

MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, SEPTEMBER 11, 2017 AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Earl J. Kurtz III, Chairman (entered meeting at 7:58 p.m.); Sean Strollo, Vice Chairman; David Veleber, Secretary; Members: S. Woody Dawson, Edward Gaudio, Gil Linder, Louis Todisco.

Alternate – Jeff Natale

Absent: Vincent Lentini, Gil Linder, John Kardaras and Alternates Jim Jinks and Jon Fischer.

I. CALL TO ORDER

Mr. Strollo called the public hearing to order at 7:31 p.m.

II. ROLL CALL

The Clerk called the roll and a quorum was determined to be present.

III. DETERMINATION OF QUORUM

Following roll call a quorum was determined to be present.

IV. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

V. BUSINESS

Secretary Veleber read the call of public hearing for each application.

- 1. Special Permit Application
Cheshire Housing Authority
50 Rumberg Road
Expansion of footprint – 2 units and
Community Building
Parking Expansion**

**PH 9/11/17
PH 7/24/17
MAD 11/15/17**

Jeff Jahnke, Architect, QA&M Architects, Farmington CT and Phil Barlow, Landscape Architect, T.O.Design, New Britain, CT were present to represent the applicant. CHA Director, Ann Belcher was also present.

Mr. Jahnke stated the applicant is Beachport Housing, a 17-acre parcel, R-20 zoned, with nine (9) existing buildings. The application is for approval of two (2) small additions to two (2) handicapped accessible units, large addition to the community room with handicapped accessibility, additional parking for 16 spaces. The parking is still below coverage for the site and buildings. There will be accommodation for additional storm water flows with underground roof drains, with net zero increase in peak flows.

Parking – additional spaces will be added on the west part of the site, northwest part of the site, new spaces along the roadway, one additional handicapped space, spaces near the dumpster (which will be enclosed); there are no spaces near the property line.

Mr. Todisco talked about 16 more parking spaces, and asked if there would be any structural changes to the site.

In response, Mr. Jahnke said there will be two (2) ADA units getting a small addition of about 65 sq.ft. each. The intent is to improve and make them fully accessible ADA units. There will be 1,200 sq.ft. additional space added to community building, which includes more outdoor patio space, and more space for the mail box kiosk, additional laundry room access, CHA office space.

On the plans, Mr. Jahnke pointed out the dark gray area and highlighted the existing community building and additional space for the building. The addition(s) will provide more ADA access and compliance.

Mr. Barlow displayed a drawing of the current units, the two (2) units getting the small additional ADA interior space.

Mr. Dawson asked about the height being different, and reverse gable on the roof.

There is no increase in height of the current units, and Mr. Jahnke said the roof gable is the hatch on the drawings that shows the roof to be re-shingled.

Mr. Veleber asked about any other units to be upgraded for ADA compliance.

There is future additional work planned for the interior of the units for ADA compliance, and Mr. Jahnke said this would be for kitchen counters and wider door frames.

The public hearing was closed.

- 2. **Waiver Request of Clearview Farm Preserve
Mountain Road/Cornwall Avenue
Pursuant to Section 11.1 Variations or Waivers
Of Regulations
Requesting a waiver of Section 6.5 Intersections**
 - PH 9/11/17
 - PH 7/24/17
 - PH 7/10/17
 - MAD 11/15/17

- 3. **Waiver request of Clearview Farm Preserve
Mountain Road/Cornwall Avenue
Pursuant to Section 11.1 Variations or Waiver
Of Regulations
Requesting a waiver of Section 6.10.1 Sidewalks**
 - PH 9/11/17
 - PH 7/24/17
 - MAD 11/15/17

4. Resubdivision Application
Clearview Farm Preserve LLC
Cornwall Avenue/Mountain Road
12-lots

PH 9/11/17
PH 7/10/17
PH 7/24/17
MAD 11/15/17

Attorney Anthony Fazzino, Two Towne Center, Cheshire CT represented the applicant along with Darin Overton, P.E. Milone and MacBroom, 99 Realty Drive, Cheshire CT.

Mr. Fazzino informed the Commission that since the last public hearing, the application has received Regional Water Authority (RWA) comments which are part of the record, and Inland Wetlands and Watercourses (IWW) approval on 9/5/17. The RWA letter and minutes of the IWW meeting are part of the record. Engineering Department final comments were received, which state the current plan complies with all the department concerns.

The Natural Diversity Data Base comments were received (which is part of the DEEP) with regard to Box Turtles on the site, and there is inclusion in the plans for compliance with the DEEP recommendations.

Declaration of Easements, Reservations, Restrictions and Covenants – Mr. Fazzino submitted a revised Declaration document for the record. The revised Declaration includes addition of paragraph #18, a provision which requires the Homeowner's Association (HOA) to maintain the sidewalks in front of Dr. Smallwood's property.

