

Present: Don Saltzman, Chairman; Jane Connolly, Vice Chairman by speaker phone for part of the meeting; Paul Heifetz, Dan Gilbert, Stephan Grozinger, Katie Gregory, Ridge Young

Meeting on tapes 1-5 dated December 1, 2008

EXECUTIVE SESSION: LITIGATION – CN BUILDERS & CHARLES V. NIEWENHOUS
V. PLANNING AND ZONING COMMISSION

Stephan Grozinger moved that the Commission go into Executive Session. Seconded by Katie Gregory. Vote in favor (6-0) Jane Connolly absent.

Attorney Robert Rubin and Town Attorney Pat Sullivan were invited to be present.

Paul Heifetz moved that the Commission go out of Executive Session. Seconded by Dan Gilbert. Vote in favor (6-0) Jane Connolly absent.

Don Saltzman stated that the Commission is participating in a settlement and a new draft and map will be presented to the Commission for further action.

APPROVAL OF MINUTES:

Paul Heifetz moved that the Commission approve the minutes, as corrected by Dan Gilbert, for November 17, 2008. Seconded by Ridge Young. Vote in favor (6-0) Jane Connolly absent.

Dan Gilbert moved that the Commission approve the minutes, as corrected by Dan Gilbert, for November 3, 2008. Seconded by Ridge Young. Vote in favor (6-0) Jane Connolly absent.

Katie Gregory moved that the Commission approve the minutes, as corrected by Dan Gilbert, for October 10, 2008. Seconded by Stephan Grozinger. Vote in favor (6-0) Jane Connolly absent.

Paul Heifetz moved that the Commission approve the minutes, as corrected by Dan Gilbert, for October 6, 2008. Seconded by Stephan Grozinger. Vote in favor (6-0) Jane Connolly absent.

Stephan Grozinger moved that the Commission approve the minutes, as corrected by Dan Gilbert, for October 20, 2008. Seconded by Katie Gregory, Vote in favor (6-0) Jane Connolly absent.

DISCUSSION: UPDATE OF THE TOWN ZONING EXEMPTION

The Commission received a letter on December 1, 2008, from Ken Bernhard, Town Attorney, stating his opinion on the Town Zoning Exemption. Paul Heifetz, read the letter and was not in agreement with it and suggested getting another opinion, perhaps from the State. Stephan Grozinger stated that the Commission could go to the Attorney General. Dan Gilbert would like to review the letter more thoroughly and discuss it at the next meeting along with the 1971 Town Charter.

ZONING REGULATIONS – ADDING ZERO INCREMENTAL RUNOFF REGULATION

This agenda item was postponed until the next meeting on 12/15/08.

PUBLIC HEARING CONT: PURSUANT TO 7/7/08 LETTER TO ZONING ENFORCEMENT OFFICER: ZONING PERMIT – LUNCH BOX STORAGE AREA, 190 WESTON ROAD (DANTE ZACAVISH)

This agenda item was postponed until the next meeting on 12/15/08.

PUBLIC HEARING CONT: MODIFICATION OF SUBDIVISION AND/OR REQUEST FOR ISSUANCE OF A CERTIFICATE OF ZONING COMPLIANCE – LEVITAN – 35 INDIAN VALLEY ROAD (ATTORNEYS RUBENSTEIN & ALBRIGHT)

Attorney Mark Rubenstein and Attorney John Albright were present. Attorney Mark Rubenstein told the Commission that he and Attorney Albright had the title searched back 60 years and that the title was clear. He also indicated that no claims have been filed against the property. They stated that there was nothing new in the file and no other changes to the modification of the subdivision. Attorney Rubenstein stated that the Fidelity National Title Insurance Company has done the title search twice, on October 12, 2007 and November 13, 2007.

These documents are part of the file. Don Saltzman asked that there are no other land owners involved? Attorney Albright stated no. Dan Gilbert stated that Mr. Levitan has a clear title.

Attorney Rubenstein stated that the drainage easement for the Town of Weston was not touched. Conservation Commission approved the driveway which is away from this easement.

