

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
April 26, 2011**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Spain, Cameron, Hutchison, Voigt, Riccardo
Chairman Conze did not arrive until 10:30 P.M.

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

PUBLIC HEARING

Mr. Spain called the meeting to order at 8:00 P.M. and read the following agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #261, Flood Damage Prevention Application #28-A, Land Filling & Regrading Application #2-A, Joseph & Kimberly Cesare, 144 Five Mile River Road. Proposing to construct a single-family residence, garage, guest cottage, and swimming pool and to perform related site development activities within regulated areas. The subject property is on the south side of Five Mile River Road at its terminus, and is shown on Assessor's Map #67 as Lot #10 & #11, in the R-1/2 Zone. *PUBLIC HEARING OPENED ON 1/25/2011, CONTINUED TO 2/15/2011 AND 3/22/2011. DEADLINE TO CLOSE PUBLIC HEARING IS 4/26/2011, UNLESS AN EXTENSION IS GRANTED BY THE APPLICANT.*

Attorney Amy Zabetakis represented the applicants and explained that an amended plan had been submitted to the Town last week. She said that they have discussed the issues with the neighbors, but have not been able to resolve all of the concerns of the neighbors. She said some of the neighbors are looking to have no fill in the center portion of the property and others want the building to be relocated farther from the easterly property line which would place the house in the center portion of the site. She said that a Coastal Area Management Report has been submitted and that the experts state that there will be no adverse impacts on the coastal resources. She said that the proposed retaining walls are to control storm water and stabilize the soil, they are not flood and erosion control structures. Attorney Zabetakis said that no variances are being requested because the proposed development complies with all setback and building height and building coverage limitations.

Tom Ryder of Land Tech Consultants said that the plans have been revised in accordance with the previously received comments from the Connecticut Department of Environmental Protection, and the Commission and the staff and the neighbors. He said that the changes to the plans include: eliminating the cottage structure; reducing the size of the house; reconfiguring the garage and driveway; inclusion of a detailed construction sequence; creation of a separate grading plan to make it easier to read; showing details such as the air conditioning units and generator; showing details about the prickly pear and tidal wetlands line having been surveyed in rather than approximated; showing the location of trees that are 5 inch or greater in caliper; conducting test pits; and revising the driveway to be of a gravel material and realigned so that it is farther from the neighboring property and the oak tree.

Mr. Ryder said that the Coastal Area Management Report has been expanded and more detail has been added. He said that one of the neighbor's concerns has been the possibility of sediment from the

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 2 OF 13

construction activity getting into the wetlands and leading to greater phragmites spread. He said that phragmites is particularly sensitive to the salinity of the water and, in this case, the salinity of the water would not be changed because there are no point sources for rainwater discharge. They are also not raising the grade in any of the areas where phragmites would grow. He said runoff from the roof of the proposed house would be directed into a well vegetated area to the north of the house. He said that the retaining walls will hold in the soil and that those retaining walls around the perimeter will be constructed first so that there will be no impact on the coastal resources. He said that there will be no impact on phragmites growth or the tidal wetlands. He said that there are no statements within the two Klein reports (the consultant hired by the neighbors) about phragmites.

Mr. Hutchison asked if there was a better way to handle the drainage rather than the proposed level spreaders. Mr. Ryder said that it might be possible to install another storm water ground recharger or a different spreader to the south of the house. In response to another question, he said that the phragmites needs to be removed by hand, not just be machine, and it is important to also remove the underground root structure of the plant. Mr. Hutchison said that this is a building lot, but asked if there was a way to develop a house with less filling of the low areas adjacent to the shore line.

Mr. Ryder said that the access driveway will require 250 cubic yards of fill in order to be safe. The installation of underground utilities will remove 32 yards of material and another 880 to 920 cubic yards of fill would be installed around the house. Mr. Hutchison said that it would be possible to eliminate the fill around the pool area.

Mr. Ryder said that according to the Department of Environmental Protection, some of the proposed activities are close to, but not within, the DEP jurisdiction. The applicant needs to continue discussions with the DEP staff to allow them to make that final determination. Mr. Spain asked how the Commission would know if the DEP is exerting jurisdiction over some of the activities if the record is closed at the end of the public hearing this evening.

Mr. Ginsberg referred to the April 26th letter that was received by email, late today, from Kristal Kallenberg-Dorismond of the Connecticut DEP.

