

Present: Stephan Grozinger, Chairman; Jane Connolly, Vice chairman; Paul Heifetz, Don Saltzman, Dan Gilbert, Katie Gregory, Ridge Young

Meeting on tapes 1-6 dated 5/18/09

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#### APPROVAL OF MINUTES:

Katie Gregory moved that the Commission approve the minutes for May 4, 2009, with correction by Dan Gilbert. Seconded Stephan Grozinger. Vote in favor (6-0) Don Saltzman absent for the May 4 2009 meeting.

#### CHAIRMAN'S REPORT

The Chairman felt that the Commission should schedule an exit interview with Robert Turner, Consultant, who is retiring on June 30<sup>th</sup>, 2009. A discussion followed.

Katie Gregory reported to the Commission members that in talking to architects and designers, a loop hole has been found in the new zero incremental runoff regulation, and how they plan to get around it. The discussion followed and then moved the discussion to the end of the meeting.

#### RECEIPT OF APPLICATION: SPECIAL PERMIT – CAMP ASPETUCK GIRL SCOUT CAMP, 88 OLD EASTON TURNPIKE (WESTCHESTER MODULAR HOMES)

Katie Gregory recused herself from this application.

Attorney Scalzo submitted a letter, dated 5/5/09, to the Commission referring to the non conforming parking lot on the property of the Girl Scout Camp. It read as follows:

The undersigned is representing the above captioned for the purpose of responding to some Zoning issues that surfaced in the Special Permit Application for the property at 88 Old Easton Turnpike, Weston, at the regular meeting of the Weston Zoning Commission. For my analysis, I have assumed the following:

1. The Zoning Regulations for the Town of Weston were adopted in 1950.
2. The Zone, Two Acres Residential and Farming District, permits “g. Nursery school or day camp, subject to Section 341” (Special Permit);
3. Camp Aspetuck is a “day camp” in accordance with the definitions contained within the Weston Zoning Regulations;
4. The Camp began with the gift of acreage in 1939 according to the Applicant.

First issue: Do the building and shed on the Northeast boundary line require a variance? Sec. 8-13a of the Connecticut General Statutes protects structures that may violate setback, sideline and acreage regulations provided the structures are in existence for three

## GIRL SCOUT CAMP CONT:

or more years and also provided no action from the Town has been brought. It is my understanding that these structures have been in existence longer than three years and that the Town has not brought any actions against the Camp. Therefore, the structures are considered legally nonconforming and do not require a variance.

The analysis under the First issue can also be expanded to not only relate further to nonconforming structures but also to nonconforming uses. The Application mentions a gravel parking area that also violates current setback regulations from the front property line (within 100') Section 8-13a mentioned above, only protects structures. The parking area would be considered a use. Any use or structure erected prior to the adoption of the Zoning Regulations would be a legal nonconforming use or structure. Please see Section 8-2 of the Connecticut General Statutes. It is my understanding that this parking area has been in existence for a long time and is considered a nonconforming parking area.

Nonconforming uses and structures enjoy vested rights. Since the nonconforming use or structure is a vested right, it can only be abolished by discontinuance or abandonment. The Weston Zoning Regulations in Sections 373 and 374 do not allow an expansion of intensification of the nonconforming use or structure. In our case, the gravel parking area and structures on the Northeast boundary line are protected as legal nonconforming structures and uses (as a parking area) provided they are not being expanded or intensified which they are not. The Weston Zoning Commission may "reasonably regulate" the nonconforming use of the parking area, for example for health and safety reasons, but they may not require the camp to discontinue the use of the parking area nor require a variance.

Second Issue: Is there anything special for the Applicant to do from a Zoning perspective to rebuild the structure? Day camps are a permitted use pursuant to the "Special Permit regulations found in Section 341 of the Zoning Regulations. Therefore, the Applicant must satisfy the Special Permit regulations. If they can, the Town should grant the Special Permit. Peter A. Scalzo, Attorney.

