

SPECIAL BOARD of SELECTMEN MEETING – AUGUST 31, 2005

7:30 P.M. – Ridgefield Town Hall Lower Level Conference Room

REVISED/APPROVED MINUTES

These minutes are a general summary of the meeting and are not intended to be a verbatim transcription.

In Attendance: R. Marconi, B. Manners, D.Masters, J. Plock, P. Yanity

R. Marconi called the meeting to order at 7:30 P.M. The purpose of the Special Board of Selectmen Meeting was to review the proposed settlement agreement with Eureka V LLC relevant to the Bennett's Farm property. Present also to discuss the proposed settlement were David Grogins, Town Counsel and Stuart Edelstein, Esq., of Cohen & Wolfe. Mr. Grogins and Mr. Edelstein had been meeting with the Board of Selectmen to determine if there was an opportunity for settlement. Prior to the vote by the BOS as to whether or not to proceed with the proposed settlement agreement, this Special Meeting was providing the public the opportunity to voice comments and ask questions.

S. Edelstein provided an overview and history of the proposed settlement agreement. He summarized the most important provisions of the proposed agreement which was the result of extensive negotiations back and forth with Eureka. Planning & Zoning and the Conservation Commission will have to support any development plan proposed by Eureka before such development can occur. Eureka will file applications and public hearings will be held relative to these applications and a determination will be made as to whether or not the Town wants to approve these applications. Signing of the agreement will result in a stay of the litigation in Federal Court.

Eureka's proposed development plan calls for the building of 345 town houses, all age-restricted with at least one resident over 55 and no resident less than 18 years of age as a resident for more than three months/year. In addition, the plans call for an office building of 1,000 sq. feet which Eureka will market for lease or sale. Sewer and water systems will need to be installed and paid for by Eureka. Ridgefield will negotiate to enter into an interlocal agreement with Danbury relative to the piping for the water and sewer. In return, Eureka withdraws the Federal Court action and provides a deed conveying open space to the Town of 80 acres and all the other documents Ridgefield needs to receive. Eureka is not required to proceed with the development plan; they can do something less or terminate the agreement. If terminate, then the court case can be reopened. Eureka will have to obtain approval for a zone change, but this zone change does not guarantee approval of the development plans. /Regarding the current application before P&Z, Eureka will have to withdraw before September 6th, the date of the next meeting of P&Z.

The meeting was open for comments from the public.

Eric Kristoffersen, Prospect Ridge Rd. - inquired as to what is in this settlement for Ridgefield? What about the Planning & Zoning approval process? Mr. Edelstein replied that if the proposed development goes forward, it will result in approximately \$4 million in tax revenue to the Town. This \$4 million estimate does include office space as part of the tax revenue. In the event a zone change is not approved by Planning & Zoning, and the proposed agreement is terminated, Eureka cannot use any of this discussion and negotiations in their future litigation.

Ellen Burns, Great Hill Road – commented on the timing of the Special BOS Meeting with only six days notice that this meeting would be held on August 31st. “What is the rush?” The public is seeing this

proposed settlement agreement for the first time this evening. “The vote on whether or not to accept this agreement should not be held tonight.”

S. Edelstein replied that the New London case upheld the right of a municipality to take property for economic development. To talk about a possible settlement appeared to be in the best interest of the Town of Ridgefield. This agreement was not available before this evening. Negotiations continued until 6:00 p.m. this evening. We want Eureka to withdraw the current application from Planning & Zoning.

D. Masters (as former Chairman of Planning & Zoning) explained why she thought it was important to have this current application withdrawn. She believed that P&Z’s possible denial would probably have been appealed. It is better to look at an application without an appeal “hanging over their heads”. It is best to look at an application for its true merits and without the involvement of litigation. She wanted to avoid additional legal costs for the Town.

A.J. DiMattia, Old Branchville Road – had some questions for Counsel: 1) What are the risks and exposure of the Eureka case? Why is the settlement better? 2) Who would have the responsibility of enforcing the age restriction for the planned town houses? 3) The \$4.1 million tax income estimate from the proposed development is a hypothetical number – it would depend on complete build-out and occupancy.

S. Edelstein replied that there is concern over the possible legal fees for the current court action and possibly an appeal to the District Court. Eureka has the right to enforce the age restriction for the planned town houses, but the Town also has the right to enforce it. D. Grogins commented on how the Town has the right to enforce such an agreement as a condition of approval of the planned development.

A.J. DiMattia inquired as to the interlocal agreement – “Why are we no longer concerned about the build-out of Route 7?” D. Grogins replied that we will be negotiating this agreement with Danbury and the piping will provide capacity only to this one project. S. Edelstein replied that “Yes”, the \$4.1 million estimated tax income is dependent on a complete build-out and occupancy.

Reed Whipple inquired as to the difference between the proposed settlement on this property two years ago and this new settlement agreement. Mr. Edelstein replied that the most significant difference is that now the Town pays nothing to Eureka. Ridgefield paid \$11.5 million for the northern parcel – they were looking for about \$20 million. In this settlement the Town will pay nothing.

