

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

Town Attorney Pat Sullivan present and Tracy Kulikowski, Land Use Director was not present.

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

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This meeting began at 6 p.m. with a Town Plan discussion.

7:15 p.m.

DISCUSSION: LITIGATION CN BUILDERS & CHARLES V. NIEWENHOUS V. PLANNING & ZONING COMMISSION.

Don Saltzman felt that the Commission should go into Executive Session with this agenda item for privacy reasons. Stephan Grozinger felt that we should do the public's work in public. A discussion followed.

Town Attorney Pat Sullivan gave her opinion on the request and stated that it is not a requirement to go into Executive Session. This discussion item was more like a report back to the Commission and how to proceed.

Don Saltzman felt that the Commission will get a report from our Town Attorney in Executive Session and also how to proceed. Then Mr. Saltzman suggested to invite Attorney Rubin (present), representing C. Niewenhaus into the Executive Session or as Jane Connolly then added, and open it up to the public?.

Stephan Grozinger stated that the Commission should keep the meeting as public as possible and then go into Executive Session.

Don Saltzman moved that the Commission speak to Town Attorney Pat Sullivan in Executive Session to clear up a particular concern with respect to the Zoning Regulation on this matter. Seconded by Jane Connolly. Vote in favor (6-0) Katie Gregory abstained.

Don Saltzman moved that that the Commission go into Executive Session. Seconded by Jane Connolly. Vote in favor (6-0) Katie Gregory abstained.

Dan Gilbert moved that the Commission go out of Executive Session. Seconded by Jane Connolly. Vote in favor (7-0)

Stephan Grozinger noted that there was no motion and no action taken.

DISCUSSION: CN BUILDERS VS. PLANNING & ZONING COMMISSION:

Attorney Robert Rubin is now present before the Commission. A discussion followed regarding the map that was received today by the Town Engineer, showing a 30 foot access. Attorney Rubin requested from John Conte, Town Engineer, a separate driveway plan of the Schaeffer property located at 76 Treadwell Lane and also see if the 30 foot right of way will work for the Town Engineer? The Town Engineer stated that he cannot approve this until the Commission resolves with Schaeffer. Attorney Rubin added two more items to the previous list:

1. Runoff calculations for the whole property
2. Calculations of the minimum lot requirement with the wetland ratios.

Stephan Grozinger stated that Attorney Rubin does not have that information tonight and it may take a couple of weeks to complete.

Paul Heifetz asked what would be the status of the property if we go forward with this approval? Attorney Sullivan and Attorney Rubin went over the plan in detail, with Paul Heifetz. It was stated that the Commission needs to check Lot 88 for their access way as the Commission is not sure where it begins.

Don Saltzman asked why the applicant cannot widen the access way and it was noted that it was due to topographic reasons. Stephan Grozinger then went forward with a discussion of the Schaeffer's variance approval.

Dan Gilbert –questioned the variance for approval for two individuals to access the driveway legal right of way and the CN lot. Attorney Rubin went over in detail that the Schaeffer's cannot use the driveway on the access way although they do have a variance to use the driveway because the variance is not legal. Stephan Grozinger requested Attorney Rubin to submit a single map showing all the coverage, wetlands that would serve as a good blue print for a mylar to be approved. Also minimum lot size and rectangle were also to be included on the map.

Paul Heifetz asked if the Town Engineer has approved this map? It was stated that the Town Engineer will not do a letter until the Commission gives him a plan with access ways to the Schaeffer's. Attorney Sullivan asked where does Lot 88 come out and also which lot has the variance, Lot 42 or Lot 43 and is one the Schaeffer lot? Stephan Grozinger extended the discussion to the next meeting.

THE CHAIRMAN'S REPORT:    moved to the next meeting

DISCUSSION CONT: UPDATE OF THE TOWN ZONING EXEMPTION

Dan Gilbert handed out a document to the Commission members which detailed the answers to the Town Attorney from Tom Landry, Town Administrator. Also the question of where does the authority come from? Mr. Gilbert felt it did not come from the Town Charter but from the State Statute. The State Statute states a definition for the legislative body. Also the Commission needs to get copies of the 1950 and 1971 Town Charters, CGS in 1950 providing authority for a town to adopt zoning (we have) and the definition of legislative body at that time. And also CGS in 1971 providing authority for a town to exempt municipal building projects from zoning (we have) and the definition of legislative body at that time. If we can get these on the table we can come to closure.

