

MINUTES OF A REGULAR MEETING OF THE HARBOR AND COASTAL ZONE MANAGEMENT COMMISSION OF THE VILLAGE OF MAMARONECK HELD JANUARY 19, 2011 AT 7:30 P.M. IN THE COURTROOM AT VILLAGE HALL, MAMARONECK, NEW YORK

PRESENT: Mr. Carl Birman, Chairman
Ms. Laura Schneider
Mr. Jim Bilotta
Mr. Bert Siegel
Mr. Nick Allison
Mr. Keith Furey, Consulting Engineer
Mr. Sven Hoeger, Environmental Consultant
Ms. Alice Pernick
Mr. Steve Silverberg, Esq.

RECUSED: Mr. Peter Jackson

NEW BUSINESS:

1. Selection of Chairperson and Corresponding Secretary

OLD BUSINESS

1. Shore Acres Point Corporation 504 The Parkway – Perimeter Permit and Seawall Maintenance Daniel S. Natchez and Associates. **Public Hearing asked to be adjourned to February meeting.**
4. Al Nolletti – Nolles Ridge Subdivision – 800 Fenimore Road – Proposed Seven Lot Subdivision which includes one conservation lot and six buildable lots; an access road, utilities, stormwater pond and retaining walls – Hahn Engineering. **Coastal Consistency Certification**

Chairman Birman made an application to adjourn to Executive Session at 7:36 p.m. to discuss pending litigation. A motion was made by Mr. Siegel, seconded by Mr. Allison and passed unanimously.

The Commission returned at 7:45 p.m. from Executive Session.

Chairman Birman made a motion to amend the agenda to put the item of New Business ahead of the item of Old Business, seconded by Mr. Allison and passed unanimously.

Mr. Siegel made a motion to nominate Chairman Birman as the new Chairman of the Commission. Chairman Birman declined the offer and stated he did not want to commit to a full year of the position. However, Chairman Birman agreed to stay on as acting chairman on a month-to-month basis. Additionally, Chairman Birman requested a secretary be appointed to work with Sally Roberts to help streamline the process.

Mr. Siegel requested a job description be developed by Chairman Birman and that it be discussed at the next meeting.

Chairman Birman agreed to act as Chairman this evening and would be willing to wait until February to discuss this issue further.

Mr. Allison agreed to help out but did not think it was conceivable to act as Chairman since he was a new member of the Commission.

Chairman Birman suggested that Mr. Allison might like to act as secretary/chairman-in-training.

Mr. Siegel made a motion to appoint Mr. Birman as the next chairman on a temporary basis. Seconded by Mr. Allison and passed, with Mr. Birman abstaining.

OLD BUSINESS

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Chairman Birman explained that the Nolles Ridge Subdivision application has been put off since November and since there are two new Board members present this evening, Mr. Jim Hahn, Hahn Engineering, gave an overview of the project for the benefit of Ms. Pernick and Mr. Allison.

Mr. Hahn stated that one of the main concerns of the Department of State was the alternatives that were considered with regard to the development of the property. Mr. Hahn explained the various stages which were proposed since July, 1986. Originally, 24 units were proposed, then there was a cluster proposed of 17 units in 2006, and then in February 2007 a single family subdivision of 17 units was proposed, in March 2007 13 individual lots were proposed, and in October 2007 an 8 unit subdivision was proposed, currently, 6 units are being proposed.

Mr. Hahn further explained the problems with tying the project in to Highview Street due to the steepness of the grade of the property between Fenimore and Highview. Therefore, access will need to be from Fenimore Road.

Chairman Birman questioned the possibility of a single road versus multiple roads. Mr. Hahn explained that that would require two cul-de-sacs and it would be prohibitively expensive and the fill required to build up the road may disturb the wetlands.

Mr. Hahn presented the FEMA maps and stated that the property was outside of the 100 year flood plain but that it was designed for such and that any flooding would not affect this property. Mr. Furey explained the process of mapping the flood plain.

Mr. Hahn presented a tributary area map and explained the flow process.