D. Grogins pointed out other changes from the previous proposed settlement – All the units will be age-restricted whereas previously, only 75 units were to be age-restricted. This is a significant difference relative to the effect of the housing on the schools. The northern parcel is all open space. It has been deeded to the State and in return we received \$4.5 million.

Ed Tyrrell, Pond Road – commented on how Eureka is gaining an increase in \$25 million in the value of this property during these two years. R. Marconi pointed out that Al Garzi figured that the units would be valued at \$775,000, 1/5 cars per unit or 517 vehicles for personal property tax assessment, and the office space at \$17.5 million for a total of \$301,380 million. This is how Mr. Garzi arrived at the estimate for possible tax return to the Town. D. Grogins commented that Mr. Tyrrell is making a valid point as there is the additional risk of the additional value of the land. If litigation is continued, the previous estimate of the land value is a risk.

R. Marconi pointed out that the Board of Selectmen is looking into the future. With litigation pending, the Town cannot proceed with eminent domain currently, what will be the assessment at the time eminent

domain is possible, and what about the legal fees that will be incurred? This proposed settlement is reducing the costs and looking at the proposed tax revenue.

Chuck Trado, Gilbert St. – commented that he feels the proposed tax revenue “sounds like a yellow paper”. \$775,000 per townhouse unit is a high hypothetical number.

George Hanlon, West Lane – pointed out that there is a lot of vacancy in corporate space in both Danbury and Fairfield County. He would like to see all age-restricted housing.

Phil Baumann, Keeler Drive – inquired if the public was going to “have their say”? There will be public hearings on any proposals before Planning & Zoning. Mr. Baumann pointed out that the citizens only had a vote at the time of the referendum because this was seeking approval for appropriation of fund dollars to be spent. What about the mayor of Danbury – Is he interested in working with us on this proposed interlocal agreement?

R. Marconi replied that he will write a letter to the mayor of Danbury requesting modification of the existing interlocal agreement and the establishment of a committee to do so.

Mr. Edelstein pointed out that there has been a temporary moratorium on Eureka litigation while the New London case was being litigated. No legal fees have been incurred during this time. We did not know what the Supreme Court was going to do.

Peter Stewart asked if there was currently any residential zoning for the Bennett’s Pond South parcel? The answer is no. D. Grogins pointed out that the Fair Housing statute is a discrimination claim, against school age children families. B. Manners pointed out that when the vote was held on the referendum, the vote was for corporate development as the town needs that type of revenue. The State Affordable Housing appeal can request affordable housing, although not presently zoned that way.

John Noonan, North St. – commented that there is a hidden tax problem. Any additional residential growth will be filled with families with additional students going into the schools. Even if the housing is age-restricted, it will be filled by Ridgefield residents who will sell their current housing to families with children in order to move into this age-restricted housing and remain in town. He prefers 100% commercial development. B. Manners pointed out that currently families with grown children are selling their property and moving out of town, the 58-65 age group. It would be preferable if these residents were to remain in Ridgefield. They have much to offer the town.

Scott Sharlow, Lakeside Drive – indicated that he has lots of questions. He has attended all the meetings relative to the Bennett’s Pond properties. He does not want to change his vote on the initial referendum. He thinks this is a “slap in the face – Let’s let the public decide”. Present zoning is for industrial/corporate use and prohibits residential use.

R. Marconi stressed how the Board of Selectmen is looking at where the Town is going into the future. What impact is the present court case going to have on the Town? The message is loud and clear from the residents – “Do not ask for any more dollars”. Attorney fees had been estimated at \$400,000 – currently at \$800,000. Should we be looking at a possible settlement? Mr. Sharlow responded that voters have supported every vote for dollars in the past. A lot of people are on vacation at the end of August. This discussion needs to be held at a public hearing. R. Marconi pointed out that Eureka has to file applications for any proposed development. P&Z will hold public hearings on any applications received. If there is a breach of the agreement, we can terminate the agreement – both sides can.

B. Manners pointed out how the Board of Selectmen has weighed all the possibilities very carefully and feel that this agreement is the best solution at this time.

Dave Landers, Mimosa Circle – inquired, based on this settlement, what does the Board of Selectmen think will be the major hurdles in the near future? The response was that we do not want to speculate with Eureka present at the meeting tonight. R. Marconi responded that we will be asking for a zone change. D. Masters responded that it is most important to realize that P&Z will be doing a great job, but they must not be encumbered with litigation hanging over their heads.

Elaine Noonan, North St. – pointed out that if 345 townhouses are built in the traditional up and down style, they are not appropriate for seniors who want housing on one floor.

D. Masters pointed out, the language “townhouses” means “dwellings”. This is important for zone changes – keeping the text the same.