Also submitted to the Commission were "Infiltration Analysis based on a 100 year storm" by Arthur H. Howland & Associates, P. C. dated 5/18/09

Jane Connolly moved that the Commission receive the application for Camp Aspetuck Girl Scout Camp and hold a public hearing on June 1. Seconded by Paul Heifetz. Vote in favor (6-0) Katie Gregory recused.

8-24 REPORT VALLEY FORGE ROAD BRIDGE REPLACEMENT (TOWN OF WESTON)

Town Administrator, Tom Landry submitted, on behalf of the Board of Selectmen, the following memo, dated May 8, 2009:

“I submit on behalf of the Board of Selectmen an application for approval under Connecticut General Statutes Section 8-24 for the total replacement of the Valley Forge Road Bridge. Commission members may be aware that the Town received an 80 % grant federal grant through the Connecticut Department of Transportation for the replacement of the 48 foot bridge, which dated to 1938.

The Town hired the Maguire Group to design the bridge. It completed a preliminary engineering report in 2006, and has proceeded toward a final bridge design. That process is at the 90% design stage. Maguire has just received second review comments from Conn. DOT, and anticipates the final design will be submitted around month end. The design process has included completion of necessary hydraulic, geotechnical, topographic, permit and design services for the replacement of the bridge.

This application seeks Planning and Zoning Commission recommendation as to whether the replacement of Valley Forge Bridge, with the safety road realignment, is a suitable and appropriate use of this Town owned property. As demolition and reconstruction of the bridge will require construction work over a watercourse, several permits are required prior to the commencement of construction activities. The relevant permitting authorities include the Weston Planning and Zoning Commission, the Weston Conservation Commission, and three separate divisions of the State of Connecticut Department of Environmental Protection. Application has been made to the Conservation Commission, and now to you. The required DEP permits have all been approved, and are included in the attached Project Statement.

The information collected and submitted for this project has been substantial. More complete background grant and design materials are available in my office as needed. Submitted to the Conservation Commission and for this opinion are: a Project Statement and a Hydrologic and Hydraulic Report. Both documents contain numerous materials and maps, so I have attached their respective Table of Contents.

Stephan Grozinger stated that for the last 5 years the Commission has required an A2 survey. He did not feel that the Commission could give a favorable report without it. Don Saltzman questioned if the Commission really needs it as it is not a legal requirement. Mr. Grozinger again stated that he felt the 8-24 report really needs the A2 survey.

Don Saltzman moved that the Commission receive the 8-24 Report for the Valley Forge Road Bridge Replacement. Seconded by Dan Gilbert. Vote in favor (7-0)

**RECEIPT OF APPLICATION: FLOOD ZONE DEVELOPMENT PERMIT: VALLEY FORGE ROAD BRIDGE REPLACEMENT (TOWN OF WESTON)**

Tom Landry, Town Administrator, submitted a Flood Zone Development Permit, on behalf of the Board of Selectmen for the Valley Forge Road Bridge Replacement application. There is one piece of an abutment that may tag the flood plain.

Paul Heifetz moved that the Commission receive the application for a Flood Zone Development Permit for the Valley Forge Road Bridge replacement. Seconded by Katie Gregory. Vote in favor (7-0).

**DISCUSSION/DECISION:****EMMANUEL CHURCH, LYONS PLAIN ROAD – EXTENSION OF TIME FOR TEMPORARY TRAILERS**

Stephan Grozinger recused himself from the discussion/decision.

Attorney George Guidera and Father Feyrer of Emmanuel Church stated to the Commission that the Emmanuel Church project will not be able to meet the June 1, 2009, deadline for the removal of the temporary trailers. A discussion followed.

Don Saltzman moved that the Commission extend the time from June 1, 2009 to September 11, 2009 for the removal of the temporary trailers. Ridge Young seconded. The Vote in favor (6-0) Stephan Grozinger recused as his daughter attends the Emmanuel Church Nursery School.