Don Saltzman moved that the Commission close the public hearing. Seconded by Stephan Grozinger. Vote in favor (6-0) Jane Connolly absent.

At this point, Jane Connolly, Vice Chairman, joined the meeting by speaker phone.

PUBLIC HEARING CONT: APPLICATION PURSUANT TO 7/7/08 LETTER TO ZONING ENFORCEMENT OFFICER: ZONING PERMIT, AUTOMOBILE REPAIR FACILITY, 107 GEORGETOWN ROAD (WESTON 1, LLC/HALLORAN & SAGE LLP.

Attorney Larry Weisman was present for the applicant. He felt that he had said everything he wants to say.

Paul Heifetz questioned – what is the state of the permit? Attorney Weisman stated that his client has not applied for any permits. You need Planning & Zoning approval to do that and Nancy Dillon never did do that.

Paul Heifetz also questioned, what is being requested by the applicant? Attorney Weisman stated – there would be no gasoline and would only be an automobile repair shop. Attorney Weisman also stated that the gas tanks have been removed. Katie Gregory asked Attorney Weisman to clarify why Nancy Dillon had to give up her license? Attorney Weisman stated because she was cited with a violation and then referred to the Consent Order. DEP took action and then it was settled by a Consent Order. He also stated that she had to comply to the State and local rules and had to give up her license. Commissioner Gilbert corrected Mr. Weisman based on a conversation with Mr. Wilde (DEP) and Jim Pjura and Bob Turner and consumer protection. Nancy Dillon let her license expire and did not renew the license.

Katie Gregory questioned– was Nancy Dillon required to remediate in order to sell the property? Attorney Weisman responded by reading the Consent Order wordage before and since the remediation.

Jane Connolly stated that the Consent Order does not say anything about surrendering her license. Dan Gilbert talked by telephone with Philip Wilde of the DEP regarding the underground storage tanks. He then stated that the Commission does not have the authority to request Nancy Dillon to surrender her license and we did not ask her to do so. The fact is that her license lapsed on 10/31/01 and was not in the Consent Order.

Attorney Weisman stated that the site cleanup was not completed by Nancy Dillon and she had put up a \$20,000 bond. The testing protocol would be completed by Mr. Lenhart, the new owner. He then received a release of the remediation order. Once again Commissioner Gilbert corrected Attorney Weisman based on a conversation with Philip Wilde (DEP). Nancy Dillon did all the remediation work and fully satisfied the requirements of the consent order. Dan Gilbert also stated that the clean up included the monitoring. Included in the clean up, 8 tanks were removed before the sale of the property.

Dan Gilbert read his notes from his telephone conversation with Philip Wilde of the DEP regarding the clean up done before the sale and the monitoring done after the sale.

PUBLIC HEARING CONT:

Attorney Weisman then referred to the Consent Order of April 2005, regarding the underground storage tanks and that the soil underneath was polluted. The whole property was implicated and Nancy Dillon let her permit lapse. Mr. Lenhart, the new owner, did the remainder of the remediation and obtained a release.

Consent Order of April 2005 attached to these minutes.

Don Salzman questioned when was the last time Nancy Dillon stopped pumping gas? and And servicing automobiles? The person who was leasing from her, was running a car salvage situation. Jane Connolly felt this was completely different use than before. The Town complained to her and also the neighbors. The Commission needs to look at what went on there and there is "intent" of the owner. Stephan Grozinger agreed. Attorney Weisman also agreed. Don Saltzman felt the operator did not have a license and he was the landlord. Stephan Grozinger questioned if the license assignable? Attorney Weisman stated that it relates to the property and not a personal thing.

Attorney Weisman stated that the vehicles and apartment were noted in the contract about the business. Nancy Dillon sold the land and not the business. Jane Connolly questioned if the ad for sale, listed the auto repair facility and apartment, and how many realtors were working on this, with different descriptions? Attorney Weisman was not sure that Nancy Dillon did that and only listed it in one way. Paul Heifetz questioned if there are any changes contemplated for the septic and we need to look into this apartment. Attorney Weisman stated that the client is not contemplating any changes to the property. He is however, going to retest the water in the stream. Don Saltzman asked Attorney Weisman– if you get a permit you will not use the apartment? Attorney Weisman stated yes.