Chairman Birman suggested lowering the number of houses to be built to four or five. Mr. Hahn stated he felt the proposal at hand is a practical way to develop the property. Mr. Hahn also stated that he is very comfortable with the drainage on the site.

Ms. Schneider questioned the options available with regard to the impact of the wetlands. Ms. Schneider suggested access via Highview Street in order to avoid disturbing the wetlands. Mr. Hahn stated that he understands the wetlands in question are very low grade and the wetlands which will be reestablished will be of a higher quality and that he will actually be improving the wetlands. Ms. Schneider stated that a natural wetland is very different from a man-made wetland and that man-made wetlands are rarely successful in replacing natural wetlands. Mr. Hahn questioned the viability of the current wetlands. Ms. Schneider disagreed, stating that she is a natural scientist and that the wetlands are, in fact, wetlands.

Mr. Hahn discussed the water quality and water quantity control basins on the proposed property. Mr. Siegel asked for an explanation of water quality vs. water quantity. Mr. Hahn explained that water quality is an attempt to clean up the water when it is settled in the basin and water quantity is when a large amount of water rushes into the basin and a lesser amount runs out.

Mr. Siegel requested a detailed explanation from Mr. Hahn for his proposed improvements to the wetlands. Mr. Hahn reviewed Mr. Hoeger's memorandum of suggestions and stated that he would fully comply with all of Mr. Hoeger's recommendations.

Mr. Hahn mentioned Mr. Steve Marino, wetlands consultant's, memorandum of January 11, 2011, to Ms. Terra Stern and stated that there are 44 items indicated; 30 of the items are not applicable to this project; 9 are applicable to the storm water pollution plan which Mr. Hahn has spent four years developing and 4 statements which Mr. Marino indicates are totally consistent with this policy.

Mr. Bilotta requested the water flow be shown from the adjacent properties and how it was accounted for or how it bypasses the property and the retaining systems. Mr. Hahn explained the process as indicated on the tributary map. Mr. Bilotta questioned the height of the adjacent properties and Mr. Hahn stated that the adjacent properties are lower than the proposed property. Mr. Hahn stated that there is a pipe into which the water will flow and leave the property. The drainage system will reduce the amount of water going onto the neighboring properties, according to Mr. Hahn. Mr. Bilotta questioned whether the basins would overflow in a 100 year storm and Mr. Hahn stated there will be flow to the Sound and there is no chance that the water will back up since it cannot flow uphill. Mr. Bilotta questioned what would happen if the River backed up. Mr. Hahn stated that based on the FEMA maps, the water would flow to I-95 up to a 100 year storm.

Mr. Allison questioned whether the new design would improve today's design and Mr. Hahn confirmed that it would since the flow will be slowed down.

Chairman Birman invited the neighbors to comment on the application.

Ms. Sharon Kapus, 1 Country Hill Road, (corner of Fenimore) presented herself to the Commission. Regarding the flood plain, there is controversy as to whether or not that was taken off of the flood map accidentally and she stated she has verification that it was from a former mayor who wrote a letter stating that there are many mistakes on the most recent flood map revision.

Ms. Kapus presented a copy of the original letter which was submitted with a full environmental impact statement which was done back in the 1980's and the flood plain was actually put on the flood map with an explanation that it was an oversight that it was not put on in the first place. The Village is aware of this controversy. Mr. Furey reiterated that the property is not in the flood plain. Ms. Kapus stated that she forwarded via e-mail a copy of the map from 2007 which shows the panel number of 30, which is higher than the 100 year storm panel number of 26 which is how the property is now designed. Since the Commission is not in receipt of this information, Mr. Kapus stated she will forward the map tomorrow.

Chairman Birman referred to Ms. Kapus' December 1, 2010 memo which refers to concerns in the Washingtonville area. Ms. Kapus explained that she was referring to the other side of I-95 and may have described it wrong.

Ms. Kapus stated that she in possession of a study from the 1980's done by Westchester County soil and water department of a full environmental impact statement for a former project and they then stated the retention basin is collecting water from 23 acres. She stated, however, that Mr. Hahn showed a diagram which did not indicate the area draining into the wetlands is 23 acres. Also, the pocket pond on the property should not collect more than 5 acres, according to the County, as per Ms. Kapus. Chairman Birman questioned the validity of the reports in question since they are almost 30 years old.

