

MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, APRIL 27, 2015, AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410.

Present

Earl J. Kurtz, Chairman; Edward Gaudio, Secretary; Members S. Woody Dawson, John Kardaras, Vincent Lentini, Louis Todisco, David Veleber. Alternate - Leslie Marinaro. Absent: Sean Strollo and Gil Linder; Alternates Diane Visconti and Jon Fischer. Staff: William Voelker, Town Planner

I. CALL TO ORDER

Chairman Kurtz called the public hearing to order at 7:32 p.m.

II. ROLL CALL

The clerk called the roll.

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

Town Planner Voelker read the call of public hearing for each application.

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| 1. | Planned Residential Resubdivision Development Application
<u>Apex Developers LLC</u>
Jarvis Street
15 Lots | PH 2/23/15
PH 3/23/15
PH 4/13/15
PH 4/27/15
MAD 7/1/15 |
| 2. | Special Permit Application
<u>Apex Developers LLC</u>
920 Jarvis Street
A 15 lot PRRD with 3 affordable units
Sections 44 and 40 | PH 2/23/15
PH 3/23/15
PH 4/13/15
PH 4/27/15
MAD 7/1/15 |
| 3. | Waiver Request: 920 Jarvis Street
<u>Apex Developers LLC</u>
920 Jarvis Street
Requesting waiver of subsections (3) and (9)
of Section 25.5 Earth Removal, Fill or
Regrading Permit | PH 2/23/15
PH 3/23/15
PH 4/13/15
PH 4/27/15
MAD 7/1/15 |

4. Earth Removal, Filling/Regrading Permit
Apex Developers LLC
Jarvis Street

PH 2/23/15
PH 3/23/15
PH 4/13/15
PH 4/27/15
MAD 7/1/15

Attorney Anthony Fazzino represented the applicant, Apex Developers LLC.

The Commission was informed by Attorney Fazzino that since the public hearing of March 23rd, the applicant received Inland Wetlands & Watercourses Commission (IWW) approval. He introduced a copy of the approval for the record and application file. Attached to the approval is a copy of the DEEP/Bureau of Natural Resources Diversity Base letter, February 11, 2015, which covers all the information on turtles and wild life on the site. This letter was submitted as an exhibit and for the record and file. There are two types of turtles species on the property, Eastern Box Turtle and Wood Turtles. The DEEP makes certain recommendations, similar to the recommendations made for the Realty Drive cemetery. These include scanning the property from April 1st to September 30th for the turtles, walking the site to see evidence of turtle mating.

Town Planner Voelker read the DEEP letter into the record.

Mr. Fazzino said the applicant would comply with all the DEEP recommendations.

With regard to the DEEP recommendations cited in the letter, Mr. Todisco asked about the people going into the area to look for the turtles, and who they would be.

The Commission was told by Mr. Fazzino that these people could be hired by the applicant to do this work, or they could be volunteers.

If turtles are found, Mr. Todisco asked about moving them to a safe area and whether this actually happens.

Mr. Fazzino stated it is correct that turtles found would be moved to a safe area. The Ten Mile River corridor is known for having turtles and they lay eggs there coming out of the Quinnipiac River.

William Root, Soil Scientist, Milone and MacBroom, explained that he does wild life studies, and surveys are done all the time in Cheshire and other towns where turtles are known to be living. The survey work includes exclusionary fencing. A team is hired to do the survey, walking the site, looking for turtles moving in the spring time, coming out of hibernation and heading to the wet land areas, and sometimes there are mating activities. The subject site is not a good one for Eastern Box Turtles. The river corridor is a good site for Wood Turtles which are more aquatic, going up and down the Ten Mile River corridor and open space. In the winter the turtles hibernate and are confined to the wet land area, and they can be harmed with excavating. After winter they come

out, can be found, are repositioned to a safe area. Wood Turtles spend most of their time in the wetland sites. On the subject site it is not expected to find Box or Wood Turtles on the site. Further north they have been found, and if found on the site they would be moved to a safe area. For this application, a protection corridor is set up for the turtles to move from the Quinnipiac River up along I-691 to sandy banks, and they are encouraged to stay in a safe zone. When turtles are found, they are moved in the same direction to a safe zone, not a dangerous zone.

Regarding moving the turtles, Ms. Marinaro asked about stressing them, and if moving them is done by the applicant and unbiased people from an ecology group, or a combination. She also asked about the Wood Turtles and changes in the brush area affecting them.

