Present: Stephan Grozinger, Chairman; Jane Connolly, Vice Chairman; Don Saltzman, Ridge Young, Joe Limone, David Allen – Katie Gregory absent

Also present: Tracy Kulikowski, Land Use Director

Meeting on tapes 1-5, dated 3/1/10

6 p.m. – Town Plan – discussion of the draft.
7:15 p.m.

APPROVAL OF MINUTES:
Ridge Young moved that the Commission approve the minutes dated February 15th, 2010, with correction. Seconded by Joe Limone. Vote in favor (5-0) Jane Connolly absent for meeting of February 15th, 2010. Katie Gregory absent this meeting.

CHAIRMAN'S REPORT
Stephan Grozinger reminded the members of the COG joint meeting with the Board of Selectmen on Tuesday, March 2, 2010 in the Town Hall Meeting Room.

Mr. Grozinger then referred to his email on enforcement regarding accessory apartment owners required to live in the house when renting an apartment in that house. Zoning Regulations subsection 321.2 (d)(6).

Mr. Grozinger also referred to a memo, dated March 1, from Pat Sullivan, Town Attorney, regarding "ownership". At this point, Mr. Grozinger felt that the Commission should suspend the regulation "Accessory Apartments" for a moratorium of one year in order to define "ownership". A discussion followed to include present violations and to research and find case law from the State of Connecticut. The members were not ready to vote on this tonight and felt there should be public input. The members requested to continue the discussion at the next meeting on March 15.

DR. LIEBERMAN 4 GOODHILL ROAD – MEDICAL OFFICE

The Land Use Director read the following memo, dated March 1, 2010, from the Code Enforcement Officer regarding 4 Goodhill Road as follows:
"At 9:00 a.m. on the morning of 3/1/10, I inspected the office of Dr. Gerald Lieberman. There were no files in this office. The examination rooms had medical supplies and examination tables in place. The computers are with power. The voice mail message informs clients that the "office is closed", and to "please pick up your files". There was no presence of any type of staff on sight. Previous inspection conducted on February 22, 2010. The difference being the file shelves behind the reception desk were full of files. Please see attached photos, dated February 22, 2010 & March 1, 2010. I did not inspect The upstairs residence".

PUBLIC HEARING CONT: SPECIAL PERMIT MUSEUM. SECTION 341.2 WESTON ZONING REGULATIONS, LOT 6 OF WESTON WOODS SUBDIVISION, 389 NEWTOWN TURNPIKE, MORTON SCHINDEL, TRUSTEE (GUIDERA)

Attorney George Guidera representing Morton Schindel also present. Attorney Guidera stated that he, the Land Use Director and the Chairman of Planning & Zoning worked together to draft the conditions for the special permit museum. Stephan Grozinger then requested that the members go thru the "draft of conditions" line by line. A discussion followed to include Attorney Guidera and Morton Schindel to clarify certain points in the conditions.

Public Comment: None

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

Don Saltzman moved that the Commission adopt the "draft of conditions" as presented on the Special Permit Museum, Section 341.2, Weston Zoning Regulations, Lot 6 of the Weston Woods Subdivision, 389 Newtown Turnpike, as currently discussed. Seconded by Jane Connolly. Vote in favor (6-0) Katie Gregory absent.

PUBLIC HEARING: ACTIVITY IN A FLOOD ZONE – SHED, 82 NEWTOWN TURNPIKE, KOPULOS-VALITUTTO (WARDELL EST.) (CHAPPA-PAOLINI P. E.)

The engineers for the applicant called and stated that their application was still missing the architectural drawings for the shed. The public hearing was postponed until the next meeting on March 15.

DISCUSSION/DECISION: SUBDIVISION TIME EXTENSION-BRENDA AUSTIN SUBDIVISION, MAP 3652a, HIDDEN SPRING DRIVE, HIDDEN SPRING ASSOCIATES, LLC (ANTOLINO)

No one was present for this agenda item; therefore it has been postponed until the next meeting on March 15. However, it was stated by Stephan Grozinger that a site walk was conducted on February 25, 2010 with Peter Romano of Land Tech Consultants.

DISCUSSION/DECISION: SUBDIVISION TIME EXTENSION – BARCELLO SUBDIVISION, AUTUMN RIDGE ASSOCIATES, LLC, 9-11 HILL CREST LANE (PATRIOT NATIONAL BANK)

DISCUSSION/DECISION: REQUEST FOR RELEASE OF SUBDIVISION BOND MONEY- BARCELLO/AUTUMN RIDGE ASSOCIATES LLC SUBDIVISION, HILL CREST LANE (T. BARCELLO)

The Chairman stated that the Commission would address these two agenda items together.