Ms. Kapus presented photos of the "vast amount of water entering into the property" to the Commission.

The pond buffers and setback requirements are 25 feet according to the Best Management plan, according to Ms. Kapus. Ms. Kapus stated that this buffer does not exist since the pond is up against her property.

Ms. Kapus stated that an aquatic bench is required. The width is too narrow on the plan according to Ms. Kapus.

Ms. Kapus stated that this is an extremely sensitive project and she does not believe the rules should be bent, since the property floods and there are safety issues involved.

Ms. Kapus expressed concern for the trees on her property, which may be destroyed during construction.

Ms. Kapus stated that the side slopes on the pond are required to be a 3-to-1 maximum; however, the Stormwater Management Plan update of August 2010 states that the side slopes must be less than 3-to-1.

Regarding maintenance access for the pond, there needs to be a 12-foot wide road which does not exist on the plans, according to Ms. Kapus.

Ms. Kapus stated that Winged Foot Golf Course was a hot spot and the pocket pond could not accept water from a hot spot and questioned whether the golf course would be conducting a stormwater pollution prevention plan and an integrated pest management plan, which are likely required under Chapter 4, Page 19 of the Stormwater Management Manual. Mr. Bilotta questioned the validity of whether or not Winged Foot is actually a hot spot.

Ms. Kapus defended her previous correspondences to the Commission and the Department of State.

Ms. Rose Toth, 3 Country Road, presented the Commission with a packet of photographs and explained them in detail.

Mr. Stewart Tiekert, 130 Beach Ave., who works in the landscaping field, and who is not a neighbor did have concerns regarding the plan, in particular, the negative impact of the proposed road and feels that the road is too close to the property line to build it to plan. Additionally, Mr. Tiekert expressed his concern for the sediment run off from the soil into the stream. With regard to the pond storage, Mr. Tiekert does not believe the water runs off to the left. He has seen it run onto the site. With regard to Mr. Furey's December 15th memo, which calculates capacity of the pond to be 27.3 Mr. Tiekert stated that the water is dumping out at 26.5. Mr. Tiekert expressed his concern regarding the buffer zone since there should not be any wooded plants within 15 feet of the toe of the buffer yet wooded plants exist within this area. Regarding the tide flex valve, a good fix will depend on how far the water will rise in the retention pond. The tolerance seems quite tight. Finally, Mr. Tiekert stated that he did not notice any of Mr. Hoeger's landscaping information included on the plans.

In closing, Mr. Tiekert stated he did not see any indication that the amount of off site water was being calculated to capacity with regard to what is coming off of Highview Street.

Ms. Doreen Roney, 143 Highview Street, presented herself to the Commission and expressed her concern for the community with regard to this project. Ms. Roney presented a color-coded map of the topography off of Highview Street and questioned the water path off of the property. Ms. Roney stated that she believes there are flooding and erosion problems with the project. She stated she believes the plan needs more work.

Mr. Bilotta outlined the following points which were brought up by the public:

- 1) The 30 ft. elevation issue
- 2) The 25 ft. buffer
- 3) The disappearance of the berm near Ms. Kapus' property
- 4) The aquatic bench does not meet the requirements
- 5) The removal of the trees
- 6) The 3-to-1 site slopes on the pond
- 7) The 12 ft. wide maintenance road to the pond
- 8) The hot spot issue from Winged Foot
- 9) The grade lines at the 300 ft. point; 13 ft. above grade; the 1-12 drop and the 1-2 on the soil
- 10) The pond storage
- 11) The details with the woody vegetation within 15 ft.

The Commission broke for 5 minutes.

Mr. Jim Hahn took the floor and defended the FEMA map as being final and to his knowledge, no mistakes have been made. Mr. Hahn mentioned the 23 acres and explained that they are the 23 acres tributary to the stream going through the property and have nothing to do with the applicant's property. The applicant's property's drainage is collected and brought into the pocket ponds and water quantity basins irrespective of the stream. After the water goes through water quantity and water quality basins, it then flows into the stream. Mr. Furey gave a more detailed explanation of the process and stated the major concern is whether or not the downstream flows are increased. Mr. Furey stated that the basins will reduce the downstream flow by 5 cubic feet per second versus what is currently flowing downstream on the site. There will be 35,000 cubic feet of storage versus the current 2,000 cubic feet of storage under this design, according to Mr. Furey.

