by Mr. Mische, to approve the application as presented for the 24' x 30' barn, with the location moved closer to the driveway and further from the wetlands.

Mr. Katz pointed out that the Commission had visited the site and found the proposed location for the barn to be in an area that would not offend any neighboring property owner, and it is in conformance with the requirements of Sec. 9.2.A.5 of the zoning regulations.

The motion to approve the application passed by a vote of 8-0. This is a final decision.

3. **2010 PZC and APA Meeting Schedules.** *For discussion.*

Chairman Mucchetti explained that, although the schedule for meetings in 2010 had previously been approved, the office staff (minus one full-time administrative clerk since January) has been overwhelmed in the past year with paperwork needed to keep up with the weekly agendas. The Commission had agreed to drop the last meeting of the month, but it has been used for planning meetings for the update to the POCD.

She suggested that greater latitude be given to the Planner and staff to handle items administratively. For instance, Special Permits required for accessory structures in front of the principal residence might instead be handled under a Site Plan approval. The Planner always has the option to refer the application to the Commission if needed. Revisions to Special Permits such as the second story on the storage building at 963 Ethan Allen Highway could also be approved administratively.

The Commissioners agreed by strong consensus. The Planner also noted that it might be possible to combine meeting agendas on the first and third Tuesday of each month,

dependent on work-load, which would ease the need for filing of agendas, minutes, and the long list of paperwork that is required for meeting preparation and follow-up.

Chairman Mucchetti pointed out that the administrative clerk position in the department was eliminated, and there is no indication that it will be restored in the near future. The Health and Building departments do not have the task of supporting the Commission, so the Planning & Zoning department is always busy when others may not be, when building permit applications are slow.

There is also a need for greater efficiency in the meetings. Repetition and re-stating points over and over is unnecessary. Meetings do not have to go on until 10:30 p.m. each week. The Planner points out that Ridgefield is the only town in the state that meets every single week.

Mr. McChesney suggested that the meeting schedule be left as is, but that select meetings could be canceled with proper notice. All agreed.

Chairman Mucchetti pointed out the proposed Special Meeting site walk schedule for 2010, prepared by the Planner using the format prepared by former Commissioner Lillian Willis.

Mr. Fossi motioned, seconded by Mr. Walsh, to approve the walk schedule. The motion passed, 8-0.

4. **#2009-075-PRE:** request to re-subdivide lot created in a 1969 stipulated judgment on property located at **104 West Mountain Road** in the RAA zone. Owner: Lawrence Bossidy. *Walk scheduled for 11/22/2009. For discussion with Attorney Jewell.*

Chairman Mucchetti noted that the Commission had walked the property in the week prior to the meeting, and Rex Gustafson, attorney, was present. The Chairman asked the Planner to explain the request in relation to the stipulated judgment.

The Planner explained that the stipulated judgment prohibited the now 12-acre lot from being subdivided. The applicant is requesting the Commission's consideration to allow the stipulation to be modified, to permit the submission of a two-lot subdivision application. The applicant needs consensus from the Commission in order to petition the Court to change the stipulation.

Discussion followed, with Attorney Jewell offering some history of the stipulated agreement, based on his research of PZC minutes from the 1960's.

Dr. Autuori asked what would be the advantage to the Town of Ridgefield if the Commission agrees to modify the stipulation. Attorney Jewell said that: (1) The property really can't be developed any more that it already is, except that the accessory structure may be replaced with a house and septic system; (2) What the Town would get is a donation in lieu of open space, or actual open space land in

perpetuity; and (3) The tax base would improve with two six-acre lots and two homes.

Attorney Jewell distributed copies of minutes from Commission records of 1969. He then explained that he had researched the minutes for references to this subdivision. He learned that it was actually three separate subdivisions: (1) Eleven Levels, (2) Highland Acres, and (3) Arc Land Development. One was approved as a pre-submission concept, another was turned down outright, and the fate of the third subdivision is uncertain. Ultimately they all ended up in court, and the minutes of the Commission indicate approval of the three merged subdivisions referenced in the stipulated judgment. There is open space, and also a recreation area.

This process started in 1959, when the subdivision regulations were in their infancy. At that time, there was a separate Planning Commission that acted on subdivisions. It was about 1961 when the Planning and Zoning Commissions were joined. There was also indication of a “planning subdivision committee,” but there are no minutes for the actions of that group.