The Land Use Director clarified, for the records, the Consent Orders being addressed. Consent Order COWSUST 02-029 (already in the record) and the second consent order is COWSUST 00-015 in Volume 477, page 553 of the Town Records. Also Certificate of Compliance/Nancy Dillon, 10/7/08. Volume 477, page 552.

Jane Connolly requested Dan Gilbert to file the notes that he read from of his telephone conversation with Mr. Wylie of the DEP. Also documents submitted by Attorney Weisman, his memo and the Hygenix's report are in the file.

Ridge Young questioned if Nancy Dillon, on 10/30/01 was forced to surrender or did it lapse – the answer was that the permit lapsed.

PUBLIC COMMENT:

David Webber of 18 Samuelson Road stated that he and the neighbors have a petition of 100 names, to submit to the Commission to deny this application and to ask for the property be returned to a residential status. He then read the petition into the record. Don Saltzman accepted the petition.

J. Calbick has lived on Samuelson Road since December of 1998 and stated what it was like when he moved in and what it is like now. There was no gas station, but there were vehicles on the premises and the activity seemed to stop and then seemed to become a dumping yard.

Michael Nelson of 16 Samuelson and has been living there since 2001. He is also a spokesperson for the neighbors. The person living in this apartment operates some kind of limo job. There does not seem to be any positive response from the neighbors, to have a gas station there. From the passionate side, if this piece of property gets approved, the Weston Town government should be imposed upon to keep enforcement of every approved item being done there. What was it like – like a place to dump stuff.

Don Saltzman – asked Attorney Weisman that when Mr. Lenhart took over did he indicate any interest in the property other than maintaining the business?

Paul Heifetz asked Mr. Nelson if he would be happy with a residence? Mr. Nelson responded that it will still be an abandoned gas station. Also stated that you may realize that there is no hope there as a repair station. He cited traffic problems which will only get worse if and when the Georgetown complex is completed.

Don Saltzman asked Attorney Weisman if a traffic study has been conducted. Attorney Weisman stated not to his knowledge. Attorney Weisman also felt it is not a good place for a residence, it should be a park. Don Saltzman then asked if Mr. Lenhart would do a traffic study? Attorney Weisman stated that the Commission needs to for the abandonment. Stephan Grozinger asked Attorney Weisman if there is a limo business in the apartment and Attorney Weisman stated he would research that.

Dean Roberts of 2 Samuelson – came forth with a very detailed research report regarding the Consent Orders, certificate of ownership and information from Philip Wilde. He continued going over these reports to the Commission and submitted it to the file.

Dean Roberts also presented two property map boards with MTBE reports and photographs from previous to now. Mr. Roberts went over these two boards in detail.

Attorney Weisman stated that all of this previous information had nothing to do with why we are here. Don Saltzman stated that the Commission will divide the information with these issues and the application. We have to separate what the application is for pre-existing non conforming use rather than a new permit for a special permit.

PUBLIC HEARING CONT:

Tom McNamara of 12 Samuelson and a resident there since 1982. He stated that when he moved in it was a small town gas station run by Don McIntire and gradually the cars were being parked into the roadway and since then the type of service changed dramatically.

Attorney Weisman stated that there could be certain guidelines for the business. He referred to Weston Gardens and there appears to be some kind of business there. The Town does not seem to monitor it.

Arnold Ziem of 13 Samuelson Road and a resident since 1961. Has seen a lot going on with that garage while Mr. McIntire was there and the land was kept quite well. Since Mr. McIntire sold it, it has really deteriorated with pollutants which have gone mostly to the West and into the river including across Route 57.

Jane Connolly felt the Commission needs to look at the facts including the environmental issues. Attorney Weisman again stated that this property is not suitable for a residential use and suggested the site plan process to include screening, testing, number of cars, the best way to clean the place up. Mr. Lenhart does not know what he is going to do if he cannot run it as a repairer's business. He thinks the neighbors concerns are well taken but how are they going to get what they want?