Review of the Subdivision Application – Mr. Overton referred to some of the issues from the last public hearing related to the flood plain and drainage. He talked about the drainage protocol, and handling storm water management on the site. He displayed a graphic showing the features of the storm water management. Mr. Overton reviewed the existing drainage patterns (green lines) that run north and south and south to east, following the drainage swale on the east side of the site. On the Mountain Road side there is drainage discharge from Sorghum Mill Drive that comes into a swale on the east side, into the cross culvert into a small catch area, into a pipe that enters the site (built in the 1970's)...that pipe comes down and discharges into a section into a channel created for this discharge pipe. A 48 inch culvert exists; it was planned to cross Roaring Brook at some point; the culvert exists on State open space property. The proposed collection system (red) comes off Mountain Road, discharges into the town's drainage system. Under the proposed condition with lots developed (blue) a portion of the front yards of the homes drain towards the road. The area between the green and blue lines represents what drains into the proposed drainage system. Computations show a reduction in flow off the site to the east.

Engineering Department – Mr. Overton said there were discussions to review questions and changes regarding the flood plain, existing FEMA flood plan, and recent updates to the plan. The FEMA plan from last year is different from the current flood plain line. The elevations show the flood plain is contained within the non-encroachment line.

The blue line is the FEMA line to be used going forward. Mr. Overton and staff developed a more detailed model, with more details than the FEMA plan; it shows the flood plain, elevated conditions within the non-encroachment line (yellow), both flood plain lines (blue is the legal line), none of the houses are in the flood plain and there is no flood plain insurance requirements. The map was revised per the Engineering Department request. The red line was pointed out as the high point. There is a "note" on the plan for "no grading" allowed to lower the elevation and create a future flood plain issue. This note is on the plans and made very clear. Copies of the flood plain information were distributed to the Commission.

Regarding the amount of impervious surface for the 12 lots, Mr. Overton reported it is 1.67 acres of impervious surface.

IWW has approved the plan. The non-encroachment line is established as part of the IWW permit. The storm water management plan is another way to protect the water quality for Roaring Brook. The FEMA flood plan is accurate; and FEMA decides where the detailed models will be open, and Mr. Overton stated he does not know how FEMA decisions are made. The detailed study of the applicant provides an analysis and elevation data, and is more accurate than the FEMA map. Mr. Overton reviewed the horizontal and vertical site lines, and said other site features have been verified by the traffic engineers.

Erosion Control Features – Mr. Overton stated there would be a temporary erosion berm; it will not be a permanent berm; it will be removed when vegetation is established.

Storm Water Basin Clogging – Mr. Overton stated there are several discharges designed; there is under drain at the bottom which will allow for the basin to drain dry between storms; it drains slowly; there is a 4 inch overflow; emergency overflow at 185.7; there are safeguards designed into the basins.

Mr. Dawson talked about the road elevations, where water will not drain down, the road lower and house up higher, and some houses closer to the road, up front.

There are 11 new lots set on a plateau, and Mr. Overton said they are about 16 feet above the broad swale of the Mountain Road homes. Most houses are 205-206 elevation; front yards drain towards the road and collection system and go to the basins.

Mr. Dawson understands the lower rebuilt houses will not be affected in any way because water goes to the catch basin drainage and back up.

The gray and blue lines were pointed out by Mr. Overton, who said they now drain into the storm water management system.

Mr. Natale talked about the elevation variances and having enough catch basins.

Mr. Overton said the road is at a low point. The new designs have adjustments matching to grade in the right-of-way. Any water will drain over the road to the south; catch basins are designed for a 10 year storm; and the design is per town standards and Engineering has approved the design.

Mr. Natale asked about Sorghum Mill Road built in the 1970's, the proposed development's construction traffic, the existing pipe breaking or something happening to it, and if there has been camera inspection to insure nothing happens.

The pipe is shallow, and Mr. Overton said there is no enough room to elevate the grade there. There is a proposal to replace the first section of pipe with more coverage, with tv inspection of the pipe.

Mr. Veleber asked about the pipe under the road and it is being scoped out yet.

Mr. Overton said camera inspection was not done as part of this project.

Mr. Veleber read Engineering Department e-mail comments to the PZC into the record.

This e-mail was received by Attorney Fazzone last week, and comments about lot #11 have been complied with, and the applicant is in agreement.

At lot #7 the ridge line fades out and Mr. Overton said the home must be elevated and up above the flood plain. With the FEMA line close to this home the flood plain issue has been addressed and the house will be raised. The flood plain does not affect this house.

With regard to the HOA Declaration document, Mr. Stollo noted only one house was identified with clearing of the sidewalk as long as the current owner lives there. He asked if there is any way the HOA would include the properties in the beginning of the street and do entire sidewalks. He said with the HOA paying for one sidewalk to be cleared it is only fair to include all the houses. Mr. Stollo cited his disagreement with this section of the HOA document.

According to Mr. Fazzone there is absolutely no way to do that, and when this house was built it was clear there would be a road in that subdivision.

Chairman Kurtz said every homeowner will know and understand the rights of the HOA, and this section of the Declaration document.

Attorney Fazzone said the HOA will have responsibility for open space areas and detention basins. People buying homes in the subdivision will have a copy of the Declaration document; the contracts will require becoming and remaining HOA

members; at closing there will be a letter signed by the purchaser that they must become members and remain HOA members.

Mr. Strollo pointed out problems and issues with prior HOA documents, i.e. Ravenswood property. He does not want future HOA's to fall by the way side.