DISCUSSION: FENCE REGULATIONS: moved to the next meeting.

PUBLIC HEARING; SPECIAL PERMIT – WESTON VOLUNTEER FIRE DEPT. INC. (GUIDERA)

Stephan Grozinger recused himself from this application as he is a member of the Weston Volunteer Fire Department.

Vice chairman Jane Connolly presided and began by reading the public hearing notice into the record.

Attorney George Guidera, representing the Fire Department and 15 members of the Fire Department were present. Attorney Guidera gave a history and need for a Fire House on Lyons Plain Road and also went over the change in the Zoning Regulation for fire houses. He noted that the Fire Department went to ZBA as a pre-existing and non conforming application and obtained 18 variances, which were granted. The applicant also has Conservation approval and health approval. Attorney Guidera then went over the plan in detail. He noted that the fire house is on 2/3 of an acre and cannot support its septic so it is offsite on an easement from a property owned by George Guidera. This has been approved by the Westport Weston Health District.

Attorney Guidera noted that the parking area will have a dual access. He also stated how important this fire house is and its absolutely necessary service to this side of Weston. It is 60 years old and needs to be renovated.

Todd Ritchie, P. E. discussed the stone/boulder wall and the second entrance of the parking area the detail of this the drainage system by extending out into Zone X of the flood plain.

At this point in the meeting, Jane Connolly suggested that the Commission consolidate the two applications and read the public hearing notice into the record for the Flood Plain application.

PUBLIC HEARING: FIRE HOUSE CONT:

Paul Heifetz questioned if their activity is in the flood plain? Mr. Ritchie stated they were Zone X, one foot over the existing grade and the activity was just the boulders. The Town Engineer's letter of 1/5/09 was referred to and read into the record, as follows:

"I have reviewed the latest plan prepared by Sterns & Wheler Engineers for the proposed Station 2 Fire House revised date November 11, 2008.

The proposed structure is adjacent to the Saugatuck River, the river floodway and river floodplain. The site plan indicates there will be no activity within the floodway but there will be a small amount of activity within the floodplain at the south end of the property concerning drainage. A small area will be excavated to construct an energy dissipater surface drainage discharge which will result in a net increase in flood volume of approximately 5 cubic yards. The proposed activity in the flood plain will not alter or increase flood elevations for the 100 year storm event. The addition of a vehicle access at the south end of the property complies with the Weston Driveway Ordinance Regulations. The engineer has provided on the plan a Construction Entrance Detail to be in place during construction. The engineer should indicate on the site plan which access will be the construction entrance that will conform to the construction detail"

Don Saltzman questioned Attorney Guidera if the variances granted covered every anomaly in the Zoning Regulations? Attorney Guidera responded yes and he also stated that the application was going from a pre-existing use with variances to one that is permitted. If there are any changes, the applicant would have to come back to the Planning & Zoning Commission.

Don Saltzman also asked if the well has to be changed? Mr. Ritchie, P. E. stated he had no information on the well and does not know the yield. Attorney Guidera stated the applicant will comply with all the conditions of the Westport Weston Health District. Mr. Saltzman also asked if there is any storage of diesel oil on the site? It was stated that all fuels come from the Town Garage aside from what is in the engines.

It was asked and noted that everyone was notified of this application within 250 feet of the site.

Curtis Gunn, of the Fire Department, went over the elevations of the proposed renovation with the Commission and also noted that the Fire Department wanted the fire station to look like a barn. They will also retain the existing fences. Ridge Young and Jane Connolly stated their concern about outdoor lighting. The response was that the applicant is using barn style lights and they will be shining down. It was also noted that the oil tanks are in the basement.

PUBLIC HEARING: FIRE HOUSE CONT:

Dan Gilbert questioned if there was any construction in the floodway? The response was no. Mr. Gilbert also made reference to the boulders and would they be a hazard going down the river. Mr. Ritchie, P. E. stated they are not in the floodway and the new drainage plan will be significantly better than what is there now consisting of a boulder mass and rip rap.

Public Comment: none

Don Saltzman moved that the Commission close the public hearings for the Special Permit and Activity in a Flood Plain applications for the Weston Volunteer Fire Department, Inc. on Lyons Plain Road. An approval draft will be presented for a vote, at the next meeting on January 26, for discussion/decision.

