

Special Meeting

The 1452nd meeting of the Town of Stonington's Planning and Zoning Commission was held on Wednesday, September 14, 2011, at Mystic Middle School, 204 Mistuxet Ave., Mystic, Connecticut. The meeting was called to order at 7:45 P.M by Acting Chairman Ben Tamsky. Present were commissioners Bob Mercer and Rob Marseglia; Alternates Gardner Young and Curt Lynch; and Acting Director of Planning / Town Planner Keith Brynes. Frances Hoffman and John Prue were absent.

Seated for the meeting were Curt Lynch, Rob Marseglia, Ben Tamsky, and Gardner Young.

Public Hearing:

PZ1112SD & SUP Richard C. Panciera Remainder Trust II – Eight-lot Re-subdivision and Special Use Permit applications for the development of 68 attached-housing units and 7 single-family residences. Property located at Mary Hall & Greenhaven Roads, Pawcatuck, CT. Assessor's Map 7, Block 1, Lot 44. Zones RA-20, RM-20, & RR-80. *Continued from 8/2/11, 9/6/11, 9/12/11.*

Applicant Rebuttal:

Attorney Thomas Liguori provided the Commission with Connecticut case law regarding excavation, filling, and earth processing. He addressed the issue of shifting the roadway in order to accommodate the Conservations Commission's request to avoid tree removals, noting that, although they provided an alternative that includes shifting the road, it is not the developer's preference. Atty. Liguori gave an overview of the issues the applicants wish to respond to and discussed the interpretation of ZR 6.6.7. He argued that Connecticut law was clear that excavation and filling as a temporary use incidental to the primary development did not require a special use permit. Atty. Liguori responded to Mr. Marseglia's request for clarity on the applicability of ZR 6.6.7.6 – Excavation and Filling for Foundations and Approved Subdivision Roads. The Commission requested an additional opinion by the Town's attorney.

Project Manager Sergio Cherenzia, P.E., discussed the revised utility plan that included incorporating a pump station on site for the sanitary sewer, reducing the amount of ledge needed to be removed. He explained the changes proposed to reroute the storm water drainage system to alleviate the runoff concerns of Mr. & Mrs. Santos, residents on Mary Hall Road near the intersection of the proposed drive. He noted that they will extend the municipal water line to the Welsh's and Santos' properties and pay for the hookup. He then addressed Steven Trinkhaus's comments about erosion and sedimentation control measures and construction of the detention systems. Mr. Cherenzia stated that they have worked with all appropriate staff to ensure the application meets the requirements of the regulations. In response to Mr. Marseglia's question regarding Mr. Trinkhaus's mention of the creation of a damn with a berm, Mr. Cherenzia provided a detailed explanation of the design, referencing the fact that it is proposed to be a balanced site and bonding is required for the work. Mr. Brynes stated that a third-party engineering firm would be hired to inspect for compliance during construction.

Certified Soil Scientist Don Fortunato gave an overview of the Wetlands Commission review of the application, noting that after plant growth is established on the site, inspections are required every year for three years at the end of the growing season.

Paul Aldinger, a geotechnologist and registered professional engineer, presented his study of the impact of blasting on the wetlands and residential wells, stating that they are trying to adopt certain procedures that will control the blasting effects. Mr. Lynch asked if there were additional risks from blasting and Mr. Aldinger stated that structures could be damaged, explaining that they conduct preconstruction surveys with instrumentation placed in wells to monitor movement allowing for adjustments to be made if necessary. Mr. Aldinger concluded that the risks considered were covered by the plan. Mr. Aldinger showed a map depicting where the blasting

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would occur, and responded to Commissioners' questions regarding it. Mr. Marseglia suggested that withdrawal and re-submittal of the application with changes would be acting as a "good neighbor." Mr. Ligouri stated that they have been a good neighbor by working directly with property owners to accommodate their specific issues. He noted that the amount of blasting could be reduced if the Attached Housing regulations did not require the entire integral lot area to be flat, the single family residences be provided rather than a 75- or 100-foot buffer to the street, and the two-story height limitation. He stated that the Commission has set the parameters and they worked within them, meeting every element of the regulations. The lack of flexibility within the regulations necessitates the additional blasting. Attorney Ligouri noted that the changes which would lessen blasting could be incorporated in a new application and questioned whether Attorney Kepple would be in agreement. Mr. Tamsky stated that the applicant needed to limit the discussion to the current application, and that during deliberations there would be the opportunity to put stipulations on any approval. There was continued discussion of an alternative plan to which Mr. Tamsky noted that it would be a major change to the application requiring an entire new set of plans and a public hearing.

Geotechnologist Paul Aldinger continued his discussion regarding the magnitude of vibrations resulting from blasting, the effects of the blasting, and his intended involvement in development of the blasting plan. He was of the opinion that there would be no likelihood of detrimental impacts on wetlands from the control blasting.

Traffic Engineer Michael Desmond reviewed the new, more detailed, traffic impact analysis, discussing traffic counts, police accident data, and safety. There were no questions asked of Mr. Desmond.

Attorney Edward V. O'Hanlan, of Robinson & Cole, explained the legal basics of a charitable remainder trust, mentioning he wished to make a brief presentation for affordable housing on the site. He submitted a letter regarding other possible development on the site, including 8-30G affordable housing. Mr. Tamsky, checking with Mr. Brynes, did not believe the acceptance of new material was permissible. Attorney O'Hanlan argued that the proposed development would be good for the town.