In that regard Mr. Fazzone said those HOA documents were nothing compared to the current Declaration documents and how HOA have been established. In the future, if work is not maintained by the HOA, the Town will do the work, and will charge the HOA accordingly.

Stating his agreement with Mr. Strollo's comments about the HOA, Mr. Todisco believes everyone will sign the HOA agreement, the HOA will be set up, and discharge its duties. He said the HOA maintaining all the sidewalks has merit; each home would benefit from all sidewalks being cleared; and this should be part of the HOA.

Mr. Strollo said the idea of the Smallwood property makes sense, and person who next buys the property will be in the same situation. He asked if this could be done. Section 18 says the HOA clears sidewalks on one lot.

It was stated by Mr. Fazzone that it could be included "in perpetuity" for the HOA to shovel snow on that sidewalk.

Mr. Todisco said it should be in the whole development.

It was noted by Chairman Kurtz that town law allows 24 hours to clear sidewalks, and we cannot demand the HOA to clear all sidewalks.

Mr. Todisco agrees with Mr. Strollo. He said everyone who purchases a home will see this as part of the maintenance; everyone will benefit from this; and this will be a selling point for the HOA to clear all the sidewalks.

Dump site and clearing – Mr. Fazzone said there is correspondence and comments about the existing dump area, its exact location, DEEP boundaries and capping. He pointed out that Milone and MacBroom did not do the engineering work for the capping. From the maps filed and approved by DEEP along with the Bens estate, the firm superimposed on the subdivision map the area of the limits of the closure plan. This is noted on the dotted line of the map being displayed, and the map was introduced for the file.

At the first public hearing the Commission received a copy of the closure plan, and #13 states that the Bens estate is required to do a complete as-built of the closure and file it on the town records. This would show up in the chain of title. There is no requirement that the dump site be shown on the actual subdivision map. Mr. Fazzone discussed this with the Town Attorney, who has authorized him to represent to the Commission

that this does not need to be on the subdivision map. There is no notice of the DEEP as-built to be filed on the town records.

New cul de sac regulations were noted by Mr. Fazzone, who said information was submitted showing this cul de sac meets requirements of Section 5.6. The cul de sac is under 1000 feet; has 11 lots; there is a traffic impact study; and Commissioners were requested to read the first part of this study, sections 1 through 3. The professional traffic engineer comments note the cul de sac meets Section 5.6. Mr. Fazzone read an excerpt of the traffic study into the record.

Mr. Fazzone pointed out an error in the July 24th minutes, page 9, last paragraph. It should read "have not raised issues..." The clerk noted this correction and said the minutes would be amended accordingly.

Cornwall Avenue Extension/through street – Mr. Fazzone stated the traffic study finds no operational benefit for a new road; no through street has been provided through the Cornwall Avenue Extension; the cul de sac ends where it is cited on the plans.

On the map, Mr. Overton reviewed the topographical conditions from the end of the cul de sac to Cornwall Avenue Extension. The cul de sac coming off Mountain Road is flat and climbs up to the plateau; the flat grade raises slightly to elevation 208, 219, 212; in that depression it goes down to elevation 190. To build a road through here would require more extensive filling; there are wetlands associated with Roaring Brook along the property line; the road is boxed into a narrow area which pushes a road towards the depressed area; there are then drops in elevation; and there is a low broad swale running through the area.

Mr. Fazzone presented a small exhibit which showed Cornwall Avenue Extension at 600 feet long. From the end of that to the border of the new home property it is 700 feet; then to the edge of the cul de sac is another 200 feet; this is 1500 linear feet; and the Cornwall Avenue Extension is not up to town road standards. According to State determination a developer cannot be required to do off-site improvements.

It was stated by Mr. Todisco that the point is that it makes no sense to build a 1500 linear foot road to reach Cornwall Avenue Extension which is not a standard town road.

Exhibit submitted by the applicant is the overall site plan, Clearview Farm Preserve.

Section 6.6 states the need to consider conditions that exist on the subdivision property where a 50 foot right-of-way would be left and also conditions that exist on the other property. Attorney Fazzone said the innate characteristics of the property must be considered, along with the Plan of Conservation and Development (POCD), natural features of steep slopes and North Roaring Brook on the subject property...whether or not the PZC wants to make a policy decision for a road in this area. The applicant is stating that due to conditions cited, the extension should not be requested.

Dump Area Issues – Mr. Linder reported he received an unsolicited e-mail communication from David Schrumm which he sent to Town Planner Voelker. Mr. Todisco also received this unsolicited e-mail communication from Mr. Schrumm and sent it to Mr. Voelker. Attorney Fazzone stated these are ex-parte communications that should not have been made. The letter being directed to Mr. Voelker as a staff member is no different from neighbors' letters to Mr. Voelker and it becomes part of the record.

Mr. Linder talked about the issue of inclusion of the location of the dump site on the town records, and asked for clarification on how the overview will be part of the land records. He also asked about this information being available to attorneys as part of a title search for future purchasers of Clearview Farm property.