Mr. Hahn stated that Mr. Nolletti will supply a maintenance bond and this will be finalized with the Village. A small pick up truck can be utilized for maintaining the pond every five years. The current road is perfectly suitable for these purposes, according to Mr. Hahn. Mr. Hahn stated that this will be placed on the drawings and the Homeowners Association will be responsible for the funding of the maintenance.

With regard to the aquatic bench, the purpose is to grow plants and eliminate some of the pollutants. These requirements are being met. Two fences are being placed on the property for safety reasons.

With regard to the 25 ft. buffer, Mr. Hahn explained that the buffer runs from the waters edge to the property line and the 25 ft. requirement is being met.

The consultant for the Village, along with the landscape architect, will visit the site to determine the trees which will be removed.

Regarding the hot spots, Mr. Hahn stated that he has been hired by Winged Foot to solve some of their drainage problems. A hot spot is generally considered to be like a highway dept. where oil is stored. The Winged Foot ponds are used to irrigate the golf course and special precautions are taken to ensure that those ponds are very clean. Winged Foot is not a hot spot, according to Mr. Hahn. Ms. Schneider stated that most golf courses use a fair amount of pesticides and run off from the site is of concern. Mr. Hahn stated that the run off will not go into the basins on the site.

The 1-on-1 soil was discussed. The maximum rip rap slop on the plan is 1-on-1 and the property will be properly planted, according to Mr. Hahn. Mr. Hoeger stated that sod or seeding will suffice to keep the soil in place.

Regarding the pond storage, Mr. Furey explained the specifics with regard to the calculations.

Mr. Hahn indicated that the sediment off of the slope is shown on the grading plan. The property line will be staked during construction and as-built forms will be submitted to the Village to ensure he is not on Village property. Mr. Hahn defended the accuracy of his plans and stated he would not exceed a 1-on-1 slope and would not go off of the property. Mr. Hahn agreed to work on the drawings with regard to this issue.

Regarding water run off during construction, there is an erosion control drawing which has been developed for this issue.

Regarding the water from 5 Highview Street, Mr. Hahn explained that, according to the topo map, this is not what is happening, however, he would review further. Mr. Bilotta stated that he has personally seen the water flowing from 5 Highview Street. Mr. Hahn explained that any water entering from the Highview area would end up in the collection basin and empty into the pond. Mr. Furey explained the water flow process in detail.

Regarding the water quality and water quantity basins, the applicant is currently applying to the DEC for approval of modifications and does not foresee any problems. Any necessary modifications will be made.

Chairman Birman questioned the meaning of wetlands preservation and stated that this particular wetlands site is not very attractive. Mr. Hahn stated that the site, when developed, will be very attractive.

Regarding the 25 ft. buffer, Mr. Hahn stated that he will go to the DEC for approval. Mr. Bilotta stated that there is an issue with the 25 ft. buffer to the property line and there is an issue with berm disappearing and there is an issue with woody plantings. Mr. Hahn will check the design.

Ms. Schneider discussed the fact that there are wetlands on the property which will be impacted and the primary impact is that the natural freshwater wetlands are not being protected. Mr. Hahn stated that the wetlands will be improved greatly after construction. Mr. Hoeger urged the Commission to follow the documents in front of them with regard to wetlands. The benefit of preserving a wetlands versus the benefit to the community of the development of the wetlands will need to be decided by the Commission. Ms. Schneider stated that more focus should be placed on the value of the habitat as a wetlands. Chairman Birman stated that this issue of value was addressed by Mr. Hoeger in his previous memo.

Mr. Allison made a motion to close the public hearing, seconded by Mr. Siegel and passed, with Mr. Bilotta opposed.