Discussion: Don Saltzman stated his concern about signage for the two accesses to the parking lot. Attorney Guidera stated that there is existing signage.

Seconded by Katie Gregory. Vote in favor (6-0) Stephan Grozinger recused.

It was noted that the Land Use Director and Jane Connolly with help create the draft of approval for the next meeting on January 26<sup>th</sup>.

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

Stephan Grozinger read the public hearing legal notice into the record. It was noted that this application will continue to the meeting on January 26, 2009.

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

Stephan Grozinger read the public hearing legal notice into the record. It was noted that this application will continue to the meeting on January 26, 2009.

PUBLIC HEARING: RE-SUBDIVISION AND/OR REQUEST FOR CERTIFICATE OF ZONING COMPLIANCE FASH, 27 ROGUES RIDGE (BLOOM)

Stephan Grozinger read the public hearing legal notice into the record.

Attorney Ira Bloom, representing Victoria Fash was present. He stated that he would like to request the Commission to grant the applicant a certificate of zoning compliance and feels it is the best approach. He stated that he was just before the Commission to legalize

PUBLIC HEARING: FASH APPLICATION CONT:

these two lots which are shown on Map 1951, from the year 1982. The original map is No. 761. The property consists of a 2.9 acres lot with the house, since 1951 and the other lot is 4.7 acres and is empty. These two lots would be considered two building lots.

Information taken from Attorney Bloom's narrative: He is presenting an application re-subdivision approval on behalf of Victoria Fash, stating that the applicant seeks to validate a subdivision which both the applicant and the Town have believed existed for many years. The applicant has owned Lot Nos. 8A and 9A on Map No. 2778, which map is dated August 1982. Ms. Fash purchased Lot No. 8A in 1993 and Lot No. 9A in 1994. The deeds of conveyance to Ms. Fash for both properties were presented as well as additional proof of ownership. The Town of Weston has acknowledged that the subject property has existed as two separate lots. As evidence, the Town has assessed the subject property as two separate lots. Submitted for the file, were the Tax Assessor's field cards and map. An earlier filed map No. 761, also shows Lot Nos. 8A and 9A with a different lot line dividing them. Map No. 761 predates Weston's subdivision regulations. Since Map No. 761 demonstrates that the two lots existed prior to the Weston subdivision regulations, a later adjustment of the lot lines does not meet the statutory definition of a "resubdivision".

Attorney Bloom noted that Attorney Fuller and Ran MacNeil visited J. Pjura, Zoning Officer, who wrote a letter in August of 2008 to Attorney Grant, indicating that the latest map required subdivision approval and could not apply as a first cut. There was a transaction in 1969 (exhibit in the file) there was no map filed but there was a deed. Mr. Walpuck is claiming ownership of some of this property but the law suit was thrown out by the courts. It was not suited again and was thrown out of the courts twice, the last being just a few weeks ago. Attorney Bloom did not think it was a subdivision, and then looked at it as a re-subdivision. There was really not a change in that map, so felt it was not a re-subdivision. He felt that maybe we really do not need to be here before the Commission but wants to do the right thing. The applicant is proposing no changes whatsoever.

Attorney Bloom felt that Mr. Pjura's letter put some sort of a cloud over the application.

Stephan Grozinger stated that he received notice that Attorney Bloom has been identified as an expert witness for the defense in which Stephan is counsel for the plaintiff. He felt there was no conflict but gave Attorney Bloom an opportunity to object.

Attorney Bloom then went over, in detail, the set of maps involved. A discussion followed regarding the section consisting of .86 acres and the creation of a lot for Mr. Carey, which is currently 4 acres.

PUBLIC HEARING: FAST CONT:

Public Comment:

Kathryn DeSousa, abutting neighbor, shed light on the .86 acre piece in 1959 and that the Carey's lot is 4.59 acres and acted to make an assumption that the Carey's lot is ¼ under 4 acres when this conveyance happened. She then stated that Mr. Fromson owned what is now the Carey lot and he had with created this lot with bits and pieces to get to put together the 4 acres. Mr. Carey purchased it as a 4 acre lot. The plan was to make two 2 acre lots.

Attorney Bloom stated he has come to appeal to the Commission to get the lots blessed. It is the same as Map 2778 with two lots consisting of 2.9acres and 4.77 acres. The applicant is not proposing anything else with these two lots. Mr. Walpuck bought it from Fromson and then added the piece, in 1980, and sold it to Carey consisting of 4.59 acres.