Attorney Zabetakis said that the applicant is proposing the plan to the Town and, in accordance with all of their own experts, all of the work is outside the jurisdiction of the Connecticut Department of Environmental Protection. If the DEP decides that they want to exert jurisdiction over some of the activities, then the applicant will need to resolve that issue with the DEP. If the plans need to be modified, then the applicant would need to come back to the Planning & Zoning Commission for an amendment.

In response to a question, Mr. Ryder said that the applicants will need to do routine maintenance on the retaining walls in order to avoid deterioration. Deterioration would require substantial reconstruction and that would require a DEP Permit.

Mrs. Cameron expressed concern about the quality of the fill material.

Mr. Ryder said that in some past projects, the developer has performed a test on each load of material coming into the site. He said that such tests and verification could be a requirement of the Commission's approval.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 3 OF 13

In response to other questions, Mr. Ryder said that on the side of the house, south of the proposed retaining wall, they will need to seed the disturbed areas and then over seed the area in one or two years until the well vegetated soil condition is achieved. He said that an irrigation system would be installed within the lawn, but not in any natural areas.

Mr. Spain said that one of the concerns is the possibility that soil will wash out during the construction process and that the soils will end up in the tidal wetlands, and therefore raise the level of the ground within the wetlands.

Mr. Ryder said that standard sediment control barriers will be needed and will be monitored to make sure that they are functioning properly. Maintenance of the erosion control barriers will be undertaken to make sure that they are sufficient. If the standard sediment barrier is not sufficient, then things like stone check dams could be added to the site to make sure that none of the soil washes into the tidal wetlands. He said that all of these things were described in the erosion control plan that is included on one of the drawings.

Mrs. Cameron asked how long the erosion controls would be remain intact and how long the project would take. Mr. Ryder said that the controls will remain intact until all of the disturbed soils are well stabilized. He said that during mild weather, his firm typically inspects erosion controls on a monthly basis. During Spring and Fall, they are usually inspected every two weeks.

Ed Montero of 8 Butler's Island Road said that he has deep concerns and dissatisfaction with the proposed plan. He said that this is an incredible amount of fill being placed in very close proximity to the tidal marsh area. He said that within the past two weeks, there was a 10 ft. high tide. If the retaining walls had already been installed, the 10 ft. high tide would have been over the top of those retaining walls. Mr. Ginsberg noted that the Planning & Zoning Commission has already received a copy of Mr. Montero's email.

Martha Robbins of 7 Edgehill Drive said that she is very concerned about the impacts of the proposed development on the very fragile environmental area. She referred to the letter from Nancy Knowlton who is a noted marine biologist and who has, she added, "incredible credentials." She submitted a copy of Miss Knowlton's résumé. Mrs. Robbins said that the proposed retaining walls are clearly flood and erosion control structures being placed on the site to prevent the reoccurring flooding of the low portions of the property. This will restrict the flow of water into and out of the tidal marsh and one of the points that Mrs. Knowlton has made in her letter is the tidal marshes need to be able to migrate back and forth.

Todd Robbins of 7 Edgehill Drive submitted photographs of the April 16th high water/storm conditions and he referred to a map that was colored in with blue marker to represent the low areas that were flooded earlier in the month. He submitted a Tide Chart/Schedule indicating that such severe tides over 8 ft. 8 in. occur 24 times during the year. That is at least 24 times when the tide would be high enough to overtop the proposed retaining walls. He said that if during the construction process, the dirt from the trenches and the fill being brought to the site, would all be susceptible to being washed into the tidal marsh. This extra material would raise the ground level and therefore make that new ground less likely to be inundated by salt water, and thus would allow for phragmites to spread into those areas. He said that at least two experts regard the proposed retaining walls as flood and erosion control structures. Moving those flood and erosion controls structures 6 inches or a short distance away from the DEP jurisdiction line, does not change the fact that they are flood and erosion control structures.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 4 OF 13

Attorney Wilder Gleason said that the proposed flood and erosion control structures will restrict the flow of flood waters. They would not restrict the flow of routine of low, tidal flows. By the definition of flood and erosion control structures are that they restrict flood flows.

Mr. Robbins said that when the phragmites grows in an area, it is able to kill off the other plants that would naturally grow in the area.