Present: Tom Barcello, Scott Harrington, Attorney with Diserio Martin O'Connor & Castigioni LLP and Mr. Daine of Patriot National Bank.

Stephan Grozinger referred to the Town Attorney Pat Sullivan's memo, dated March 1, 2010, as follows:

"Commissioners: I have been asked to advise you with regard to the applications that are before you for the "Barcello" subdivision. The two requests are by Mr. Barcello for return of bond money and by Patriot Bank/ PinPat ('Bank") for an extension of the subdivision approval which is set to expire later this year.

Let me first set out the general objectives in a situation of this type.

When a subdivision is approved it must comply with certain conditions. One of those conditions is the posting of a bond to insure that the work of the subdivision will be completed. This ""work" is the infrastructure work that benefits all the lots in the subdivision. Good examples are roadways, drainage systems and fire ponds. The bond is generally set at an amount that will allow the completion of the improvements if the subdivider fails to do so. Bond money can be returned to the subdivider in two situations (1) the infrastructure improvements are complete; and (2) no lots in the subdivision have been conveyed, the subdivision expires and is void.

I asked the attorneys for the Bank and Mr. Barcello to submit their positions with regard to the bond and extension issues. I then gave them the opportunity to respond to the other's position. I expect those documents, two from each side, have been shared with you by now. I also asked them to get together and to find a way to compromise to get the subdivision improvements made without further intervention by the Commission.

The Commission's interest is to see that the infrastructure that was approved is built. Ideally that would be done by the parties in interest prior to the subdivision expiration date. If the subdivision expires and lots have been conveyed the bond money is to be

BARCELLO CONT:

used for subdivision improvements to the extent it covers those not yet complete. Connecticut law provides that subdivisions expire on certain dates and provide for the extension of those dates under certain circumstances.

I have read and analyzed all of the submissions. There is not a lot of law to guide us in these circumstances. It is clear that lots in the subdivision have been conveyed. There are conveyances of three lots to the Barcellos from Horelick and Sedgewick, a conveyance to Mr. and Mrs. Suss from the Barcellos and conveyances to the Bank. Even if an argument can be made that the conveyances to the Barcellos and to the Bank are not true"Conveyances", an argument which I find without merit, the conveyance to Mr. and Mrs. Suss is clearly a conveyance to a third party. Once that conveyance was made the bond money was at risk if the subdivision expired and the improvements had not been completed.

Because of the conveyance and the lack of improvements, the bond posted by Barcello should not be released until the improvements are made. That money is insurance that those improvements will be made.

The Barcellos have not asked for an extension of the subdivision, the Bank has. If an extension is to be granted it would have to be on the condition that the Bank post a bond sufficient to cover the amount that the Town Engineer considers sufficient to complete the subdivision improvements. It would also have to be with the understanding that the Bank is taking over responsibility for the subdivision. The Bank bought two lots as a result of a foreclosure of the Barcellos. An approval of an extension, should, in part, depend on the Bank promise to complete the subdivision improvements and posting a bond to assure that the improvements are completed. The Commission must insure that there will be no claim by the Bank that they are not responsible for the subdivision improvements if an extension is granted.

I know of no authority that would permit the municipality to "give" the Barcello bond to the successor in interest to aid in the completion of the subdivision improvements nor do I know of any authority which would allow the release of the bond prior to the subdivision improvements being completed.

I would be happy to discuss further".

A discussion followed to include a question by Don Saltzman "is a foreclosure a "conveyance"? Joe Limone stated that yes it is a conveyance. Also that the bond is for the entire subdivision (5 lots) and until those improvements are made, the bond must remain with the Town and cannot see releasing that bond until the entire subdivision is satisfied.

DRAFT
BARCELLO CONT:

Attorney Scott Harrington stated that he does understand why there is no direct law on this and has discussed it with Town Attorney Pat Sullivan. Then it was noted about the rights of the subdividers to request an extension. Maybe a third party would come and finish the improvements. A discussion followed regarding who is responsible for finishing the improvements. It was also noted that the bond amount of approximately $46,000 has now increased to approximately $72,000. since the Town Engineer and Fire Marshal have visited the site, dealing with the completion of the fire pond. A discussion followed regarding Mr. Barcello requesting the extension and also Mr. Barcello wants the bank to put up the bond money. The bond expires October 11, 2010.