In response, Mr. Fazzone said the overview will not be part of the subdivision map. It will be available for someone looking at the PZC files. The current property owner is the estate of Mabel Bens. If the subdivision is approved and the deal goes through, this estate will transfer title to the developer. Someone doing a title search will look at the name of Mabel Bens, and see a copy of the closure plan on the land records, paragraph #13; and will see reference to the as-built map showing the exact location of the capping area. This will not show up in the title search.

This information would be of special interest to a home buyer and Mr. Linder said the owner of the house at the end of the cul de sac would be closest to the dump area.

Everything will be a matter of record and Mr. Fazzone said this will be on the record, and there will be a Mylar on file for many years.

Mr. Veleber said with this piece coming out, it will not involve the landfill itself, and asked about the landfill not being reflected on the subdivision piece. If the remaining Bens property were to be subdivided, he asked if it would show up on that subdivision map.

It would depend on what is included in the remaining piece of land, and Mr. Fazzone said anyone doing a title search would see reference to the closure plan and as-built survey.

For lot #6, Mr. Natale sees a perk test and asked if the septic system was tied to the landfill.

The Commission was informed by Mr. Overton that the test pits and perk tests for the septic system complied with feasibility approval and Chesprocott. All testing done on the site was for septic systems, and there are no State requirements. Another company handled this for the Bens family, not Milone and MacBroom.

Waiver Requests – Attorney Fazzone referred to an exhibit from the last public hearing, and offered copies for those Commissioners who did not have a copy of this exhibit.

The exhibit is a copy of the original Bens subdivision and all homes along Mountain Road. Another exhibit was a map showing the details of the roadway. In the late 1970's Mr. Bens granted Barnett drainage easement through the property. The easement was subsequently assigned to the Town and assumed by the Town, and the deed received for the roads in Deaconwood. Mr. Fazzone read an excerpt from the deed into the record.

The subdivision map shows the property of Mr. Dell and Dr. Smallwood. There is a copy of the Town GIS map, orientation of their houses, orientation towards the proposed roads, copies of their deeds, easements over the proposed road which will disappear at the time the road becomes a Town road. There was a time (when Deaconwood drainage facilities were put into this strip of land) when Barnett agreed to grade the property and build a road to Town standards, which was never completed.

The Bens property is 23 acres, is unique to the area, and Mr. Fazzone has searched Assessor records, and there are no other large parcels zoned R-20 in this area. The only other access to this property would be off Cornwall Avenue Extension. The exhibit previously submitted shows the length of distances for the cul de sac, and Mr. Fazzone reviewed the details pointing out the areas on the map. Regulations allow for a cul de sac to be only 1000 feet long. A through street is not the answer; it would require the same waiver of Section 6.5 as the current application; it would still be a street; without the waiver the land could not be developed. There are no other properties in the area where these conditions would be applicable.

The hardship which arises is based on many things, including location of North Roaring Brook, sub-standard conditions of Cornwall Avenue Extension, existing terrain, location of the cul de sac from the opposite end. These create situations that the subject property cannot be used for residential development without Section 6.5 being waived.

There is not much case law in Connecticut on waivers and hardships as it applies to the PZC vs. ZBA. There is nothing in the statutes about hardship for PZC situations. Case law only talks about ZBA situations; ZBA concept has practical confiscations; it talks about severely reducing the usage of someone's property. For the subject application, there is lack of reasonable alternative.

Mr. Fazzone directed the Commission to the traffic impact study and CPD comments...noting the intersection will operate safely, and based on traffic comps a left run out of Sorghum Mill has the same time out of Beachwood. All the sight lines are more than adequate, greater than what is required, and Section 6.5 recognizes that there may be instances where it may be varied for safety reasons. The traffic study states that to put a road directly opposite Sorghum Mill, looking to the left coming out of that road, sight line requirements would not be met. Section 6.5 talks about where the offset road presents a safety situation directly opposite the road it is competing with, and this is the case here. Mr. Fazzone does not see the waiver violating the POCD or zoning scheme of the town. The applicant is providing a sidewalk along Mountain Road

to the sidewalk which starts at Sorghum Mill (east side), and there can be walkers to Doolittle School. A bus stop is not required. There will be signage at Cornwall Avenue Extension so vehicles have a heads up of students crossing. A four-way stop was checked into last year at Cornwall Avenue, and CPD advised the situation did not warrant this stop.

These are off-site improvements and Mr. Linder said they are being done voluntarily by the applicant.

Plans before the Commission show sidewalks on both sides of the street. On the south end of the property there are wetlands and a 50 foot upland area. In order to avoid disturbance to the wetlands the plans show a sidewalk up against the curb of the road. The Town Engineer's original comments recommended seeking a waiver of the sidewalks in that area, as there would be less disturbance of the upland review area. Mr. Fazzone said the applicant seeks the waiver subsequent to the engineer's comments. The hardship arises out of the existence of the wetlands. There will be sidewalks on the opposite side of the street; the furthest home will be about 700 feet; those houses would have access directly across the street to the sidewalk.

Mr. Todisco said the origin of the sidewalk waiver was from the Town Engineer, not the applicant. Regarding Section 6.5 of the Subdivision Regulations, he asked about 215 foot requirement included in 1980 or 1985, or was it earlier.