Don Saltzman stated his concern about a time limit on a certificate of zoning compliance. Stephan Grozinger confirmed that it is the Zoning Regulations that if your application is not acted upon in the statutory time limit of 10 days it becomes an automatic approval. Stephan Grozinger questioned if there were any lot line changes after 1959? Attorney Bloom-stated not that he knew of. – did change a line but the outside perimeter remained the same. However, from 1951 to1982 there was one lot line change. He stated again that he is looking for an approval not changes.

It was stated that Mr. Carey has hired a lawyer by the name of Attorney Hammer. Mr. Walpuck has called Mr. Carey and told him that this application will impact this property. Attorney Bloom stated that this is a false statement. He sent a packet of information to Attorney Hammer. Mr. Carey requested that the public hearing be continued, as he is on a vacation and will not return until 1/7/09, stated in a telephone conversation with the Land Use Director. Mr. Carey just wants to know the impact on his property. Attorney Bloom stated that this application has no impact on the Carey property or any one else. He will contact Mr. Carey and would like to come before the Commission to review this application. Attorney Bloom was not in favor of a continuance and does not think he is risking anything here.

Don Saltzman stated that he was in favor of closing the public hearing. This is merely history and the zoning compliance certificate works for this part of the situation.

9:40 p.m. Robert Walpuck came to the hearing.

Katie Gregory asked if we will close the public hearing? Also does the Commission have to hold a public hearing for a zoning compliance certificate?

PUBLIC HEARING: FASH CONT:

Dan Gilbert stated that that all the members of the Commission are responsible for looking at these maps. Katie Gregory felt the Commission needs to establish that the subdivision issue is gone and that was the reason for the public hearing. Attorney Bloom stated he could withdraw.

Stephan Grozinger stated that the Zoning Officer has been instructed to bring applications that are ambiguous to the Planning & Zoning Commission for a decision.

Public Comment:

Robert Walpuck of 27 Indian Valley Road – would like to speak to whether this application is a subdivision on resubdivision and referred to the application –which contains a warranty deed from Muscot to Fromson to convey a parcel of land for .86 acres, on Map 761 – no map existing on file showing this conveyance. Map 2476 of the Carey property is referred in 1959 for one acre adding to 3.2 acres - Map 2993 and then showing 4.1 acres into two lots.

Mr. Walpuck felt this was the same situation he had at Georgetown Road. Attorney Bloom finds no map closing this for Ms. Fast. Mr. Walpuck submitted Map 2592 filed May 8, 1979 showing multiple acres and lot line changes. Map 2778 which shows another lot line adjustment , taking one acre and adding 3.2 to Carey’s property. The lot lines were redone once and again changed the lot lines by moving  $\frac{3}{4}$  acres. Mr. Walpuck stated that he is bringing Attorney Fuller to the next meeting.

Attorney Bloom said no map that showed a conveyance had been filed since 1959. Clearly a deed refers to a survey and a new map for .86 acres. Attorney Bloom did not think that this had any relevance. Regardless on the history, the applicant just wants to clean up the history here. The application does not fit in with the use a subdivision or a re-subdivision, so we are looking towards a zoning certificate so it is in compliance with the Zoning Regulations.

Don Saltzman felt the client has to prove their case.

Stephan Grozinger referred to Section 8-18 Definitions of the Connecticut Statutes. Reading as follows:

As used in this chapter: “commission” means a planning commission; “municipality” includes a city, town or borough or a district establishing a planning commission under section 7-326; “subdivision” means the division of a tract or parcel of land into three or

PUBLIC HEARING: FAST CONT:

more parts or lots made subsequent to the adoption of subdivision regulations by the commission, for the purpose, whether immediate or future, of sale or building development expressly excluding development for municipal, conservation or agricultural purposes, and includes resubdivision; "resubdivision" means a change in a map of an approved or recorded subdivision or resubdivision if such change (a) affects any street layout shown on such map, (b) affects any area reserved thereon for public use or (c) diminishes the size of any lot shown thereon and creates an additional building lot, if any of the lots shown thereon have been conveyed after the approval or recording of such map; "cluster development" means a building pattern concentrating units on a particular portion of a parcel so that at least one-third of the parcel remains as open space to be used exclusively for recreational, conservation and agricultural purposes except that nothing herein shall prevent any municipality from requiring more than one-third open space in any particular cluster development; "town" and "selectmen" include district and officers of such district, respectively."