Stephan Grozinger moved that the Commission add to the agenda, Katie Gregory's issue regarding zero incremental runoff and the removal of trees. Seconded by Ridge Young. Vote in favor (7-0)

Katie Gregory learned that in response to the Zero Incremental Runoff Regulation that a developer removes the trees before the developer applies for a permit. Also a developer could split up the construction project into several permits so that they would not need to apply under this regulation.

Don Saltzman felt we should intend to measure before and after and hold incremental runoff to zero. You cannot escape with before and after. Before starts today and the other after. The builder would receive a certificate of occupancy after the measurement. Also the Commission should look into a regulation on clear cutting. Jane Connolly offered to research tree cutting ordinances. Stephan Grozinger did not think they were beating the law. The Land Use Director felt you can clear cut your property now without a permit; unless wetlands are involved.

DISCUSSION CONT:

Stephan Grozinger referred to the 177 Good Hill violation ancillary structure being used. The Zoning Enforcement Officer was examining evidence that the use of an ancillary structure as a second dwelling may be grandfathered.

PUBLIC HEARING CONT: FAR HORIZON SUBDIVISION, 4 LOTS, ADC 10 LADDER ROAD, LLC, 10 LADDER HILL (SPATH & BJORKLUND)

Chick Spath of the Huntington Company was present. Stephan Grozinger stated that since the last meeting, at Spath's request, he examined a proposed revision and felt it still appears to violate the odd-lot regulation. Mr. Spath presented a revised plan incorporating a split lot with two acres of contiguous land and explained his plan and stated that it will still have the same ownership. He also handed out a copy of the regulation on split lots, to the Commission. A discussion followed on the wording of this regulation. Dan Gilbert questioned the open space and will it be deeded to the Town? A discussion followed on the different kinds of open space and their recipients. Mr. Spath stated it could be either the Town, or the Town and the Conservancy. Paul Heifetz felt it could be a condition of approval.

Dan Gilbert went over the list of other requirements for the file regarding zero incremental runoff report, Fire Protection letter/sprinklers. Mr. Spath spoke to the owner and they will install sprinklers. Also the neighbor's existing well will remain and the applicant has Conservation approval.

Katie Gregory raised the possible problem with the grade of the driveway at 15% for 750 feet. John Conte, Town Engineer explained and stated that it is 300 feet of the 15% grade and the applicant had no choice because of severe topography. Dan Gilbert questioned if the driveway was safe? The Town Engineer stated that the driveway is safe but for this grade you need asphalt. The Town Engineer stated that the grade was not a safety or health problem. Jane Connolly questioned if a guard rail was needed and the Town Engineer said only if steep slopes are involved. A discussion followed on the possibility of a bond being needed and if so that will come in before any approvals are given.

There are two waivers being requested by the applicant:

Waiver of Section 3.6.3 in order to construct a common driveway with an average (and maximum) grade of 15%. Town regulations already provide for 15% driveway grades, but over shorter distances.

Waiver of Section 3.10.13b regarding a proposed pavement a width reduction from 20 feet to 18 feet over the first 450 lineal feet of what is to become a "neighborhood lane" serving three homes. The Town Engineer stated that the reduction in width did not pose a safety problem.

The Land Use Director stated that John Pokorny, Fire Chief, has looked at the plan and there are three or four, 50 x 50 foot pull outs and turnarounds for the fire trucks. The houses will have sprinkler systems as well.

PUBLIC HEARING CONT: FAR HORIZONS CONT:

Katie Gregory asked if the Commission has letters from the Town Engineer and Fire Department and the answer was yes.

John Pokorny's letter called for sprinklers and/or dry hydrants. Dan Gilbert questioned a statement regarding the volume, speed and rate of runoff.

Don Saltzman reminded the Commission that if you go for approval, a vote is needed on the variances first. Stephan Grozinger requested to keep the public hearing open to receive the letter on the zero incremental runoff.