It was there earlier than 1980-1985, and Mr. Fazzone said it was not there in 1962 when Bens subdivided the property.

Mr. Todisco asked about Deaconwood, and the proposed road that was never built, and if this is where the road would be built. If the road had been built we would not be talking about a waiver now. It would have been legal to have a road there in 1972, even with Sorghum Mill coming out where it does.

Mr. Fazzone said it would have been legal to have a road there before Sorghum Mill development, which was built in the late 1970's.

On the colored map, Mr. Todisco said it appears there is a barrier between the new properties and the current homes...a tree line. He asked if the Mountain Road homes can see the subdivision with the trees.

It is a tree line, and Mr. Fazzone said the homes can see the subdivision. As far as the proposed development goes those trees will remain.

Mr. Overton advised the tree line is 80 feet wide.

PUBLIC COMMENTS AND QUESTIONS

Peter Wilcox, 415 Mountain Road, referred to the flood plain maps, and FEMA map (blue) being legally binding and that being good. He referred to the e-mail on the Milone and MacBroom flood plain map, and it being modified to reflect the FEMA map.

Mr. Overton stated the FEMA line on the plans is the legal flood plain line. There was a detailed study relative to engineering regarding the new line, and updates showing the area going out across the proposed roadway. The updated model addresses the concerns of Engineering staff on safety and emergency vehicles to get to this road in a flood. Updated model shows water will not cross the road, and it justifies the flood plain relation to lot #11. The applicant did not plan to submit to FEMA to update the mapping of this area, and it was done to address concerns of town staff.

Mr. Veleber read the Town Engineering e-mail to the Commission into the record.

Mr. Wilcox questioned the minimum setback for the septic system from Roaring Brook.

The Chesprocott letter approves all the septic systems in their locations, and Mr. Fazzone said everything meets health code, and the letter is in the file along with a stamped copy of the map.

Mr. Wilcox asked about DEEP approving the capping plan for the dump site, and about runoff and effect on the development, and if a study has been done.

To the extent there is to be capping, Mr. Fazzone said the State recognizes this would come before the Commission. The area is in a deep depression, and filling must come before the Commission.

Mr. Wilcox said his understanding is the capping will be higher than lot #6; the dump area is even with the ground; and there could be runoff to lot #5 or #6 from the capping. He asked about the maps given to the Commission and their review by the public.

Chairman Kurtz stated nothing new has been turned into the Commission.

Mr. Fazzone said the map showing the capping is new/revised. Other information and maps were submitted at the last public hearing. FEMA lines and contours were more clear and introduced.

According to Mr. Overton the maps introduced with revision date is based on a meeting with Engineering staff. It is the same information with clarity, as requested by Engineering.

Mr. Wilcox stated the site application and waiver is in violation of open space directives and in conflict with the 2016 POCD. He questions why the application should go ahead and be looked at now when the Commission approved the POCD. Mr. Wilcox heard this application should be approved because of a hardship, which he believes is self

imposed, and is not a hardship for anybody. He does not want the application approved.

A portion of the land being turned over to the town is wider than the 50 foot easement in the area of lot #11, and Mr. Fazzone said it will provide direct access from Beachwood Court to the State owned property, open space which can be more enjoyed than at the present time. With respect to the self imposed hardship, he said the law is clear that when there is a change in zoning regulations, it makes the hardship.

David Schrumm, 369 Sir Walter Drive, reviewed the history of the Bens property, sale of the upland to the State, and Cheshire given responsibility of preserving this open space. The State land did not include the dump; residents found the dump not the town staff. Since the death of Mabel Bens in 2008 it has been 10 years, and there is a letter in the file showing the request to extend the estate, keep it open for environmental concerns. The subject application drew the line along the edge of the dump, and there are pictures of the stuff in the dump, with residents finding out about it and getting involved. DEEP has plans to cap the dump, and Mr. Schrumm asked the Town Planner if anyone will review this plan. He was told it was a State issue not a town issue. The capping plan exists; the Commission represents the citizens, not the Town Attorney; and on the subdivision map this line should be shown. The Bens estate cannot afford to cap the dump until there is a sale of the property, and it could be some time before the dump is capped. He said there is no information on the public record about the dump area, and there is no reason that the outline of the State plan is not on the subdivision map. The capping is 2 feet of impervious soil, 6 inches of loam, and the grass planted which must be mowed forever. This matter will be back to the Commission again. Some of the land capped will be higher than some of the houses developed. People have been ignoring this for a long time. Mr. Schrumm said the public hearing should not be closed as more information is needed on the dump area. He encouraged the Commission to keep the public hearing open, and take a walk around the unique site.

Barbara Chartier, 445 Mountain Road, talked about the proposal to build houses behind her house on lots at a higher level than her house. She has two sump pumps operating continuously in her house. She mentioned the issue of Box Turtles being dismissed, perk tests done during last year's dry summer not this year's wet summer, and if they have to be repeated. She requested public comments from last year be put into the current record, and was told this was not possible with the new application. With more people there is more traffic, and Ms. Chartier said she has no answers to where to turn if measures don't work. For the dump area the debris is deeper, and much of the information has been glassed over. She asked that the application be denied.