Dan Gilbert asked that Robert Walpuck show him a deed referencing the map which does not exist (1959) 2476 regarding the conveyance of the .86 acre piece, which was added to the 3.2 acre property, added to the Carey property is Map 2993, taking the 3.2 acres (Fromson) with the .86 acre piece added, that creates two 2 acre lots post zoning. Part of the addition to the adjoining pieces which is then cut in half.

Mr. Walpuck went over the map in detail with Jane Connolly – the two properties, the first lot line adjustment on Map 2592 is filed and shows multiple changes with a big adjustment and then it was adjusted again. The lot has been cut and refigured many times and in many cases it was not legitimate. It was requested to keep the public hearing open as Mr. Walpuck he will bring people in to add more testimony. Attorney Bloom stated that this has nothing to do with my client's lots. It really has nothing to do with what is before you now. Jane Connolly asked if lots 8A and 9A are on the map introduced by Mr. Walpuck. Attorney Bloom stated that he is seeing this map for the first time and stating you are still left with the same two lots.

Mr. Walpuck referred to letter dated November 13, 2002 from Attorney Bloom regarding Lost Trail at 96 Georgetown Road. His opinion in this letter is factually different from what he is saying tonight.

Don Saltzman stated that Robert Walpuck is currently in litigation with the Town of Weston. Suggested reading Section 8-18 definition and that this application is neither a resubdivision or a subdivision and just need a certificate of compliance.

Paul Heifetz felt that the Commission should continue the public hearing. Jane Connolly would like to keep the public hearing open.

PUBLIC HEARING: FAST CONT:

Dan Gilbert felt that the applicant does not have a detailed stamped map for Mr. Pjura. Don Saltzman felt that Attorney Bloom should include a map with all the notes that he has noted and to please have the Zoning Officer issue him a certificate of zoning compliance, if he complies.

Attorney Bloom asked that if he withdrew the whole application, whether he could handle it another way?

Dan Gilbert feels we do not have any other alternative as the application has become more complex and to give back the application to Mr. Pjura would be a mistake.

Paul Heifetz felt the only thing we can consider is the matter that is before us. If the maps brought in do not apply, we should not consider this request.

Katie Gregory agreed with Paul Heifetz and what have you seen presented before us, is it a resubdivision? Dan Gilbert felt that Mr. Walpuck will bring in people with more information. Jane Connolly felt the 1979 map is significantly different from the 1982 map. Ridge Young felt the public hearing should be continued.

Stephan Grozinger asked if anyone wished to move to close the public hearing. Hearing no response, the public hearing will be continued to the next meeting on January 26.

DISCUSSION/DECISION: 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)

Stephan Grozinger submitted a draft of a proposed denial for the automobile repair facility at 107 Georgetown Road for the Commission members. A discussion followed to include the reasons for denial from the first application of denial and for the members to read and discuss at the next meeting.

Dan Gilbert submitted a document entitled "Midtown Argumentation", dated 1/5/09 referencing the Law, the Facts and a Conclusion. The members will read and discuss at the next meeting.

Stephan Grozinger will do a redraft to include the prior list of reasons for a denial into this present draft.

DISCUSSION/DECISION: PETITION FOR ZONING AMENDMENTS, SECTION 321.2 ACCESSORY BUILDING (ATTORNEY KORDAS)

Robert Siska was present.

Don Saltzman felt there was no reason to change the present Zoning Regulations. A discussion followed.

Stephan Grozinger accepted a motion that the Commission deny this application for a Petition for Zoning Amendments, Section 321.2 Accessory Building because it is inconsistent with the current Regulations (section 321.1(a) and the 2000 Town Plan of Conservation and Development which, on page 11, states “single family, detached houses should continue to be the only type of permitted residences”.

Seconded by Paul Heifetz . Vote in Favor (4-1) Stephan Grozinger opposed. Jane Connolly and Katie Gregory had left the meeting.

OTHER BUSINESS:

Paul Heifetz showed the Commission members a recent ad in the Weston Forum for Dr. Lieberman’s medical practice and was questioning the validity of the home occupation. A discussion followed and research on past history will be done.

Meeting adjourned.

Respectfully submitted.

Joan Lewis, Administrative Assistant

Approval: Unanimous approval 2/23/09 Jane Connolly and Katie Gregory absent.