Attorney Ligouri cited changes in regional demographics will necessitate smaller, starter houses thereby reducing the demand for large luxury homes. He noted that the Plan of Conservation and Development calls for the type of residences proposed in this project. He stated that from their initial Regulation Amendment in 2008 and subsequent Wetlands and Conceptual Review applications, they had followed the preferences of the Commission, always showing what the ultimate goal for development of the property was. The Commission could have changed their regulations to eliminate attached housing in this zoning district if they felt it was not a good fit. He reviewed the favorable reports of the various experts, asserting that there would be no adverse affect on surrounding property values and would provide many local jobs with materials provided by local suppliers. He claimed they are being a good neighbor in many ways. He expressed frustration with the application process and thought it unfair to be expected to file a new application with an additional significant fee, as they were willing to work with a stipulated approval that would allow them to return with an amended plan to reduce blasting. He stated that they resent any implication of wrong doing by the planning staff and that Cherenzia's relationship with Bill Haase when he was the Westerly Town Planner was solely professional where Mr. Haase required applicants to comply with the regulations to the strictest degree, often calling for additional plan review by outside experts.

Public Comment: Chairman Tamsky directed the public to speak only on new information presented prior to the 9/12/11 meeting or new information raised during the applicant's rebuttal.

Les Bray stated his opinion of Planning Staff's interpretation of ZR 6.6.7 Excavation and Filling.

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Jim Fink referenced Mr. Trinkhaus' report regarding a proposed dam area and drainage issues that could affect his property.

Neal Madden spoke of the effects that the project would have on his property views and neighborhood character, suggesting the buffer size be increased. He stated that an environmental assessment of the excavation or filling operation had not been submitted since the requirement was eliminated shortly after the original application was submitted in July. He discussed the hydrological report data concerning wells, sewerage, and drainage. Mr. Madden submitted a document reviewing his issues. Mr. Madden stated that buffer requirements at some of the drainage basins were not being met and all E&S controls were installed at the wetland boundary, suggesting bigger buffers from the natural resources should be required. He discussed the removal of trees, size of the fire line, and his request that the application be denied.

Staats Abrams questioned whether the risk to surrounding properties had been adequately addressed and would like a \$3-5 million dollar bond adjudicated by a third party.

Peg Moran submitted two documents to Mr. Brynes, stated that she agreed with Mr. Madden's comments, and started to recap response from the neighborhood. Mr. Tamsky reminded her that no new information could be provided and discussion had to be limited to Mr. Liguori's rebuttal.

Richard McKrell asked about the deals for connecting to city water that had been made with the Santos and the Welches. He also questioned the bonding to be required for the blasting and gave his interpretation of ZR 6.6.7, Excavation and Filling.

Richard L. McKrell wished to discuss issues that were not related to the rebuttal.

Julia Roberts stated that the way to protect the Town from any future problems that could arise from the project was through the bond process.

Fran Slater was concerned with potential damage from blasting to her house foundation.

Heather Berner presented results of a traffic study she performed at the Fountaincrest condominiums in Westerly, RI.

Carlene Donnarummo read the definition of integral lot, cautioning the Commission to not change the regulations midstream in an application. Mr. Tamsky clarified that the Commission had been talking about making a determination of the interpretation of the regulation.

Attorney Mark Kepple made note of two instances of wells failing due to blasting, both within 300 feet of the subject property. He is of the opinion that the Commission was not in a position to make an environmentally sound decision. Mr. Kepple submitted a Petition for Intervention on behalf of his clients, Gordon & Edyth Rose, seeking intervenor status making them an equal party in the proceedings. He presented his opinion of the decision-making policies of the Town Planner and the Zoning Enforcement Officer. Mr. Kepple thought workable solution for all would be viable with an environmental assessment.

Second Rebuttal:

Attorney Liguori corrected Mr. Fink's misinterpretation regarding the retention basin, noting that Basin #1 was adjacent to his property, not Basin #3, and Basin #3 has no residents around it. He corrected the misrepresentation that the Environmental review requirement was eliminated from the Regulations after the


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application had been submitted, stating that the review was eliminated on July 10, 2010, and the application was filed on April 19, 2011. Soil Scientist Don Fortunato confirmed that the vernal pool referenced by Mr. Madden is not a vernal pool; it appears to be an old pond, likely dug to water livestock. Attorney Liguori confirmed that the application conforms to the Subdivision Regulations. He noted that the neighborhood residents stated repeatedly that they did not want public water. He reiterated that anyone within 1,500 feet that wishes a pre-blast survey will be provided one by a vibration consultant. Attorney Liguori stated that he stands by the traffic study submitted by the applicant's expert. He clarified that the closest proposed residence to Mr. Madden's property is 190 feet, and the applicants are willing to speak directly with Mr. Madden and any neighbors with concerns.

Attorney Kepple asked who would be the voting members for the application. Chairman Tamsky indicated that Mr. Lynch, Mr. Prue, Mr. Marseglia, Mr. Young, and he would be seated for the deliberations on this application. Written comments by absent Alternate Commissioner Francis Hoffman were accepted. Attorney Liguori objected to not seeing the letter. There was discussion as to whether Ms. Hoffman's written comments should be read into the record. Mr. Brynes felt there was no need since they had already been submitted to the file and marked as an exhibit.

Mr. Lynch made a motion to close the Public Hearing. Mr. Marseglia seconded. The motion was unanimously approved. The Public Hearing was closed at 12:17 A.M.

Mr. Young made a motion to adjourn the meeting. Mr. Marseglia seconded. The motion was unanimously approved. Chairman Tamsky adjourned the meeting at 12:19 A.M.



12/20/11

Robert Marseglia, Secretary