The Land Use director stated that there is a 9 year old cease and desist on this property that needs to be lifted. It may be moot by now. The Town Attorney advised, just to lift it. Stephan Grozinger felt the Commission could do it.

Mr. Spath summarized what he still needed to submit – zero incremental letter, bond amount, and talk to the owner, Mr. Dicaro, regarding setting up an association for the open space.

Continued to the next meeting on June 1, 2009

PUBLIC HEARING: SCHINDEL SUBDIVISION, 6 LOTS, MORTON SCHINDEL, ET ALS. 389 NEWTOWN TURNPIKE (GUIDERA)

Stephan Grozinger read the legal notice for the public hearing, into the record. Attorney George Guidera and R. Bennett, P. E. were present.

Attorney Guidera stated he would like to go over some of the items mentioned at the last meeting, as to how the property evolved from 1950 until now and that the proposed subdivision contains many pre existing and non conforming lots. Mr. Schindel's proposal has taken the 18 acres and divided it into 6 building lots and some have pre existing building on them. The presentation continued to mention the lot near Powder Horn Hill which is not part of the subdivision. Don Saltzman questioned if the larger 7 acre lot could be subdivided? Attorney Guidera stated yes you can and it would be a re-subdivision.

Don Saltzman raised the question of the naming of the subdivision road. Attorney Guidera stated it would be on the final map. Stephan Grozinger requested an A-2 survey. The Land Use Director stated that Attorney Guidera has them and will bring them to the Commission. Don Saltzman asked if Morton Schindel owns all the property not in the subdivision and the answer was yes.

Stephan Grozinger read the Town Engineer's memo of May 18<sup>th</sup>, 2009 into the record

PUBLIC HEARING: SCHINDEL CONT:

R. Bennett, P. E. would like to talk to the Town Engineer personally, because it includes a lot of drainage. Attorney Guidera then addressed the open space and stated he did not feel they could provide it. They could however, provide a 10% conservation easement in Lot 6 it could make it possible for Morton Schindel to keep his Weston Woods Collection. Attorney Guidera explained the wetlands and would like to work with the Aspetuck Land Trust as it would make the property better and more conforming and was built before open space requirement. A discussion followed on the easement. Stephan Grozinger requested to see a map of these proposed conservation easements.

PUBLIC COMMENT: None

Katie Gregory asked if Robert Turner, Consultant, had looked at the application and the answer was yes. She was also concerned about the lot with the three buildings. The Land Use Director stated that the maps are in the file and Mr. Turner has done a "history research".

Rich Bennett, P. E. will talk to the Town Engineer. It was stated that a walk date needed to be set and to be on the agenda again for June 15<sup>th</sup>.

PUBLIC HEARING CONT: PETITION FOR ZONING REGULATION  
AMENDMENT, DR. LIEBERMAN, 4 GOOD HILL ROAD MEDICAL SERVICES

Stephan Grozinger entered the response letter from SWRPA into the file. Both Dr. Lieberman and Attorney Guidera were present.

Don Saltzman felt the Commission is still dealing with a commercial office building vs. a home occupation on the current location; and I have listened to the tapes and heard no problems with tenants but what I heard from the public is there is more of a convenience so people do not have to drive to Westport for medical attention.

Dr. Lieberman told the Commission that he was very upset from the last meeting about the opposition to an office that has been there for twenty five years. He went over the history of the regulations for a medical office. He stated that he now has 4 employees and two doctors in a 1000 square foot space. He also stated that most doctors do not want to live in the house where they are practicing and that the aquifer and the traffic. There will be no change in the office.

Paul Heifetz felt the practice would be a more intensive use and affect the septic and water supply.

## PUBLIC HEARING CONT: DR. LIEBERMAN CONT

Dr. Lieberman stated that he has had two doctors and four employees for many years and is just now asking the Commission to make it legal. Dr. Lieberman did some research and submitted a list of every 3 acre property in Weston for a total of 338. Also that there are four major roads and 4 properties south of Weston Center. He continued with his research which he had put on a disc and submitted for the file.