Mr. Robbins said that this question boils down to which experts the Commission will trust. The applicants' experts say that there will be no impact on the environment and the neighbors and their experts indicate that there could be severe impacts on the environment. He said that moving flood control structures just outside the DEP jurisdiction means that they would then be within the Town's jurisdiction and should not be permitted because they are flood and erosion control structures. If they are allowed to be put in place, it would impact the coastal headland area and block the flow of water into and out of the tidal marsh. Mr. Robbins said that the applicants' Environmental Reports do not mention the many unique and special birds that live in the tidal marsh and on the tidal headlands. He said that the inclusion of the glass cottage on the tidal headlands appears to have been a Trojan horse so that people would concentrate on it. Now that they have withdrawn it, the applicant seems to think that everything is okay, when in fact the impacts to the tidal wetlands and other natural features are still too severe. He referred to the photographs of the flooding that occurred through the low portion of the site, also known as the saddle. The Connecticut DEP letter from January of this year refers to a house that could be built on stilts to avoid construction of walls and filling. That is still a viable option. The proposed retaining walls are designed to hold back huge amounts of fill that are proposed around the house and pool area. If there was no flooding in this area, then there would be no need for the fill to raise the ground level, and if there is no fill, then there is not as much concern about the potential erosion. He said that since the area does flood, the applicant is proposing to fill and then to create the flood and erosion control structures to contain that fill and to prevent the area from flooding.

Attorney Wilder Gleason played back a portion of the March public hearing in which developer, Andy Glazer, noted that this is a special site and nobody wants to see an eyesore like a house on stilts. He also said that the retaining walls will hold back the soil and hold back the flooding. Attorney Gleason said that later in the meeting, consultant, Tom Ryder, said that the retaining walls were an attempt to remediate a flooding situation. Thus, the proposed retaining walls are clearly flood and erosion control structures.

Len D'Andrea, Professional Engineer, represented the Kanes who own the parcels to the east of the subject site. He said that the mass and bulk of the proposed house will loom over the Kane property. He submitted a letter to the Commission and a copy to Attorney Zabetakis. The Kanes live at 143 Five Mile River Road and they also own vacant parcels at 147 and 149 Five Mile River Road. They have obtained approvals to develop those two vacant parcels. He said that the applicants' proposed development would include two two-car garages, a 4,800 sq. ft. house and a swimming pool. He said that this is too much development for the unique property and that the proposed house cannot be slid farther west (away from the Kane property) because that portion of the subject property is too narrow. He concurs that the proposed floor elevation of the house (13) and of the garage (11) are appropriate, but they are both too large for the space on the site. He said that the house measures approximately 82' x 110.' He said that the architectural elevation drawings submitted to the Commission noted that they are not to scale. When he tried to analyze the scale of the house, he could not determine whether the house would be 30 ft. tall or 32 ft. tall. Thirty feet from the existing grade is the maximum allowed by the Regulations. Mr. D'Andrea said that some filling and regrading for the easterly edge of the house would be appropriate, but that the entire westerly portion of the house should not be placed on fill. He

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 5 OF 13

said that the proposed swimming pool installation needs to be eliminated because it requires so much alteration of the natural site conditions. The swimming pool would also require a security fence which is not shown on the plans. He said that limiting the size of the house and the proposed development area would allow for more drainage area to attenuate the pollutants that are likely from the proposed development. He said that he is very bothered by the use of concrete infiltrators in the driveway rather than creating landscaped, vegetative bio-filters. He said that test pits in the area indicate that the ledge is only two ft. below the surface of the existing grade and that the proposed infiltrators will only be 6 in. above the ledge rock. This will not give them sufficient area to function properly. He said that a detail on Sheet 3 of the new plans indicates that a 4 in. diameter under-drain pipe would be placed underneath the proposed infiltrators. This under-drain will result in the infiltrators not functioning to allow water to percolate into the ground, but rather will provide a direct conduit for the water to pass through the drainage system and to be discharged at an unknown location. He said that the scope of the project should be reduced and then it would be possible to find more areas that are more likely where percolation and infiltration can properly work. He said that the sanitary sewer grinder pump which is shown on the plan, will need an excavated area of approximately 10'x10', not just a 2' diameter circular pump shown on the plans. This will require the excavation of a much larger portion of the ledge rock area.

Mr. D'Andrea said that he has dealt with this type of situation on many occasions and the proposed retaining walls are absolutely, positively flood and erosion control structures. He reviewed the Department of Environmental Protection Office of Long Island Sound Programs (OLISP) criteria for defining flood and erosion control structures. One of the exemptions to allow such structures is if it is to protect an existing structure that is close to the edge of the land. He noted this project will not protect an existing structure. Rather, it proposes a new structure, so the proposed flood and erosion control structures cannot be justified. He said, if anything, the house should be constructed on stilts or with flow through foundation features so that the normal flow of high water can proceed through the site as it does to today. He said that the applicants' design, including flood vents in the crawl space, will not comply with the Federal Emergency Management Agency definitions and criteria. He said that by FEMA definition, the proposed crawl space would be a basement, which is below grade on all sides. Basements are not permitted in flood hazard zones. He said that all but one of the flood vents would be ineffective because they would be above the expected flood level. He said if the Town approves the project as submitted, it could jeopardize the Town's participation in the National Flood Program. He said that one solution would be to lower the flood vents and avoid the installation of the fill. This would allow the crawl space below the house to routinely flood when water rises through the area as it does today.

Mr. Spain said that one point made by Mr. D'Andrea was the possibility of moving the house farther to the west so that it is not as close to the Kane property. This, however, would mean that the house would be in the low, saddle area of the site which was previously not built upon. This is the area that floods more frequently than the other, higher portions of the property.

Mr. D'Andrea said that eliminating the swimming pool, reducing the disturbed area, as well as moving the house and driveway farther from the neighbors are all parts of substantial modifications that have to be made. He said that the entire development needs to be completely redesigned because this proposed project is not complying with the flood design criteria or the CAM policies. He said that the use of bio-swale retention basins is a critical element of the applicants' design, but it is not uncommon that these types of features are not properly maintained. When they are not properly maintained, then the environment will suffer. He said that the redesign of the development should make everything more compact and avoid the installation of fill within the saddle area.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 6 OF 13

Mr. D'Andrea referred to a site plan that he has revised to include a cross section of the proposed retaining walls and an area highlighted in red. He said that the construction of the retaining walls will definitely impact the tidal wetlands and be within the Connecticut DEP jurisdiction. He said that most work would need to be scheduled around the tide cycles because the work is in such close proximity to tidal areas. It must also be done from the upland side only. When the footings for the retaining walls are constructed, the footing will be wider than the wall and the footing and the over digging for the footing will be within the DEP jurisdiction. He said that there are much better, prudent and feasible alternatives to what has been proposed. He also noted that the Fire Marshal has expressed concern about a turn-around area for emergency vehicles. He said that the Kanes have had to provide such a turn-around and will work cooperatively with the applicants to create a reasonable plan for a turn-around to be shared by both properties.

Attorney Gleason asked Mr. D'Andrea about the amount of fill and the number of trucks that would be necessary to remove and bring in fill materials. Mr. D'Andrea said that approximately 300 cubic yards of soil must be excavated for the installation of the walls. That material would not be suitable for reuse on the site, and would therefore have to be removed from the property. An additional 550 yards of fill material would need to be brought in to accommodate the proposed house foundation. Mr. Gleason said that the proposed area beneath the house is labeled as a crawl space at Elevation 7.5, but it would, by FEMA definitions, be a basement structure which is not allowed in the Flood Zone.

Mr. D'Andrea said that there does not appear to be enough room for another infiltrator and that, typically, the bottom of the infiltrator would need to be two feet or three feet above any ledge rock area in order for the infiltrator to properly function.

Mr. Spain asked if there was any way to avoid the discharge of storm water runoff from the driveway directly into Long Island Sound.

Mr. D'Andrea said that reducing the amount of asphalt would certainly help and that other methods to properly manage the runoff water could be devised.

Attorney Wilder Gleason represented several of the neighbors and said that he disagrees with the applicants' attorney's contention that the Planning & Zoning Commission can act on the application without DEP Permits being obtained or without clearance from the DEP that no such permits will be necessary. He said that Section 850 of the Zoning Regulations regarding filling and regrading indicates that the applicant must comply with all provisions of Section 1000 which is the Special Permit procedure. Section 1003 indicates that the applicant shall provide all approvals or permits from federal or state agencies that have jurisdiction over the proposed work. He said that in accordance with the DEP letter from Kristal Kallenberg-Dorismond, the proposed work will need DEP permits based on the most recent revision submitted by the applicants. As proposed work within DEP jurisdiction appears unavoidable.

Attorney Gleason said that the application is incomplete and cannot be approved because they have not yet obtained DEP approvals or permits. He said that the tidal wetland area is right up to the edge of the proposed retaining walls, even though they have been moved back a little bit on a few occasions. He said that construction and maintenance of these retaining walls will require that people be in the tidal wetlands. He said that the maps and plans do not show the critical elevation of the bottoms and tops of the retaining walls. Those details should be provided, but they are not. He said that the applicants claim that they are being sensitive to the environment, but they are not. In the original plans, 12 trees

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 7 OF 13

measuring 9 inch caliber or greater were shown. Nine of those twelve trees would be removed and a tenth would be threatened because of the extensive fill to be placed on the root system. The original plans also called for clearing vegetation on the headland. That extensive clearing has been modified somewhat, but they are still proposing that the headland area be partially cleared and made into lawn so that it can be a play area for the children. That is not an appropriate activity within this sensitive environmental area. He said that the western portion of the site should be covered by a conservation area so that it is permanently maintained as an open, undeveloped natural area. He said that his clients do not agree with the concept of bridging the saddle area (the low portion of the site) with a house or other structures, because it would only encourage activity into the headland area.

Attorney Gleason submitted a Connecticut Department of Environmental Protection Fact Sheet regarding flood and erosion control structures. It refers to Connecticut General Statutes 22a-109(c). He said that a flood and erosion control structure is any structure that creates a barrier to flood waters. He said that the Commission saw the replay of Mr. Glazer's earlier contention that the need for the retaining walls is to remediate the flood problem on the site. Attorney Gleason said that the proposed remediation is to fill and install retaining walls to prevent that flooding condition. Attorney Gleason said that the proposed development has been modified on several occasions, but they have not pinched it in enough. He said that the letter from Kristal Kallenberg-Dorismond still indicates that DEP jurisdiction is unavoidable. He said that the applicants' Coastal Area Management Report represents that since the retaining walls are landward of mean high water and tidal wetlands, they are not erosion control structures. He said that this contention is not correct because flood and erosion control structures are defined by the statutes and if they are not within the DEP's jurisdiction, then they are within the Town's jurisdiction. He said placing the fill and retaining walls within the flood area still violates the coastal policies. He said the flood and erosion control structures are intended to prevent damage from floods and that is exactly what the proposed development would do. He said that they would not be affected by ordinary tides, but then again, they would not be called flood and erosion control structures if they were only dealing with ordinary tidal conditions. He said that the DEP letter from January 25, 2011 refers to elevating the house on pilings or stilts, not on fill.

Mr. Spain asked if it was Mr. Gleason's contention that the Town review and act on the application in a manner that is parallel to the DEP policies even if the DEP does not have jurisdiction over the proposed structures. Mr. Gleason said that the Commission should apply the same statutes and standards because the Town Regulations on coastal site plan review are very sparse and basically just refer to the State Statutes. Part of those policies indicate that it is not appropriate to create hardscape along the shore lands and the policy is to not allow flood and erosion control structures to protect new houses being built. He said that the location of the structure does not justify putting in flood and erosion control structures to remediate flood conditions that naturally occur. He said that the Commission should apply the DEP standards and that the proposed development is not consistent with the DEP policy and standards. The application must be denied unless it is exempt from compliance with all of those policies. He said that in this case, there is a very healthy, viable marshland surrounded by water on three sides and the proposed development would adversely impact the marshland.

Attorney Gleason showed photographs of three houses in the area that were built on stilts and which are very attractive and very valuable.

Attorney Gleason reviewed a drawing submitted by the applicants of a detail of the retaining wall and a table that indicates that the height of the retaining wall will require footings of certain dimensions. He said that using this table, it would appear that the footings for the proposed retaining walls would project 11 inches, thus it would be into the Connecticut DEP jurisdiction, even though the outside face of the

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 8 OF 13

finished retaining wall would be just slightly outside of the DEP jurisdiction. He said that the over dig area necessary for the footing would further protrude into the wetland soils. These wetlands soils are influenced by tidal flows twice each day and impacting the tidal area would be unavoidable. He said that no dewatering plan has been submitted to show how the applicants would deal with the constant flow of water into the excavated trenches. He also noted that the standard curing time for the cement footings would be 28 days before they could be back filled.

Attorney Gleason said that the proposed development activity was too much for this sensitive site and that the project makes no sense. He submitted a detailed list of all the deficiencies and, rather than reading the entire list due to the time, he asked the Commission to take note of the many problems. He did ask that the Commission deny the application, but give some indication to the property owner as to what would be allowed as to a reasonable development of the property.

A resident of Five Mile River Road expressed concern about the traffic that would be generated by the construction activity. He said that children on the street must walk on the narrow, private portion of the road in order to get a school bus at the turnaround area which is the terminus of the public street. He said he remembers when this was a quiet, private road with modest houses. A recent traffic accident involved a car hitting a pole. He questioned when a child would be injured due to the substantial increase in construction activity and traffic.

Tom Ryder said that the swimming pool and patio area would require only about 275 cubic yards of fill. He said that the swimming pool cover structure would be utilized so that a large exterior fence would be avoided.

Attorney Zabetakis said that the experts indicate that the proposed retaining walls are not flood and erosion control structures, and even if they were, she indicated that there would be no harm that would happen if the walls were built. She referred to a recent Court decision at Norwalk Yacht Club v. Norwalk. She said that the case indicates that the Commission cannot deny the use under the Coastal Area Management Regulations when there is no expert opinion about any adverse impacts.

Mr. Spain said that the letter from the DEP indicates that the proposed activity would appear to be inconsistent with coastal area management policies and would be within DEP jurisdiction.

Mr. Hutchison said that certainly during the construction process there is a high likelihood of impact to tidal areas and the environment.

Attorney Zabetakis said that all of the activity would stay landward of the mean high water line, and if any activity was proposed in the DEP jurisdiction, then they would need to obtain DEP Permits. If the plans needed to be changed, they would need to come back to the Planning & Zoning Commission to request amendments. If there are any additional details that the Commission wants to see, a submission of those details could be a condition of the approval.

Mrs. Cameron said that she is concerned that the plan won't work.

Attorney Gleason said that there is expert testimony from Mr. D'Andrea and Ms. Knowlton about the negative impacts to the environment. He also said that the experts conclude that the retaining walls are flood and erosion control structures.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 9 OF 13

Mrs. Cameron said that in cases where the two experts disagree, the Commission needs to choose which expert or experts to believe.

There being no further comments, the following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Hutchison, seconded by Mr. Voigt. Voting in favor of the motion to close were Messrs. Spain, Hutchison, Voigt and Mrs. Riccardo. Opposed to the motion was Mrs. Cameron. By a vote of 4 to 1, the hearing was closed.

After a five minute break, the meeting was resumed. Mr. Conze arrived to serve as Chairman. He read the following agenda item:

At about 10:35 p.m., Mr. Conze then read the next agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #264, and Land Filling & Regrading Application #256, Robert & Kimberlee Ageloff, 18 Crane Road. Proposing to: construct additions and alterations to the existing single-family residence with associated stormwater management; construct a replacement pool with associated patio; install a new driveway and construct a driveway expansion area; and perform related site development activities within a regulated area. The subject property is located on the east side of Crane Road, approximately 1,100 feet south of its intersection with Pear Tree Point Road, and is shown on Assessor's Map #60 as Lot #29, in the R-1 Zone. *PUBLIC HEARING OPENED ON 3/22/2011.*

Robert Tucker, Project Architect, explained that the public hearing regarding this matter had been continued so that drainage issues could be resolved. They have submitted a revised Drainage Plan prepared by their engineer.

Peter Finkbeiner, Drainage Engineer from Sound View Engineering, explained that the revised Plan now includes a large bio-retention area on the south side of the house. This will catch surface water and allow it to be infiltrated into the ground. They still need to install some underground infiltrator structures. In response to comments from the Public Works Department, they will be installing a simple, swale like regrading on the east side of the proposed retaining wall. That will bring water (on the sloped area east of the house) toward the south side of the house and to the bio-retention area. He said that Darren Oustafine from the Public Works Department has indicated that they would prefer not to have a direct pipe connection to the existing catch basin in the street. They will therefore revise the plans to create a second bio-retention area just to the east of the street. This will allow for the water to soak into the ground and will have an overflow area that will allow water to flow on the surface toward the catch basin in the street.

There were no comments from the public regarding the application. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Voigt, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze read the following agenda item:

Proposed Amendments to the Darien Zoning Regulations (#4-2011), Special Permit Application #266, Site Plan Application #279, Land Filling & Regrading Application #259, Hunter Gregory Realty Corp., 599 Boston Post Road. Proposing to convert the existing building at 599 Boston Post Road into 66 assisted living units—some for traditional assisted living and some for memory care; with

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 10 OF 13

associated pathways and landscaping in the rear of the property; and perform related site development activities. Zoning Regulation amendments are proposed to Section 210 (Definitions) to specifically define Memory Care Facility; a new subsection 624i to allow Assisted Living Facilities and Memory Care Facilities in the DB-2 zone by Special Permit; and a new subsection 627 created with further criteria. The full text of the proposed zoning regulation amendments is on file and available in the Town Clerk's office and the Planning and Zoning Office for inspection. The subject property is on the northeast corner formed by the intersection of Brookside Road and Boston Post Road, and is shown on Assessor's Map #14 as Lot #35 and is located in the DB-2 and R-1/2 Zones.

Attorney Amy Zabetakis represented the applicant and explained that the former convalescent center, located on the corner of Boston Post Road and Brookside Road has been vacant for approximately four years. It formerly housed 120 patients. She said that the building is structurally sound, but needs to be renovated in order to become the proposed assisted living facility. An assisted living facility is currently not permitted in the DB-2 Zone and thus she has submitted an application to amend the Zoning Regulations with the application to establish the assisted living facility. She said that some of the units within the assisted living facility will be for memory care patients. She noted that there will be no independent living, no apartments, and no kitchens or cooking facilities in the units. Because the people that reside in the facility will not be allowed to drive, very little parking is required for this use. She said that if the proposed amendments to the Regulations are adopted, then the use would be permitted only be Special Permit from the Planning & Zoning Commission and any changes to the site will require site plan approval. In this case, part of the amendments to the site would mean changing the ground level, therefore a Special Permit under the Land Filling and Regrading applications will also be needed. She said that one of the provisions of the proposed amendments would be to allow some or all of the required open space to be within the residential zone rather than requiring that all of the open space be within the business zone.

Michael Stein, Project Architect, explained that the current three story building also has a basement parking level area. The entry driveway to the basement level parking is somewhat difficult due to a support post in the middle of the driveway. That post will need to be changed. The plan is to remove the existing façade of the entire building and create a new façade of red cedar shingles and stone as the face of the first floor. The existing flat roof will be modified so that it will have a façade of a peaked roof, but within the midst of the flat roof, they will carve a hole to let light down into the second and first floors. He said that the second floor will be dedicated to memory care patients. They will have access to their own dining room and from that dining room, they will have access to a patio area in the back yard. Residents of the first and third floors will need some assistance, but not nursing care. They will have access from a first floor dining room to the back yard open space areas. Mr. Stein explained that the Architectural Review Board had discussed the architectural plans and approved those plans in April. He also noted that the Fire Marshal has reviewed the plans and has required some slight changes to the east stairway. He submitted copies of those revised plans to comply with the Fire Code Regulations.

Amy Zabetakis said that the memory care residents cannot have a car and, of the other residents, those in need of assistance, very few have cars.

Greg Smith, representing the applicants, indicated that at their other facility, they have 35 on-site parking spaces. Of the 28 units of assisted care, only one resident owns a vehicle that is parked on the site, but the resident does not drive the car.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 11 OF 13

Mike Galante of Frederick Clark Associates explained that he had been hired by the Town to review the applicant's traffic and parking information. He reviewed the April 13th report and noted that sight line distances need to be shown on the Site Plan and the State will require it for a double yellow center line road. Mr. Galante said that the on-site parking appears to be adequate for regular days for the residents and for workers and normal visitors. However, on special days, such as Mother's Day, there might be insufficient on-site parking for visitors. He added those occasions will be very rare, and the applicant should make alternative arrangements for off-site parking. He said that one of the original comments was the possible consideration of a no left turn for vehicles exiting the driveway. Mr. Galante said that the proposed use will actually generate less traffic than the previous use as a nursing home and convalescent center. He said that eliminating the existing driveway on Brookside Road is a positive. The new driveway on the Boston Post Road will need Connecticut Department of Transportation Permits, and it does create a much needed drop-off area. He said that the volume of traffic is so low within the site that he does not see any traffic conflicts between the existing driveway and the proposed new curb cut.

Everyone agreed that the public hearing regarding this matter needed to be continued so that additional information and experts could be available. The following motion was made: That the Commission continue this public hearing on May 10, 2011 in the Darien Town Hall at 8:00 P.M. The motion was made by Mr. Hutchison, seconded by Mr. Voigt and unanimously approved.

Chairman Conze read the following agenda item:

Special Permit Application #11-Q, Land Filling & Regrading Application #258, Ox Ridge Hunt Club, 512-516 Middlesex Road. Proposing to fill, excavate, and regrade in order to construct a 225' x 325' riding ring and perform related site activities. The subject property is on the southeast corner formed by the intersection of Middlesex Road and Ox Ridge Lane, and is shown on Assessor's Map #6 as Lot #149 and is located in the R-2 Zone.