Dr. Joan Smallwood, 469 Mountain Road, submitted written information and a flash drive from Matt Dell, 465 Mountain Road, to the Commission. She said information from last year is relevant to the new application. She wants to review the new HOA Declaration for further comments; she submitted last year's statement on the impact of the proposed development on existing Mountain Road neighbors; impairment to her

property and neighbor's property. Dr. Smallwood said the new information is controversial and the public hearing should be continued. People living in the area see potential issues with this proposal, quality of lives and property values are affected by the proposal, and what is incorporated in the record should have response. A petition was submitted by neighbors requesting an independent review by an outside source on the project, such as Southwest Conservative District, with the town paying for this external review.

Dr. Smallwood asked about filing of the subdivision map, what this is.

This is labeled in the documents as a subdivision map, and Attorney Fazzone said they are filed for land record purposes, a description in the deed. A site plan is filed because of specific references in the restrictions and covenants that refer to the site plan details, i.e. maintenance of the detention basins. The required plan is the subdivision map; it is labeled as such; and is in the whole packet of documents.

On the site plan between her property and sidewalk there is a symbol, i.e. retaining wall, but it is not labeled.

Mr. Overton said there is a long entrance drive; there is only a 50 foot wide right-of-way to work with; town standard is a 40 foot wide roadway plus graded shoulder on each side; and there is no room grading out the full right-of-way. The applicant worked with engineering staff and the proposed retaining wall will meet the grade, at a maximum of 2 feet high.

Dr. Smallwood questioned safety hazards for pedestrians, dogs, bicycles along the wall falling into her yard.

There is no other option, and Mr. Overton said it is a low retaining wall, which has been reviewed by engineering staff. Other areas in town have retaining walls. A fence may be required and will be in place. He said it is hopeful there can be some agreement with property owners to grad this roadway out.

Across the road is a 12 inch RCP drain that takes ground water from the drainage swale under the road and out into the wetlands, and Dr. Smallwood said there is erosion there. The actual road bed is only 40 feet wide, so the sidewalk and width of the road extend over the lip of the land at that point. She does not see how this can be done for long term stability without a retaining wall and fill in there. This has not been mentioned. This is why people have urged site walks as details of the land do not fit with what is on paper as far as the project goes.

Dr. Smallwood showed an aerial view of the Bens property proposed to be developed, hillside shading area views, 16-20 foot steep slopes, houses built 2+ stories high on 20 foot high plateau, summer heavy screening, no screening in winter, detention ponds, basins on a slope, the dump area/shaded areas with depression. Capping does not

protect whatever is in the dump and there can be seepage, and it will be an attractive nuisance to children, and is unsafe. She showed a view of the southern end of the property, total of the plateau of the development, Roaring Brook going down to the wetlands, the stream from the 12 inch RCP which will contribute to the ground water for neighbors. The development will not be served by public water; will not have sewers to take water out; there will be a net accumulation of water; septic systems add to the significant level of water to the already seasonal ground water. She asked why leaching fields are so close to the slope in back of Mountain Road houses, and said they are much further out than required by regulations.

In response to the question, Mr. Overton said the septic systems are in the location where testing was done. These systems meet health code; have had Chesprocott review and approval for feasibility as standard practice for this type subdivision. The septic systems could be located closer to the houses. Before testing was done there was little information about the soil on the site; there were concept plans for the subdivision; and the layout is in flux. Soil information on the test pits is consistent with sandy gravel. Chesprocott was on property when testing was done; everything is on their records; and the septic report is part of the project. The original septic system testing for the larger subdivision is also in the Chesprocott records, but is not relevant to this project.

Dr.Smallwood said Cheshire is liberal with regulations on location of leaching fields, and she has concerns they are too close to a highly erodible slope, which could collapse. There could also be frost heaves creating channel in the soil causing leach ate to go down into backyards. Many people own the entire slope. The concern is plantings holding the slope in place could be cut down by the homeowners and destabilize the slopes, which would be harmful to properties down below. She has more concerns about the flood zone, things to be addressed, and asked that the public hearing be extended so residents can have their say on these issues.

Attorney Fazzone said the State Legislature disagrees with closing this public hearing, and says the public hearing must be concluded within 35 days from when it started. On July 10th the applicant submitted lots of material to the Commission for the record. People had time to look at it, submit questions and issues at the public hearing. Mr. Fazzone has checked the file and nothing has been submitted by Dr.Smallwood prior to this public hearing. The Commission cannot continue this public hearing without a request from the applicant. The 35 days is long past; it has been 63 days with an extension to get to this date; and there are a limited number of days to be given. Mr. Fazzone said the applicant sees no need to continue the public hearing.

The concept of the Mandatory Action Date, MAD, is that once the public hearing is closed the Commission has 65 days to render its decision. The MAD is not the length of the hearings. The legislation for 35 days was specifically to avoid continued delays.

Dr. Smallwood said the public has the right to speak; the applicant went on for two hours; and this is a disadvantage to the public. She discussed the traffic study as insufficient to expanding traffic in this area and it did not reveal the unsafe degree of the roads. Traffic on the road does not happen in the a.m. or p.m. hours, but nights and weekends, with daytime traffic faster than rush hour traffic. Mountain Road is an arterial road, and there is more traffic than cited in the study, and there is heavy truck traffic.