Attorney Guidera stated again that the present home occupation regulation simply does not work for doctors and this is why we are here right now. He then asked directly – do you want doctors in the community or don't you? This application is not about Dr. Lieberman, we are talking about Home Occupation, public health safety and welfare.

If you do not approve this application, Dr. Lieberman will close the practice and there will be no doctor in Weston.

Paul Heifetz referred to the Home Occupation Regulations. Dan Gilbert felt that the comments in the public hearing were slightly in favor of Dr. Lieberman. Attorney Guidera stated that if you want a doctor in Town, take what I wrote and doctor it up. Dan Gilbert felt that Attorney Guidera could not have been more eloquent in his summary. Don Saltzman restated that Dr. Lieberman needs two doctors and 4 employees and can he get by with this?

Jane Connolly stated that Dr. Lieberman lives in the home today with very close ties to the community. The Commission needs to discuss this – spot zoning – floating zone? It could be a Commission discussion.

## PUBLIC COMMENT:

Bean Cocoran 4 children and a son with cystic fibrosis and is thrilled to be so close to Dr. Lieberman's office, "it has meant a lot to me to be able to get to his office in 5 or 10 minutes. 1000 square feet for someone like this to practice and live needs to be considered. It is not the 1930's. I hope you will consider application".

Lucy Boden of Stonehenge Road, questioned if it was 1000 square feet for the office or is the living space 1000 square feet? Someone could come in and build and limit the office space to 1000 square feet.

George Guidera stated that a doctor does not want to live in the space where he works.

Ellen Strauss suggested that one could offer to have a separate entrance to the doctor's space and balance it as a home and business. "We are the nays and need to abide by the regulations. Dr Lieberman has been in violation and lives in another house on Good Hill and I have abided by the rules with my home occupation".

Chris Kimberly. " I am truly disappointed about George Guidera's comment regarding the nay sayers. Let's enforce the regulations". The reason the Town is the way it is, is because of the regulations". He asked the Commission to enforce the zoning regulations so issues like this don't happen. "My rights shouldn't be taken away."

Mr. Ameden of Old Mill road. The Town is small enough that it is not going to attract a big practice. It would take a special person such as a small town doctor. Someone to come would be a huge difference.

Lynn Kimberly wrote a flyer and her 13 year old child delivered them to their area residents, for the purpose of coming to this meeting tonight. She also stated that Dr. Lieberman does not live in the house and for you to enforce what you have now. Sorry I am a nay sayer. I live in this neighborhood and he is running a commercial office so please enforce the regulation. Lynn Kimberly submitted a copy of her flyer to the Commission for the file.

Don Saltzman moved that the Commission close the public hearing on the Petition for a Zoning Regulation Amendment, Dr. Lieberman, 4 Good Hill Road – Medical Services. Seconded by Paul Heifetz. Vote in favor (7-0)

Debate of Dr. Lieberman matters

Stephan Grozinger – "This is not about Dr. Lieberman – This is about the regulation which affects all of Weston. It boils down to how zoning regulations protect people's expectations when they buy a home, so that a business will not be opened next to you. Proposing this would open up the entire Town's residential district to business development. I will vote negative. With respect to George Guidera's request that we revise his proposed regulation rather than reject it outright: we will address this as part of the Town Plan. It looks more like spot zoning. One could create 3 acre lots by combining two lots and major roads are not defined in Weston".

Katie Gregory "The Commission does have a role in Planning where some people in Town want more services. How would this fit in the Town Plan for the next 10 to 20

Debate cont:

years? The Commission needs to consider a lot of what we are hearing at the Town Plan public meetings. Also need to include Affordable housing, not because of our regulations but because of our senior citizens”.