Dan Gilbert felt the Commission needs to decide if the use was permanently abandoned or was the use stopped but not abandoned. Paul Heifetz asked if Mr. Masone is out of the picture? Attorney Weisman stated he did not know. The Commission needs to look at conditions that would address the neighbor's concerns.

To be on the agenda for the next meeting.

PUBLIC HEARING: ACTIVITY IN FLOOD PLAIN: ASPETUCK VALLEY COUNTRY CLUB, 67 OLD REDDING ROAD, IRRIGATION BUILDING (ATTORNEY FALLON)

PUBLIC HEARING: SPECIAL PERMIT: ASPETUCK VALLEY COUNTRY CLUB, 67 OLD REDDING ROAD, IRRIGATION BUILDING (ATTORNEY FALLON)

This application has been postponed until January 5th, 2009 meeting.

PUBLIC HEARING: PETITION FOR ZONING AMENDMENTS, SECTION 321.2
ACCESSORY BUILDING. (ATTORNEY KORDAS)

Attorney Kordas was present, stated that his client, Daniel Crown, of 36 Kellogg Road is seeking an Amendment to the Zoning Regulations Section 321.2 for an outbuilding or auxiliary structure not attached to the main dwelling that may be used in whole or in part as a residence for a caretaker, with conditions. Attorney Kordas then went over the eight conditions that the client would apply.

Paul Heifetz stated he felt that it would create all kinds of problems for the Town of Weston. Stephan Grozinger felt it would affect subdivisions

Don Saltzman understood the applicant wanted to create a free standing garage with an apartment.

Patty Gay of the Forum, asked if this would apply to a pool house?

Ann Ingen of Kellogg Hill Road and neighbor across the street from the Crowns, asked how a pool house is related to this issue? Don Saltzman stated that it would have to be on a separate lot.

Jane Connolly felt it would encourage people to have a garage with an 800 square foot apartment on the second floor. Also what happens with the next owner of the property and would it stay on four acres?

Stephan Grozinger felt that one of the benefits is that this garage/apartment would be very close to the main house and would be difficult to subdivide. Jane Connolly stated you could take four acres with a garage inlaw apartment and move it closer and could not have a first cut.

Pat Sullivan, Town Attorney – suggested that the Commission could make a new four acre zone and freeze it. Jane Connolly suggested requiring a special permit for four acres and it will give up the right to a first cut.

Jane Connolly thought about 800 square feet with a married couple with kids and Paul Heifetz felt you could not regulate it and would not be able to control it.

Mrs. Engen told of her procedure of obtain a permit for a workshop and signing a covenant and that the Town already has regulations to enforce this kind of situation. She felt it was a superb idea.

PUBLIC HEARING CONT:

Don Saltzman felt you have a problem limiting the size with 800 square feet above the size of the proposed garage footprint. Attorney Kordas stated that he would look into that.

Dan Gilbert referred to the phrase of referring to blood relative or caretakers and Attorney Pat Sullivan told the Commission that they would have to be careful with the blood relative wordage.

Jane Connolly felt that you just cannot make a regulation for one particular person. It would have to think about everybody in Weston.

The Land Use Director stated you cannot close the public hearing tonight because you need to get the comments of SWRPA and then are coming tomorrow.

Katie Gregory asked how many four acre lots are there in Town and how does it affect Weston.

ELECTIONS

Dan Gilbert nominated Don Saltzman for Chairman of the Planning & Zoning Commission for the coming year and Jane Connolly seconded that nomination.

Paul Heifetz nominated Stephan Grozinger for Chairman of the Planning & Zoning Commission for coming year and Ridge Young seconded that nomination.

A discussion followed and a vote was taken.

Four members (Ridge Young, Katie Gregory, Paul Heifetz, Stephan Grozinger) voted for Stephan Grozinger.

Three members (Jane Connolly, Dan Gilbert and Don Saltzman) voted for Don Saltzman.

Stephan Grozinger was elected the new Chairman of the Planning & Zoning for the coming year.

The nomination and vote for the Vice Chairman will postponed to the next meeting.

Meeting adjourned.

Respectfully submitted.
Joan Lewis, Administrative Assistant

Approval: