

Present: Stephan Grozinger, Chairman; Don Saltzman, Paul Heifetz, Dan Gilbert, Katie Gregory, Ridge Young – Jane Connolly absent.

Meeting on tapes 1-5 dated 4/6/09

CHAIRMAN’S REPORT: Stephan Grozinger reported that Katie Gregory and James Pjura, Zoning Officer, went with him to visit the Town of Fairfield’s Zoning Office to meet with the Town Planner and the head of the Zoning Department. He felt they had a good meeting and that Weston seems to be precisely matched with Fairfield on survey requirements. The Town of Fairfield has a zoning grid/check list which is on their maps. Stephan Grozinger felt that Weston may want to adopt this procedure. The Commission felt they would like to pursue this idea. Katie Gregory reported on their GIS system and Fairfield also has the existing and proposed elevations of properties on their maps.

PROPOSED 8-24 PROTOCOL- Stephan Grozinger submitted a Draft Protocol regarding 8-24 applications received by the Planning & Zoning Commission (pending resolution of the dispute regarding validity of any exemption). A discussion followed. The Land Use Director stated that the 8-24 is a planning function and has nothing to do with zoning. The Chairman could notify the Board of Selectmen of this new direction which would facilitate the review of an 8-24 report. There was a consensus of the Commission in favor of writing the letter.

Don Saltzman moved that the Commission send a letter to the Board of Selectmen advising them of these new standards which will incorporate Zoning Regulations Sections 330-336 and 341.7 and such other issues on which the Commission may appropriately report pursuant to C.G.S. Section 8-24. Seconded by Dan Gilbert. Vote in favor (6-0) Jane Connolly absent.

APPOINTMENT OF TEMPORARY ZONING ENFORCEMENT OFFICER FROM APRIL 17, 2009 THROUGH APRIL 24, 2009

Don Saltzman moved that the Commission appoint Tracy Kulikowski, Land Use Director, to be the temporary Zoning Enforcement Officer from April 17, 2009 through April 24, 2009, for James Pjura, who will be on vacation. Paul Heifetz seconded. Vote in favor (6-0) Jane Connolly absent.

DISCUSSION – RETAINING WALLS – Stephan Grozinger met with Zoning Officer J. Pjura and Consultant Robert Turner regarding retaining walls and are they subject to setbacks? A retaining wall is a wall that has dirt behind it and clearly it is not a fence. A discussion followed about whether or not it was a structure. The consensus of the Commission was that they do not want to refine the regulations right now.

DISCUSSION OF DEFINITION OF "SUBDIVISION" Stephan Grozinger felt that the Commission should postpone this discussion until the next meeting, April 20th when Town Attorney will be in attendance. Robert Walpuck submitted a letter on what constitutes a subdivision. The Commission accepted the letter.

RECEIPT OF APPLICATION: LIEBERMAN, 4 GOODHILL ROAD (GUIDERA)
Dr. Lieberman and Attorney Guidera submitted an application for a special permit petition regarding medical offices in the Town of Weston. Attorney Guidera did mention that he had sent a copy of this application to each member at their home before the meeting.

Attorney Guidera stated that the applicant would like to set a public hearing for the next meeting and the Land Use Director stated that the application would have to go before SWRPA which takes 35 days and then a public meeting could be held on May 4. A discussion followed as to whether the Commission should take time to go over the application before it goes to SWRPA as it is a very comprehensive document. Paul Heifetz felt it was wrong to discuss it before the opening of a public hearing. The Land Use Director stated that SWRPA is only looking at the application for inter-municipal impact.

Don Saltzman moved that the Commission approve the receipt of application for Dr. Lieberman of 4 Goodhill Road. Seconded by Katie Gregory. Vote in favor (6-0) Jane Connolly absent.

A public hearing will be set for May 4th. Don Saltzman questioned Attorney Guidera if it was okay for the public to question Dr. Lieberman. Attorney Guidera stated yes.

PUBLIC HEARING: FLOODZONE ACTIVITY – ERNST, 204 LYONS PLAINS ROAD, REPAIR STONE WALL AND CREATE STEPS (W. KENNY ASSOC.)
The Chairman read the public hearing legal notice into the record.

The Commission members walked the site.

A representative from William Kenny Associates went over the map in detail for the repair of the stone wall and creation of steps within the wall. The following letter from Civil Design Associates, LLC, dated January 13, 2009: "In accordance with Town of Weston Flood Plain Management Regulations, we do hereby certify that we have examined the work proposed at the site and have confirmed that there will be no increase in base flood levels within the community during the base flood event (100 year event). The proposed work is generally shown on plans provided by Rivi Oren Landscapes, drawings L-1 through L-4, dated November 24, 2008. Our analysis is contained in a drainage study prepared by us dated January 7, 2009. Furthermore, all proposed construction shall be in accordance with FEMA standard specifications for temporary and permanent activity and construction within a flood plain and shall not adversely impact the floodplain and floodway on adjacent properties. Chris DeAngelis, P. E.

MOTION TO APPROVE:

Paul Heifetz moved that the Commission approve the Flood Zone Development Permit for Jerome and Martha Ernst for the reconstruction of a stone wall and construction of stone steps adjacent to the Saugatuck River at 204 Lyons Plain Road subject to conditions. Seconded by Katie Gregory. Vote in favor 5-0 Don Saltzman and Jane Connolly absent. Conditions are attached to these minutes.

PUBLIC HEARING CONT: SUBDIVISION, SPRATT, 65 NEWTOWN TURNPIKE
(LAND TECH)

Peter Romano of Land Tech presented a letter, dated April 6, 2009, as follows:
“As a follow up to our conversation at the March 16th Planning & Zoning Commission hearing regarding the confirmation that the drainage calculations prepared for the Spratt Subdivision, dated March 8, 2009, prepared by our office meets the requirement for “Zero Incremental Runoff” requirements, I offer the following: the drainage calculations provided compares the stormwater runoff in the current undeveloped conditions to the proposed runoff from the new home, drive and associated site improvements. From those calculations we determined that there was an increase in the Post-Development runoff of 1.025 cu.ft. In order to reduce the stormwater runoff we have proposed to install 56 l.f. of Cultec “Recharger 280” which provides 1,925 cu. Ft. of storage capacity for stormwater runoff. Therefore, this is to confirm that we have provided, at a minimum, “Zero Incremental Runoff” and in fact exceeded it by 900 cu. Ft. in other words, we have actually reduced the flows from our site once development is completed and the infiltrators are installed.

A second letter was presented to the Commission, as follows, from Gregory & Adams, P.C., dated April 6, 2009: We represent Spratt Builders Inc. (“Spratt”), the owner of the above-referenced Premises. It is our understanding that the Commission has requested Spratt’s legal counsel opine as to the commission’s jurisdiction over the review of an alleged deed restriction on the Premises in connection with Spratt’s application for subdivision. The law on this question is clear and well-established. The Planning and Zoning Commission does not have jurisdiction or authority to consider or enforce private deed restrictions. In the words of the Connecticut Appellate court, “a planning commission cannot base its denial of subdivision approval on the existence of a deed restriction if the application otherwise meets the regulations. The responsibility of enforcing restrictive covenants in deeds is allocated to neighboring landowners, not to a municipal commission”. *Moscowitz v. Planning and Zoning Comm’n*, 16 Conn.App 303, 311-12 n. 8, 547 A.2nd 569 (1988). Furthermore, “the law is well established that restrictive deed covenants are separate and distinct from zoning law provisions and cannot impact the administration of zoning law”. *Cook v. Planning and Zoning Comm’n*, 451202 (Ct. Sup. Ct. October 14, 1993). In conclusion, the alleged deed restriction does not fall within the Commission’s jurisdiction. Clarissa H. Cannavino

PUBLIC HEARING CONT – SPRATT CONT:

Dan Gilbert felt that the Commission does not have the expertise to make the decision on deed restrictions. Also the neighbor can file an injunction when they start to dig the foundation. A discussion followed. The Land Director stated that it is not the Commission's purview. It is not something you can deny when the application meets all the other requirements.

Public Comment: none

Paul Heifetz raised the question on the issue of the driveway being steep and narrow and could be dangerous – should it be paved? Peter Romano stated it could be made a condition of approval. Stephan Grozinger stated this is a subdivision approval and not site specific. We will get another chance at this lot when the applicant comes for lot development approval. Also the application will have to return for Conservation Commission site specific approval. Don Saltzman also questioned the Fire Protection condition.

MOTION TO APPROVE:

Dan Gilbert moved that the Commission approve, with conditions, the application of owner, Spratt builders, for a two lot subdivision of property, consisting of approximately 4.15 acres of land located at 65 Newtown Turnpike, Weston, Connecticut. Seconded by Paul Heifetz. Vote in favor (6-0) Jane Connolly absent.

Conditions attached to these minutes.

PUBLIC HEARING CONT: SUBDIVISION, FASH, 27 ROGUES RIDGE (BLOOM)

Attorney Ira Bloom and Todd Ritchie of Stearns and Wheeler were present. Attorney Bloom went over the past history of this application from when they applied until now; first as a re-subdivision and now as a subdivision. The applicant agreed to do that and have submitted all the documentation and look forward to the Commission's favorable review. The wetlands are flagged and Attorney Bloom submitted the Conservation administrative approval and there is no activity within a 100 feet of wetlands. Robert Walpuck visited Fred Anderson, Conservation Planner, several times with some questions about the approval and Mr. Anderson stands by his approval. However, when someone comes in to build on this lot, Conservation will have to review it again. Attorney Bloom stated he is only here for subdivision of land and will come back for site specific approval.

Don Saltzman questioned Attorney Bloom that the plan, as submitted, meets all the prerequisites of a subdivision and the answer was yes. Paul Heifetz asked for clarification

for what the applicant is doing and is the house shown on the empty lot, conceptual? The answer was yes. The application has health approval and also approval from the Town Engineer.

Stephen Grozinger read the memo, dated April 3, 2009, from the Town Engineer, into the record as follows: "I have reviewed the site plans and drainage report prepared by Stearns & Wheler Engineers for the subdivision of 27 Rogues Ridge Road into two lots. The drainage report clearly indicates there would be a negative impact of site drainage to the surrounding area for a 50 year design storm. I have reviewed the site plans and found they are satisfactory for the requirements of this office. The only comment I have is the engineer should check the proposed design of the septic tank and septic pump chamber. The engineer has shown the pump chamber first in line from the house prior to the septic tank. It should be the opposite, septic tank first then pump chamber. This may just be a typographical error."

The Fire Marshal did not write a letter because it was an existing situation.

Attorney Bloom checked the Carey deed and put the information in the record in a letter from Carey's attorney, Joseph Hammer. They have agreed on a "no build" area of 100 feet. Attorney Bloom read the letter dated April 6, 2009 from Attorney Joseph Hammer, into the record as follows:

"We represent Albert and Victoria Carey. The Careys own and reside on property known as 90 Lords Highway (the "Carey Property"). The Carey Property abuts the Fash Property that is the subject of the above referenced application (Lots 8A and 9A – Victoria Fash – 27 Rogues Ridge – the Fash Property") We are writing to you to let you know that, as a result of discussions between the parties, and in order to address the concerns of the Careys, the applicant (Fash) has agreed to impose a Property and Lot 9A of the Fash Property. (Proposed Lot 9A is shown on the map entitled "Subdivision survey Map of Property Prepared for Victoria F. Fash Lot "8A" & Lot "9A" Rogues Ridge Road Weston, Connecticut Scale:1"=50' Aug. 15, 2008" prepared by Walter H. Skidd – Land Surveyor LLC). The applicant has agreed that no buildings or other structures of any kind (including but not limited to houses, outbuildings, garages, swimming pools, tennis or other playing courts, driveways, parking areas, antennas, fences, walls or signs) are to be constructed or otherwise located within the 100 foot setback area. Such restriction shall run with and apply to the Fash land in perpetuity and be binding upon all owners, heirs, successors and assigns. In reliance upon and subject to the implementation by the applicant (Fash) of this 100 foot setback/no-build restriction through the execution and recording of an appropriate binding legal instrument, the Careys do not object to the granting of the pending application for subdivision."