With the adoption of the zoning map in 1946, most of the town was zoned for one-acre lots. In 1964, the re-zoning began, for two and three-acre lots. So while these subdivisions were pending, the town was being re-zoned. There was likely a lot of acrimony among the landowners, based on the lawsuits that resulted. This lawsuit was settled in 1969, with the stipulated judgment.

This subdivision has existed as-is for many years, and the acrimony is long past. The proposal is to split this 12-acre parcel into two 6-acre parcels. The current property owner thinks it will be more marketable as two lots. He would be happy to enter into an agreement not to subdivide the land into any more than the two lots.

Mr. Katz said that would be “only until another similar request comes along.”

Attorney Jewell offered to make the decision irreversible with conservation restrictions and private restrictions to prevent further division. The owner would also donate open space, or give money in lieu of open space if that were desirable, if the Commission agrees that the request can go forward.

Mr. McChesney asked if there were any open space adjacent to this lot. The answer was no. He thought that a piece of open space would be isolated and meaningless.

Mr. Katz said that (1) The open space enjoyed by the Town on this property is virtually there already, as it is currently maintained, with very large ponds. He feels that the current land should stay in one ownership, and the owners should maintain it; (2) He also says that acting as a Planning Commission, the members do not get many “cracks” at legislative power, and this is legislative, under the stipulation. A subdivision application would be administrative, and the Commission would have to approve it as long as it meets the regulations; and (3) Rarely has he seen a document

as iron-clad as the stipulation. He quotes, "...anything to the contrary notwithstanding, Lots 65 and 66 on the revised map shall never hereafter be subdivided." This was an exceptionally good Planning Commission, and if they had thought that, down the road, there would be rationale for doing something different, they would have made a different statement, allowing a future Commission to find an alternative "in the Town's eternal interest." That language is not there.

He says the Commission has argued many times about how deed restrictions can be un-done. This stipulated court judgment is far more "in perpetuity." It would be a grand offense if the earlier Commission's judgment were over-turned. He says he will not vote for changing the stipulation.

Dr. Autuori said he completely agreed with Mr. Katz. He says that this is a "point of Commission town honor." It goes beyond deed restrictions. The Commission created an agreement with the Court, to prohibit subdivision of the lot, and to back away from this would be "the most screaming example of ethical, moral flaccidity [he] could imagine." What is to be gained by being morally spineless? He says he will never support the request.

Mr. Mische says he did some research and found some relevant documents, including a similar situation involving the Planning and Zoning Commission. It did not specifically address this situation, but it did address what happens when you have a settlement that's brought about as a result of litigation. It says, "This interest applies to the administrative proceedings by explicitly approving a stipulation for judgment in an administrative appeal then pending before it." He finds the next statement compelling: "This interest would be seriously undercut if, after a Planning Commission has, in good faith, settled a pending appeal by agreeing to a stipulated judgment, that settlement could be challenged by a subsequent appeal by a third party." And it also refers to "the interest of the need for the protection of the integrity of the use planning process."

Also, because it uses specific language, he looked up the definition of "stipulate," and it means "to demand, and guarantee." The definition of "guarantee" is an "assurance for the fulfillment of a condition and agreement by which one person undertakes to secure another in the possession or enjoyment of something; and assurance of the quality of the length of use to be expected from a product offered for sale." A "judgment" is a "formal decision given by a court; an obligation created by the decree of a court." He says all of these things point to what is iron-clad in the stipulation, and if these judgments are challenged... He also quotes from a court decision, "If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board." He says, "Knowing the legacy of the Planning and Zoning Commission, and the people that were on the board at the time, and the compelling reasons that they had to justify them to bring this issue to this conclusion, to protect this property from subdivision going forward, I don't know how the Commission could, in good conscience, do anything but echo that same sentiment."

Chairman Mucchetti asked Dr. Gelfman if he had any recollections of what went on, since he was on the Commission in 1969. He did not recall the reasons for the stipulation.

Mr. Walsh says he is confused about the wording of the stipulation, and asks about the revised map. Mr. Jewell notes the maps referenced in the stipulation. But Mr. Walsh asks about the words, “old map.” It was noted by both the Planner and Mr. Jewell that the original subdivision files are no longer available, and that the only maps that can be tied to the stipulation are the ones that have been provided (from the reference in the stipulation).

Chairman Mucchetti asked why this property was held to be so much larger than the rest. Mr. Jewell said that he found nothing in the minutes that would explain. The Chairman asked about the restricted lots and open space; Mr. Jewell explained that the maps show open space as well as the lots “not to be subdivided.” The Chairman asked if this is the only lot with this stipulation. The restriction appears to be only applied to Lot 65 at 11.817 acres on map Three of Three, and Lot 66 at 5.6 acres.