The Smallwood house is only 32 feet from the Mountain Road curb, and in winter there are high snow piles with safety concerns getting in and out of her driveway. The road proposed to Beachwood has wild life crossing and animal safety will be affected. There are concerns with the sharpness, 90+ degree turn of the road, a 6.5% decline, future grading will be a 10 foot drop, someone could slip or go off the road, and there is no provision for a guard rail.

Dr. Smallwood raised flood zone issues, stating engineers have recalculated to show no problem, and asked for evidence to support this claim. She has reviewed this, and wants to meet with PW Director Noewatne on issues of concern.

The easement access did not exist in the beginning with no easements when her subdivision was created. Dr. Smallwood said the easements were created by her and her attorney. It was stated she should have known by the wording of the easement that there would be a public road there someday, and she disagrees with this. When there is an easement, it is her understanding that an access easement over someone's property makes no sense when the property is no longer private. She said it is reasonable to include a statement in the easement specifying the conditions upon which the easement is terminated. Dr. Smallwood read a short statement into the record on the easement. She was told at Town Hall in 2002 that the purpose of the road bed was to allow Bens access to their property at the south once the Mountain Road houses were built, as they could no longer access their property directly from Mountain Road. She was told that in 1980 Bens attempted to develop this property, but ran into serious problems with the land, and the project was abandoned, and Cheshire would never allow this property to be developed. Between 2007 and 2010, Dr. Smallwood went back to the Planning Department and asked about anything happening to this property, would it be developed, would the road be finished. She was told no...Cheshire would not allow this land to be developed. With that history, she asked how she would know this property and road would be developed. Had she known, the idea that this should shut down her first amendment rights with opposition to this development is absurd. Dr. Smallwood has concerns about the water quality at the 12 inch pipe stream at the rear of the Dell property, water going in and around, past their houses along the swale and floods their basements. She has concerns about the lining up of the septic systems in back of the houses along the swale. She recently became concerned about the dump area, what is in the ground...i.e. chemicals. This water was tested for ecoli and other contaminants, with results showing the water is contaminated to a level where swimming would be unsafe. This is the water that floods their homes, wild life drinks

this water and breeds in it, and now 11 septic systems are added to further contaminate the water. These are Class AA waters in a public water supply water shed, and this is an issue. Septic fields, leaching fields densities of one half acres or up to one acre are certain to contaminate ground water, and this is not sanitary.

According to Dr. Smallwood this project on many levels is not appropriate for this site. It is an unusual property; the site should be preserved in its natural state; it should not be developed to the extent proposed. This site will be clear cut, bulldozed, paved, trampled, and she supports the environment and its preservation. The application should be denied.

(Mr. Linder left the public hearing at 10:30 p.m.)

Mr. Veleber asked where the water tests were from and who did the sampling.

Dr. Smallwood said there were two samples taken from the stream at the outlay of the stream, two samples for the sump pit in her basement, and Connecticut Testing Lab in Meriden did the testing.

Tom Grimshaw, 470 Riverside Drive, asked why the berm is being removed if it is necessary and helpful in the development of the site. He said the berm will have some protection of the homes below it.

In response, Mr. Overton said the berm is shown to control sediment laden runoff during construction as if all lots were developed at once. Some of the temporary berm goes over some of the leaching field area, and to leave it permanently would be an issue of storm water runoff not suitable for leaching fields.

Mr. Grimshaw said leaching fields are pushed back towards the homeowners on Mountain Road. If there is impervious surface being built or added by owners on the high ground this should be taken into account, and not allowed. He is interested in the applicant putting teeth into the HOA. Mr. Grimshaw asked what will be standard for 2nd and 3rd generations with the HOA.

Chairman Kurtz stated the HOA Declaration will always be on the house deed.

(Mr. Dawson left the public hearing at 10:59 p.m.)

Stating he took a walk through this property and the toxic waste dump, Mr. Grimshaw said it is a significant site. The testing done does not show how deep it is, and he asked if testing was done on the water. Lot #6 will be very close to the dump site; it should be looked at being 25 to 30 feet; kids will have access to the dump area, and depending on the cap much of the stuff will be sticking out. As part of an environment group, Mr. Grimshaw was pleased to see the POCD coming to Cheshire. The Commission should look at the requirements described, and he said this special property should be

preserved. It is a shame to develop it before knowing what happens with the dump site. He recommended this application be disapproved until that is fully worked out, and proved it will work.

MOTION by Mr. Veleber; seconded by Mr. Natale.

MOVED to extend the hours of business beyond the 11:00 p.m. curfew.

VOTE The motion passed unanimously by those present.

Dr. Smallwood cited a list of how the design of the storm water basins is contrary to the DEEP manual and submitted the list for the file. She wanted to submit this list to IWW but was unable to do so. Deaconwood Pond collection basin dimensions are not correct; traffic data indicating site distances are not sufficient to insure safety; comments on hydrology, rain fall data and calculations are being updated; an article by two attorneys about land owner limitations on use of their properties.