A straw pole was taken regarding the Commission's position on the application as follows:

Chairman Birman stated that he agreed with Ms. Schneider's concern regarding the wetlands and the language of Policy 44 and stated that if this application requires the elimination of a natural wetlands by the creation of something other than that, the language of Subsection 3 must be looked at which requires: No feasible alternatives are found; the action will minimize all adverse affects on the wetlands; that it will advance one or more other coastal policies and that it will result in an overriding public benefit. Chairman Birman stated that he will not vote for a resolution that does not clearly articulate why it meets all of the foregoing criteria. The flooding issue seems to be well understood but the wetlands should be looked at more closely, according to Chairman Birman.

Mr. Siegel stated with regard to the wetlands, he is satisfied that this development effectively replaces the current wetlands with a far more effective solution. The wetlands as currently exists has many problems and the engineering which will take place will improve the wetlands and improve the neighborhood. The developers should also be considered. Provided the development does not do damage to the neighborhood, the developers should be allowed to achieve a return on their investment.

Ms. Schneider stated that although this project is being looked at piece by piece, the total impact on the community and the ecosystem needs to be considered. The wetlands is a very complicated issue and when the land is taken out of its natural setting, the ability of that land to function naturally is impacted. The habitat will be altered forever, which is in violation of Policy 44, therefore, she will have to vote against the project.

Mr. Allison stated that the flow of the water may be better controlled with this project, however, the wetlands issue and Policy 44 were considered and he would have to vote no based on this criteria.

Mr. Bilotta stated that while Ms. Schneider's argument is well taken, unfortunately, no development would ever take place with that argument. Regardless of the size of the development, Mr. Bilotta agreed that there would be loss to the wetlands but his concern regards the potential effect this project would have on the neighbors. Therefore, the only way he would vote yes on this project with the following caveats:

- The effect on the neighbors
- The 25 foot buffer issue
- Controlling the water from Highview Street
- The trees that will be removed being kept to a minimum
- The road design issue
- Water run-off during construction

Ms. Pernick stated that she believes the flooding issues will be improved, however, the wetlands need to be considered. She does not believe it is an undevelopable site, however, she would like to see the ponds moved away from the wetlands and placed elsewhere on the site. As is, she is not comfortable with the plan and would have to vote no.

The recap is as follows:

Chairman Birman –	Aye, with provisions
Mr. Siegel -	Aye
Mr. Bilotta -	Aye, with restrictions
Ms. Schneider -	Nay
Mr. Allison -	Nay
Ms. Pernick -	Nay

Mr. Silverberg explained that the split vote is actually a non-action, therefore, the default provision would kick in and the application would be approved.

After listening to the deliberations of the Commission, Chairman Birman stated the he believes the wetlands issue is in opposition to Policy 44 and, therefore, he would have to change his vote.

On motion of Chairman Birman, seconded by Ms. Schneider:

WHEREAS, the Mamaroneck Harbor and Coastal Zone Management Commission, having completed its consistency review of the Nolles Ridge application and having considered all of the documents on the list prepared by the Deputy Clerk, dated January 19, 2011, and

WHEREAS, the Harbor and Coastal Zone Management Commission has also considered submissions made to the this evening, including photographs submitted by Ms. Toth, and comments by the public as well as having heard from the applicant in response to some criticisms and

WHEREAS, the Harbor and Coastal Zone Management Commission, after carefully considering the advise of the consulting engineer and the environmental consultant, finds that

NOW THEREFORE BE IT RESOLVED that the application, in its current form, is inconsistent with Policy #44 of the Local Waterfront Revitalization Program and that it will result in the destruction of the natural wetland. However, the applicant is welcome to revise the proposal and move the retention pond out of the existing wetland area.

Ayes: Birman, Schneider, Allison, Pernick
Nays: Siegel
Abstain: Bilotta
Recused: Jackson

Minutes

The minutes from November 17 and December 2 were reviewed by Chairman Birman, however, a quorum could not be reached on approval since a majority of the Commission members had not had a chance to review them. Therefore, the minutes were postponed until February.

The meeting was adjourned by Chairman Birman at 12:30 p.m.

Respectfully submitted,

Lorraine McSpedon