Attorney Wilder Gleason represented the Hunt Club and explained that the proposal is to slightly regrade the existing site to accommodate a new, special surface riding ring. This riding ring will be in approximately the center of the 22 acre property. He submitted copies of the Tax Assessor's Map to show the location of the site. He said that the 225'x225' riding ring needs to be very flat, thus, they need to regrade the property slightly. The installation of the special riding ring involves excavation of the existing soil down to a depth of approximately 24 inches. At that point, special drainage pipes and drainage stone will be installed. Then there will be layers of varying special material. He said that this riding ring would actually result in less storm water runoff due to the removal of the underlying clay layer and existing compacted topsoil. He reviewed the letter of April 26th expressing concern about the fence and plantings along Middlesex Road that were required by a previous permit. Mr. Gleason said that the existing chain link fence with plastic inserts will be relocated in the near future and replaced with a series of willow trees and at least 16 arborvitae shrubs. The fence will be moved farther into the site to provide screening of the paddle tennis courts. The fence will be far less visible after it is relocated, compared to its current position.

Flavia Callari of the Ox Ridge Hunt Club said that the Club does want to relocate the fence and resolve all of the issues with the neighbors. She said that the Club is performing long overdue maintenance work now. She added that the horse show planned for the summer will be smaller than it was in the 1980s and, therefore, there will be fewer problems and less traffic.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 12 OF 13

Attorney Gleason said that the Club would appreciate a quick action by the Planning & Zoning Commission so that this new riding ring can be installed prior to the June horse show.

Bill Holding of Saddle Ridge Road said that the Hunt Club is a wonderful open space parcel and is beautiful. He said that he is glad that the Club is working with the neighbors to resolve any issues.

Jenny Schwartz of 8 Saddle Ridge Road said that she is an avid horse rider and noted that the footing for the horses is a critical component of conducting a high quality horse show. She said she supports the application. She did express concern about the proper management of the waste material and waste water from the bathing of the horses. She said that the stabling of the horses needs to remain in its current place, which is not close to any of the neighbors on Saddle Ridge Road.

Todd Ritchie, Professional Engineer, from GHD Engineers said that containment is key to the management of the waste water. He said that the waste materials would be allowed to infiltrate into the ground where it is naturally processed by the soils. He said that none of the waste material would be allowed to run into the nearby wetlands or watercourses or onto the neighboring street or neighboring properties. He said that storm water runoff will not be increased due to the new riding ring because the bed of stone under the riding ring will absorb and hold the water until it is allowed to percolate into the ground. He said that there is an overflow pipe so that any excess storm water would be drained into the existing ditch on the easterly portion of the site.

There were no other comments from the public. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mrs. Riccardo, seconded by Mrs. Cameron and unanimously approved.

Chairman Conze read the following agenda item:

Business Site Plan #200-E/Special Permit, Tokeneke Properties, LLC, 23-33 Tokeneke Road.
Proposing to convert a portion of the existing second floor from office use to six apartments, with two of those apartments being designated as below market rate units as required by Section 580 of the Darien Zoning Regulations. The subject property is on the west side of Tokeneke Road, approximately 300 feet south of its intersection with Boston Post Road, and is shown on Assessor's Map #72 as Lot #45 and is located in the CBD Zone.

Mr. David Palombo, Project Architect, explained that the second floor of the existing commercial building currently contains 4 apartments and 6 office suites. The proposal is to convert the 6 offices into 6 additional apartments as the offices are vacated.

Mr. Ginsberg said that this proposal is somewhat similar to the Garden Homes project that had been conducted at 397 Boston Post Road. He said that the applicant or residents will need to get parking permits in order to use the Center Street parking lot. The on-site parking requirement for this property has been waived due to previous approval by the Commission and the donation of land by the previous owner of this property. That land is adjacent to Center Street and will allow for the expansion of the municipal parking area at some time in the future. Mr. Ginsberg said that some of the units within the project will need to be income restricted in accordance with the Inclusionary Housing portion of the Darien Zoning Regulations. In this case, 6 additional units will be added to the 4 existing units. There will be a total of 10 units on-site, all of them will be one-bedroom or studio apartments. He said that the applicant will need to comply with the Deed restriction

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
APRIL 26, 2011
PAGE 13 OF 13

requirements of the Regulations and those documents will need to be filed in the Land Records. He said that the applicant may want to come back to the Commission in the future in order to convert some of the apartments back into office uses.

Mr. Palombo said that as the office spaces become vacant, they will convert those spaces into apartments. This will avoid having all of the offices becoming vacant at the same time.

Mr. Ginsberg said that the applicant will need to resolve several minor issues that were raised by the Fire Marshal's comments. Mr. Palombo said that those issues will be addressed.

There were no comments from the public regarding this matter. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved.

GENERAL MEETING

Due to the late hour, the Commission decided that it will discuss the items under general business at its next available meeting.

There being no further business, the meeting was adjourned at 11:30 P.M.

Respectfully Submitted,

David J. Keating
Assistant Planning & Zoning Director

04262011min