Mr. Overton responded as follows:

He said capping of the dump site will be filled well above lot #6. Grade from the closure plan ranges from elevation of 188 at the low point to the near ridge of 204 elevation. The upper elevation near the ridge is 204; lot #6 is at 208-210; based on these elevations they will not come up to lot #6 or go over the top of it.

The information submitted by Mr. Dell is relevant to traffic, and the information is similar to that covered as part of the project. The traffic study properly documents the traffic information out there. The traffic counts were done in a wide range time frame; focus is on the peak hours; there is understanding of speeds outside the peak hours.

Storm Water (submitted by Mr. Dell) – the designs are based on town standards; they were reviewed by town staff; information proves to be consistent with town standards and standard engineering practices and design.

Aerial photographs submitted by Mr. Dell – he mentions the channel drain from the pond shown in 1934; 1965 photographs of homes with the pond gone; some of the houses on the pond where pond was filled in; this fits in with neighbors comments about the 12 inch pipe; ecoli comes from animal waste and failing septic systems.

The septic system is designed to meet the State and Town code, and all health code systems that apply, and it will not contribute to any ground water containment. WPCA updated its facilities plan; looked all the residents in Cheshire at the time; they came up with flows coming into the treatment plant at an average value of 227 gallons per day

per home; the subject property would be about 2,500 gallons per day total. The State and Public Health codes do not require a ground water analysis for individual septic systems because of the minimal impact. The project septic system will have a miniscule effect on the ground water.

Radius of the curvature coming into the site – there are standards to be met in the regulations; the current design is consistent with standards; a sharper curve could have been designed, farther away from the wetlands, in the center of the roadway, but town standards require a larger radius.

Unique and ecological sensitive property site – this was a concern cited by many speakers; the applicant had awareness of the animal and plant species on site, and the ridge line which is preserved by the State. A full study, by a biologist, was done of this property per DEEP; nothing was found; the DEEP requirement for a Turtle Management Plan has been complied with. If this was a particular ecology area the State would have included it in its open space.

Regarding lot #6 and the dump pit, Mr. Todisco clarified that the capping is at a lower elevation than #6.

According to Mr. Overton, a part is lower at 188 elevation; the ridge line on the east side goes up to grade 204; lot #6 is at 208-210 elevation; two feet of fill on the capping is lower than the existing grade of lot #6.

The Commission was informed by Mr. Overton that Milone and MacBroom was not involved in the land fill closure plan design, and he cannot make representation on how it will closed/capped, what studies were done, etc. His firm provided a copy of the plans, did an overlay of the infill area to address any issues raised in a letter to the Commission.

Attorney Fazzone commented on the Bens estate selling the land to have funds to pay for the dump capping, and said this is correct. The DEEP and the estate are in negotiations on getting the property sold and developed, secure that the capping will be done; and this is a concern of DEEP. Mr. Fazzone clarified that whoever is responsible for capping the property (never said the "State")...the Bens estate, contractor doing the work...will be trucking material onto the site. Some material may be available from the subdivision work. There will an earth removal permit approved by the PZC on this work, getting fill in and out of the site.

Regarding the point about the applicant coming in to clear cut the site, Mr. Fazzone said this could not be further from the case. The tree lines are being preserved; this is a former farm and now a meadow, not a tree property; 100% of the tree line will be respected. Tree lines on the west coordinate with the 50 foot upland review area.

Dr. Smallwood cited the following. The meadow will not be clear cut; the plateau is ½ acre of wooded land which will be entirely clear cut to get in the basin. She pointed out (on the plans) a road that was clear cut without a permit. During growing season these trees have a deep root system, control and minimize ground water in the area, and if removed ground water issues will be worse.

Mr. Wilcox stated his understanding that Mr. Overton and his firm are not responsible for capping the dump area...but there is a need for coordination between the developer and capping plan. He requested the Commission to head this up with town engineering or outside resources, as they are inter-connected and need to be evaluated. Mr. Wilcox does not see how the project can be approved without this careful review.

Mr. Schrumm said the State is working about its finances. There is a long term issue with this site; test wells will be dug; they must be maintained for many years; it is critical there be coordination and overview of the dump, as certain soils must be used. He asked who would oversee soils moving back and forth between the dump area and development, as there is a boundary line involved. When will the dump be capped...before or after the houses are developed...and Mr. Schrumm suggested whoever does the work show the PZC maps and plans.

Chairman Kurtz stated that soil cannot be pushed from this subdivision, if approved, onto another piece of property. The Commission needs to see the plan before any dirt is placed on the dump site.

The public hearing was closed.

VI. ADJOURNMENT

MOTION by Mr. Stollo; seconded by Mr. Veleber.

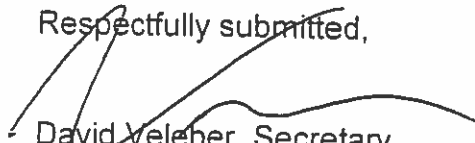
MOVED to adjourn the public hearing at 11:30 p.m.

VOTE The motion passed unanimously by those present.

Attest:


Marilyn W. Milton, Clerk

Respectfully submitted,


David Veleber, Secretary
Cheshire Planning and Zoning Commission