Don Saltzman questioned Attorney Bloom if this diminished the lot. The answer was no.

Dan Gilbert questioned the frontage as shown in a common driveway – twenty feet for each – a total of 40 feet. Discussion followed and Mr. Gilbert was then satisfied. Attorney Bloom had gone over this issue with Robert Turner, Consultant for Zoning Enforcement.

Public Comment:

Mr. Guberman of 30 Rogues Ridge questioned how many houses are allowed on a dead end road? He stated that Rogues Ridge is owned by an association and is really a driveway but also a private road. He also questioned if the water situation had been resolved and Attorney Bloom stated that it had been approved by the Town Engineer. Mr. Guberman questioned how did the Town Engineer approve this? Mr. Ritchie of Stearns and Wheler explained the drainage in detail. A discussion followed by Mr. Guberman explaining on how it affects his property and didn't think the problem had been addressed. Stephan Grozinger stated that the Commission is just approving the lines for a subdivision. The lot, when developed, will have to come back for a site specific review and also Conservation would have to look at it again. The driveway would probably be in the wetland area. Mr. Guberman stated that twenty years ago when Rogues Ridge was approved it was stated that the lot could not be built on and Rogues Ridge is really a driveway and not good for emergency vehicles. The Land Use Director stated that the Fire Chief Pokorny looked at the plan and there are turnaround areas. As stated before, the lot will have to return to the Commissions for site specific review and these items would be addressed. Mr. Guberman seemed satisfied.

Don Saltzman moved that the Commission close the public hearing. Seconded by Paul Heifetz. Vote in favor (6-0) Jane Connolly absent. The Commission will have 65 days to make a decision. To be on the agenda for discussion/decision on April 20th.

**PUBLIC HEARING CONT: NEW SECTION 314 OF ZONING REGULATIONS,
ZERO INCREASE IN RUNOFF AND EROSION**

Dan Gilbert presented the draft for the new section to the Commission. A discussion followed.

MOTION TO APPROVE:

Ridge Young moved that the Commission approve the new Section 314 of the Zoning Regulations for Zero Increase in Runoff and Erosion, effective on the date of publication. Seconded by Stephan Grozinger. Vote in favor (6-0) Jane Connolly absent.

DISCUSSION: FASH SUBDIVISION

The Commission members discussed how to handle the Fash Subdivision draft approval. Katie Gregory did not feel that this application was a subdivision and would be abstaining from the final vote. She felt that there needed to be three lots to be a subdivision. A discussion followed regarding the division of land creating the three lots. Don Saltzman felt it should be a positive draft as you are asking the Commission to validate a subdivision. Also the Town Attorney suggested that the applicant go for a subdivision. Stephan Grozinger asked for a consensus of the meeting and that he was in favor of an approval draft. The vote was five in favor of an approval draft with one abstention by Katie Gregory and Jane Connolly was absent.

A discussion continued regarding a subdivision approval of a certificate of zoning compliance. It was then decided to draft two approvals – one for a subdivision and one for a certificate of zoning compliance. To be on the agenda for the next meeting.

EXECUTIVE SESSION – LITIGATION UPDATE

Katie Gregory questioned on why the Commission does not take minutes during the Executive Session? The Land Use Director stated that this is an appropriate procedure but that she will be attending an FOI seminar on April 9 and will ask the question.

Don Saltzman moved that the Commission go into Executive Session. Seconded by Stephan Grozinger. Vote in favor (5-0) Jane Connolly absent.

Don Saltzman moved that the Commission go out of Executive Session. Seconded by Staphan Grozinger. Vote in favor (5-0) Jane Connolly absent.

Meeting adjourned.

Respectfully submitted.

Joan Lewis, Administrative Assistant

Approval: Unanimous approval with correction on May 4, 2009 (6-0) Don Saltzman absent.