Don Saltzman – “I am finally convinced that George Guidera is submitting an application because of an enforcement issue from the Commission, and to let the public know that we do not ignore enforcement. We will be reviewing enforcement. It is a shame because Dr. Lieberman cannot continue. Can we put in a temporary regulation to continue for the next two years – Is there a way? I want to know the enforcement procedure. Can the Commission remediate for two years and then the Dr. Lieberman will retire. The Commission cannot open the flood gates to commercial offices and we do not have a choice with a special permit”.

Ridge Young –“ I have a ton of questions and agree with some of Stephan Grozinger’s comments and some of them, I don’t agree. Now is the time, now that we are doing the Town Plan. It is a very important topic that we are discussing and agrees with George Guidera that this shouldn’t be about Dr. Lieberman. In my opinion, I would like to take your position and work with it and to see what we can do with a Town Plan going forward. I have questions about Home Occupation and have to digest this. Katie shared good points about Dr. Lieberman being so close. Now is the time to look at the Plan – a tough call”.

Paul Heifetz – feels the present Home Occupation has served the Town very well. “ The fact that we require that the resident to live in the house and being more careful with the surrounding neighbors. As to needing additional doctors in Town, we have doctors nearby that serve us very well. There is also the problem with traffic and neighbor’s rights. Need to care about the protection of the quality of water in Weston and the protection of the aquifer”. He doesn’t see the need and will not come out with a regulation like this.

Dan Gilbert – “This is really about us, (the Commission) that we get to decide what Weston will be like in 20 years. The question is focusing on need. There has not been an outcry in 20 years for a physician in Town, the application fails. Dr. Lieberman has for 25 years –satisfied a need. I vote negative on the application. I would like to keep the proposal in front of us. Do we have to evaluate a need for a pediatrician – yes”. Hopes the Commission will continue the discussion to the next meeting.

DR. LIEBERMAN CONT:

Jane Connolly –“a lot has been already said, but what troubles me is the spot zoning mentioned by Stephan Grozinger. There has been no outcry for pediatric medical services and the Commission has to look at all physicians. Perhaps the Commission revisits this because of Dr. Lieberman, but it should not be dead in the water. As to where the parameters may be, we will have to see. Dr Lieberman can apply for a variance with a possible suggestion to have Dr. Lieberman continue for a year to retire. I vote no”.

Katie Gregory – Felt the Commission should pursue it. Dr. Lieberman does not have a drop dead date.

Don Saltzman – Stephan Grozinger does have a consensus and should vote for a denial tonight. Can it be appealed? Would not be correct to have conditions. Perhaps add a transcript of this part of the meeting.

Jane Connolly – we can only vote on what is before us.

Jane Connolly – What is before us now is Attorney’s Guidera’s application for a Petition for Zoning Regulation Amendment, Dr. Lieberman, 4 Good Hill Road – Medical Services.

Paul Heifetz moved that the Commission vote on the proposed application for a Petition for Zoning Regulation Amendment, Dr. Lieberman, 4 Good Hill Road – Medical Services, proposed by Attorney George Guidera, before us. Seconded by Donald Saltzman

Discussion: Approval or denial of an approval.

Vote in favor – Unanimous for a denial. (7-0)

Dan Gilbert –Proposed that we put this item on the agenda for the next meeting for discussion.-

EXECUTIVE SESSION:

Don Saltzman moved that the Commission go into Executive Session regarding a legal issue for Walpuck, 98 Lords Highway LLC vs. Fash Trust Victoria Fash. Seconded by Paul Heifetz. Vote in favor (6-0) Jane Connolly absent from the room.

Dan Gilbert moved that the Commission come out of Executive Session. Paul Heifetz Vote in favor (7-0)

Stephan Grozinger stated that the Commission made no motion during the Executive Session.

Meeting adjourned.

Respectfully submitted.

Joan Lewis, Administrative Assistant

Approval: Unanimous approval on June 1, 2009 vote (6-0) Don Saltzman absent