Public Comment: Mr. Suss stated that he purchased a home, in this subdivision, from Mr. Barcello and there are some items that have not been finished.

Mr. Barcello, Attorney Scott Harrington and Mr. Daine of Patriot Bank left the table to discuss this situation, in another room and to come back to the table at the end of the meeting.

DISCUSSION CONTINUED: ENFORCEMENT, ORDER OF REMOVAL DATED 9/11/09, JACOBY, 11 BLUEBERRY HILL, IN-GROUND POOL IN THE SIDE YARD SETBACK (GUIDERA)

Stephan Grozinger, Chairman, recused himself as he is a neighbor to 11 Blueberry Hill. Jane Connolly, Vice Chairman, presided for this application.

Present: Attorney Guidera representing Mr. and Mrs. Jacoby also present.

Attorney Guidera referred to a court case referencing that it makes no difference between a building to a structure/habitation. Also continued on to discuss what did the Legislature mean when it used the word "building". A discussion followed to include that Section 8-13a did have a 5 year time period in 1967 and now has 3 year time period to make it legal to have a non-conforming structure on a building lot . Any structure of 5 years is valid. A building is always a structure but a structure is not always a building.

The applicant did go to Zoning Board of Appeals for a variance, twice. Attorney Guidera explained the lot in detail. The pool has been there for 6 years and none of the neighbors have complained and contacted Robert Turner and Ed Hahne, former Enforcement Officer for help. Jane Connolly referred to the Appellate Court cases and then referred to the Zoning Regulations Section 610 – definitions of "building" and "structure".

DRAFT
ENFORCEMENT – JACOBY 11 BLUEBERRY HILL POOL

Attorney Guidera felt the Zoning Regulations do not apply. Jane Connolly felt that they did and it was not ambiguous. She also thinks this application is something for an Appellate Court and that Planning & Zoning Commission cannot do anything. She felt the best thing to do is to defer enforcement and get something from the Court. In Section 8-2A Attorney Guidera felt it is an ambiguity.

Mrs. Jacoby went over, in detail, the history of the pool and who constructed it (Lang Pool Co.) in 2004. In the Fall of 2006 she was requested by Robert Turner, Zoning Officer, to get a new survey because he felt they were in violation with several out buildings and the pool. Dennis Delius, Surveyor, did a survey and found that the pool, by measuring from Lyons Plain Road, was 28" over the line. The pool would have to be moved to get it behind the setback line. Mrs, Jacoby stated that she was present when Lang Pool measured from the stakes on her property and thought she was in the setback. The other items in violation have been corrected. Robert Turner, Zoning Officer, suggested that she go to Zoning Board of Appeals. None of her neighbors complained. She went to one neighbor, Mr. Vogel, to see if he would agree to a land swap for 28" and was not in favor. Mrs. Jacoby has been to Zoning Board of Appeals twice and twice she has been denied. She is beside herself and felt she should not be punished for this error.

Don Saltzman felt the applicant could cut off 28 inches at the end of the pool and it is tough for the Commission to ignore a regulation. Jane Connolly stated that the Commission has to abide by the regulations. The Commission could grant a moratorium on enforcement and give the applicant time to find someone who can repair the pool. Joe Limone felt it was pretty clear and there was not an ambiguity and agreed with Mr. Saltzman's solution.

Don Saltzman felt that the applicant could get a good contractor to repair the pool.

Jane Connolly requested the applicant to come back with a plan back by the May 3 meeting.

Don Saltzman moved that the Commission approve suspending any enforcement until May 3rd when the applicant will come back with a game plan for the pool. Seconded by Ridge Young. Vote in favor (6-0) Katie Gregory absent.

BARCELLO CONTINUED:
Tom Barcello, Attorney Scott Harrington and Mr. Daine of Patriot Bank returned to the table and requested that the issue be held over for about a month to explore whether we can jointly do something by October, 2010, when the bond is due to expire. These items will be on the agenda for the April 15th, 2010 meeting.

OTHER BUSINESS:

Stephan Grozinger reminded the members of the COG meeting with the Board of Selectmen on March 2, 7:30 p.m. at Town Hall.

Meeting Adjourned.

Respectfully submitted.

Joan Lewis, Administrative Assistant

Approval: Approved on March 15, 2010