The Planner said it appeared that lot lines had been changed, and the original lots 65 and 66 are no longer in the same configuration or acreage. The Chairman asked for confirmation that the three subdivision lots were to be considered as one big subdivision.

Mr. Katz pointed out other conditions in the stipulation, concerning the number of lots that could be built in any one year. He also noted that the Commission vacated enforcement of the [then] three-year rule for build-out of improvements, as long as the stipulation was adhered to, including paragraph “v,” which requires the prohibition of further subdivision.

Dr. Gelfman said that the stipulation had a lot to do with limiting the number of lots that could be developed in one year.

Mr. McChesney says the pond was subject to a lawsuit with Mr. Tuccio, and it was probably the first case where a fine was imposed. But it was determined that the fine and violation occurred subsequent to the stipulation.

Chairman Mucchetti says that her objection is not as strong as some of the other Commissioners. It is a three-acre zone, this is a 12-acre parcel, and one house would be built in place of the barn. She thinks that Commissions revisit decisions all the time; the original decision is always made based on the best information available at that time, and often there is additional information available later that may justify a change. Taking a 12-acre lot and making two 6-acre lots is not objectionable.

Dr. Autuori says that the Town of Ridgefield is fortunate to have a beautiful piece of land such as this, and why should it be tampered with?

Mr. Fossi disagreed with Mr. Katz that a subsequent owner would necessarily take care of the property in the same manner as the present owner. He pointed out the language of the stipulation, and said he interpreted it to mean that Lot 65 could not be further subdivided, and Lot 66 could not be subdivided. It did not mean that the combined lots 65 and 66 could not be subdivided. What is the downside? The town would pick up some open space, taxes would be collected on two homes, and development would not substantially exceed what is already there.

Chairman Mucchetti asked if lots 65 and 66 were merged. Mr. Jewell says that he has a lot line revision map slightly revising what was there previously. He describes the changes in acreages. The Chairman asked if the restriction was specific to the parcels individually, and not to the combined parcels. The note appears on each, individually.

There was continued discussion about where the restriction applied, based on the stipulation and the various lots that are referenced. It was also determined, that lot lines had been changed following the stipulation. Again, it was noted that the original subdivision maps are not available. There was much confusion about the changes in lot lines. Dr. Gelfman asked about the zone boundary; it was noted that the RAA and RAAA line goes through the 12-acre parcel. He thought the number of lots approved in the stipulation was probably determined based on the total acreage of the parcels, considering the zones.

[Discussion was interrupted briefly to address the resignation letter of Jeff Mose from the AAC, because Mr. Mose entered the room. See notes under "Correspondence."]

Attorney Jewell thought that the major issue in the appeal was the re-zoning of the land, and the owners of the property at that time felt that the new zones should not apply because the Planning Commission had granted a preliminary approval of the one-acre subdivision (for at least a portion of the land) in 1959. They wanted a one-acre subdivision.

The Planner referenced the map "Three of Three," and the property lines of Lots 65 and 66. There is need for clarification about whether the current proposal is a restoration of those original lot lines (approximately). Perhaps the deeds and maps showing the various changes in the lot lines should be analyzed.

Attorney Jewell says the research started with the title search. He noted that a portion of land was added to one of the original parcels, so that accounts for at least part of the change in acreage. He references TC Map #5804 from 1977, which is a lot line revision and is marked "This does not constitute a subdivision or resubdivision." He submitted that map for the record. A little less than ½ acre was added to the parcel from another adjoining piece of land.

Mr. McChesney points to map Three of Three and the note that says “Not to be further subdivided.” Mr. Jewell clarified that the three maps referenced in the stipulation are the three maps that he provided, and explained the acreages. It seems clear that the two lots separately (65 and 66) cannot be subdivided. The Planner feels that the sequential history is still not clear.

Mr. Fossi said he is still confused and there is a need for clarification. Mr. Jewell attempted to explain the lot lines and the numbering of the lots. There was continued discussion, with disagreement about the changing lot lines. Mr. Fossi says it looks like the owner is asking to restore the original two lots. Mr. Jewell says that is not the case; the two lots were never combined, but lot lines were revised, and the “guts” of the two original lots remain. The 0.4 acres added from adjoining land makes it a little more confusing because the total acreage changed.