John McNicholas, Old Washington Rd. – referred to Section 4.1 and the term “diligently negotiate”. What does this term mean? How are we going to do this – with an open checkbook? Also, regarding the expenses of the interlocal agreement, funds will be committed for this and not sure of the cost involved. R. Marconi reported that large costs are not anticipated relative to the interlocal agreement. The town will appoint a committee for negotiation of the interlocal agreement, with a minimum of legal expense involved. Mr. McNicholas also referred to Section 4.2, Step 3 and the term “vigorously defend its decision”. R. Marconi responded that the BOS always defends P&Z’s decisions. Support services will need to be increased, but Mr. Marconi indicated that he did not anticipate any large increases relative to the proposed age group in the housing. Regarding fire, the Fire Department will have to be prepared for a 100,000 sq. ft. building. However, the building will be built with today’s improvement in building codes.

Andy Bodner, Branchville Rd. – pointed out how six years ago considerable time was spent on the affordable housing issue. These proposed townhouses are not really affordable housing. The real question is what do we want to build? He has not read the document as it was just this evening passed out. He questioned the vote tonight.

R. Marconi responded that the 100% age-restricted housing will bring in more in revenue than corporate development. Corporate development is hard to fill, and this will result in less traffic and the revenue will be available sooner.

Ellen Burns, Great Hill Rd. – pointed out that residents of this proposed complex will be in town seven days a week and demand town services accordingly. Corporate development’s demands are traffic at peak times only. All development will require additional services. This proposed \$4 million in tax money is not all money in-pocket, so to speak. She suggested an appraisal of the property and then a town vote.

Mr. Edelstein pointed out that we are defending ourselves in court and not bringing the action. The action was started in February 2002. There are still issues that remain. We have not control over this suit.

Marty Carr, Lawson Lane – inquired if Eureka would be the builder of these units? There are deed restrictions and whoever buys the property will be bound by this agreement.

Barbara Jennes, Madeline Drive – inquired whether this will be subject to future litigation because of the term “age-restricted” housing? Mr. Edelstein replied that Section 3.13 covers this concern. Any development must comply with all statutes and acts.

A.J. DiMattia, Old Branchville Rd. – inquired about the senior citizen credit for this age-restricted housing? R. Marconi replied that this was thought of. Is the First Selectman obligated to support this agreement in good faith throughout the process? The answer is yes. D. Grogins pointed out that this settlement agreement is an agreement between the two parties. They have agreed to not have the development be based on affordable housing.

Sean Burke inquired if the 345 townhouses will be on 75 acres, except for 20 acres reserved for commercial development. The answer is yes.

Phil Baumann, Keeler Dr. – asked what would be the worst case scenario for affordable housing? A change in use would be denied and then it would go to Hartford on appeal.

Barbara Jennes inquired whether Eureka can do affordable housing later. The answer is yes.

Scott Sharlow, Lakeside Drive – asked if this agreement is thrown out and P&Z says no to Eureka's applications, then legal fees will be necessary to support P&Z and this will incur costs for the Town? R. Marconi pointed out that our Town charter required the BOS to support P&Z.

Eric Kristoffersen, Prospect Ridge Rd. – commented on how things happen with Eureka. They sometimes have hidden agendas. If 4 people live in the proposed housing with one of the 4 people over 55, and 2 children – all 4 people can have cars and they will all be out on town roads. This will be a disaster. In a real democracy, all ideas should go to the voting public. Everyone should have a vote. This settlement has been done behind closed doors.

Mr. Kropowski, Woodland Way – inquired if there will be a traffic light on Route 7 and Bennett's Pond Drive? The answer is yes.

John McNicholas asked, "What about the Federal government coming in later to enforce Federal Housing standards? Is it possible?" The answer is yes, but not likely. Affordable housing is a State statute, not federal law.

Peter Stewart pointed out that P&Z members were present tonight at the meeting. Ask them if this agreement helps them? Do we have to have the answer tonight? This is a big decision.

D. Masters commented on how the BOS wants to improve the situation for the Town and eliminate the legal fees. The current application is on P&Z's table. It would probably be turned down on September 6 and then there would be an appeal.

A.J. DiMattia inquired as to how many hours are we up to in lawyer's time. What is the bill to date regarding this proposed settlement? Monte Frank, David Grogins and Stuart Edelstein have all worked on this agreement. They didn't want to estimate but would provide the exact numbers the next day.

Scott Sharlow indicated that we realize that all the Board members support this settlement. Why is this not going to a referendum? R. Marconi replied that there is no appropriation involved in this settlement. We are compromising to settle all legal expenses.

B. Manners moved and D. Masters seconded a motion that the Board of Selectmen approve the agreement with Eureka V LLC dated 8/31/05, which binds the Board of Selectmen to support the

settlement terms contained therein relating to settlement of the lawsuit entitled case of Eureka V LLC et al versus The Town of Ridgefield Docket No. 3 02CV356 (DJS). Motion passed 5-0.

J. Plock moved and P. Yanity seconded a motion to adjourn the Special Board of Selectmen Meeting at 9:30 p.m. Motion passed 5-0.

Respectfully submitted,

Janet L. Johnson