The Planner looked at the assessor’s map and does not understand the changing lot lines based on Mr. Jewell’s presentation. It appears on the assessor’s map that a portion of the original lots was deeded away. All agreed that there is a need for the history of the changing lot lines.

Attorney Jewell summarized his thoughts on the stipulation and pointed out the “Commission” that agreed to the stipulation is now the current Commission, in effect, and that it has the authority to make changes. Regardless of what was thought at the time the stipulation was drawn up, this current Commission is now in charge.

Mr. Katz disagreed. Any property owner with excess land would benefit from subdivision. That doesn’t mean that the Commission should let it happen now.

Mr. Mische addresses the issue of how the town looks, and the legacy of the previous Commission that is now embodied in the current board. He remembers this developer and the litigation that surrounded his subdivisions. There were very few victories for the town at the time, and there were a lot of victories for the developer. This was a battle hard fought and won, and he is reluctant to change the stipulation. You have to have some confidence in the reasons for the original decision, and the judgment of the Commission at that time.

Attorney Jewell repeated his position that the allowance of a two-lot subdivision would not change the conditions on the land. His request is simply for the Commission’s agreement to petition the court to allow that to happen.

Mr. Fossi says this is not a case of converting deeded open space for development. It is a 12-acre parcel with a request to make two 6-acre parcels. He sees the opportunity for two ratables where now there is one. There may be a donation of open space or payment of money in lieu of open space. He does not see the down-side in allowing this to happen.

Mr. Walsh suggested that Mr. Jewell talk to Romeo Petroni, who signed the stipulated judgment.

After some continued discussion, it was determined that additional research on changing lot lines was needed. The consensus of the Commission was for Mr. Jewell to better explain the sequential changes in the lot lines and the acreages.

The item will return for further discussion on December 8th or 15th.

5. **#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. Received 11/17/2009. PZC agreed to walk site individually. For discussion/action.*

Chairman Mucchetti noted that the representative for the application had visited the Architectural Advisory Committee meeting and had not stayed for review of the plans by the PZC. No minutes were received from the AAC, and it is assumed that the review by that agency is incomplete.

The item was tabled.

NEW ITEMS

6. **#2009-040-SR-S**: request to reinstate approved subdivision and extend time in which to file map on property located at **32 Hickory Lane and 164 Florida Road**. Owner: Wynmar Properties, LLC. Auth. Agent: John F. McCoy VII, P.E. *For discussion/action.*

Planner Brosius explained that the time for filing of the application had expired within the past two weeks, and the applicant was requesting reinstatement of approvals and an extension of the time to file the map.

Mr. Katz motioned, seconded by Mr. Fossi, to reinstate the application as requested and to extend the time to file the map. The motion passed, 8-0.

COMMISSION WALKS

There were no site walks to be scheduled.

REQUESTS FOR BOND RELEASES/REDUCTION

There were no requests for bond release or reduction.

CORRESPONDENCE

Chairman Mucchetti pointed out the following correspondence:

- Letter of resignation from Jeff Mose, for his service on the Architectural Advisory Committee and the Village District Consultant [Note: Mr. Mose entered the room at the Commission's request in a short interruption of the discussion for item #4, above. The Commission commended Mr. Mose on his 15 years of service on the AAC, and expressed regret on receiving the letter of resignation. Many thanks were offered for Mr. Mose's important contributions to the recommendations offered by the AAC in review and improvement of plans for projects built in the Town of Ridgefield.]
- Copies of pages from the Zoning Regulations, updated with recent amendments
- Article from the Wall Street Journal, about Dark Sky issues and light pollution

MINUTES

Mr. McChesney motioned, seconded by Dr. Autuori, to approve the minutes of November 10, 2009. Mr. Mische offered a grammatical correction on page 5. The motion to approve the minutes passed by a vote of 7-0-1, with Mr. Mische abstained.

Chairman Mucchetti pointed out that the December 1st meeting would be a work session with Planimetrics, to discuss the first draft update to the Plan of Conservation and Development. Mr. Katz expressed disappointment in the style of writing and grammar, noting that it was not comparable to the standards of the previous Plan. Others agreed. The Planner and the Chairman suggested that he mark up a copy of the Plan and work through the Planner to make some changes. The Planner will also discuss the issue with Glenn Chalder of Planimetrics.

Hearing no further discussion, the Chairman adjourned the meeting at 9:14 p.m.

Respectfully submitted,

Betty Brosius
Director of Planning