The turtles are not stressed, and Mr. Root said the initial steps are done as part of the overall site assessment of the habitat. When it is closer to construction there is application to the DEEP for a permit, similar to a storm water permit, and conditions are usually attached to protect the species. In this particular project the corridor is all in the wet lands, protected zone, with an upland buffer undisturbed area; the interior portion of the site is dedicated to housing; with preservation of the habitat and upland for the turtles. He said turtles are usually found in a clear setting. For power line work, the permitting is different and comes under different State agencies. With this project there is approval with a set of conditions from DEEP, as part of the storm water general permit, requiring conditions in the record. The applicant hires someone licensed to do this type of work.

Homeowner's Association (HOA) - Attorney Fazzone said the HOA issue came up at the last hearing, effectiveness of the HOA, creation of the HOA and Commissioners were sent the copy of the Declaration for the HOA.

Mr. Fazzone submitted the document and made it part of the record.

Throughout discussions and for the IWW hearing the HOA Declaration came up. A meeting was held with the Engineering Department regarding the HOA, with discussion about what should go into the Declaration. The first draft of the Declaration was submitted by Mr. Fazzone to the Planning, Wetland, and Engineering staff. Assistant Town Engineer Nolte reviewed the document, made suggestions and revisions, and this "red lined" revision is included for the record.

Mr. Fazzone stated that the HOA is required to do maintenance and repairs to the storm water basins. There is description in the Declaration on what the Town Engineer wants done with respect to the basins, such as mow them, keep the berm areas free of brush, vegetation and trees. The prospective buyer must enter into the HOA; the deed will require the buyer to join the HOA; the Declaration will be recorded; before a Certificate of Occupancy is issued for any house, it will be established that the HOA is established and on record. At the Town's suggestion, there is a right to inspect and enforce the agreement. If the Town feels the basin is in danger or there is an issue to the wetlands,

the Town can do the work and pursue the HOA and individual homeowners for reimbursement of costs.

According to Mr. Fazzone this development has zero increase in runoff. Milone and MacBroom decided to accomplish this with storm water basins, and the Town will not undertake this responsibility. This falls upon the HOA. The Declaration has been strengthened to make this enforcement. At the time of closing on houses, the applicant will require the homeowner to put in an amount towards the HOA dues. This fund will be established within the first two years to completion of the sale of the houses.

The Engineering Department comments dated April 22, 2015 indicate satisfaction with the HOA Declaration.

Mr. Voelker read the Engineering Department letter from Don Nolte, Assistant Town Engineer, dated April 22, 2015, into the record.

Other Space Issues - Mr. Fazzone stated this is an application pursuant to Section 44 of the Zoning Regulations. He read an excerpt of Section 44 into the record.

There is no disturbance to the wetlands; there is some disturbance where the basins are built in the upland review area; this is what the IWW permit approves; it is proposed that the open space which does not contain the storm basins be given to the Town of Cheshire. The opposite side of the Ten Mile River is owned by the Town as open space.

Mr. Fazzone reported that the applicant looked at conventional subdivisions under which there is no open space requirement, but it was felt that the flood plain and land running up to the river would be better held by the Town of Cheshire and not as part of a larger subdivision in which a property owner has the temptation to encroach upon the wet lands.

Grading and Earth Removal Issues - Mr. Fazzone pointed out that Section 25 was originally intended and used for actual mining operations for gravel etc. Until recently it was never considered to be necessary for subdivision or site plan applications. It started being considered as a separate and necessary application when Stop & Shop was approved. And, a separate application is now filed for earth removal.

The applicant is seeking two waivers. The first is the requirement that the disturbed area be limited to 5 acres; and the second is no grading within 50 feet of a road or property line where the grading is below the level of the adjacent property.

With respect to the 5 acres, Mr. Fazzone said the number for this application is approximately 7.5 acres disturbance at one time, and this includes the road way. He said this is a more efficient way to do the work; it takes less time to do the whole site at once, and start the restoration; there is less disturbance in the area for the removal. Neither waiver will cause any unreasonable risk to public health or safety, which is

standard in the regulation. It was noted by Mr. Fazzone that two property owners were concerned with the grading.

Mr. McEvoy has prepared cross sections which show the grading related to their properties and grading previously done on them, and will show the exact limits of the grading. It will not come right up to the boundary line, and the applicant is not asking a complete 50 foot waiver, but about 30 to 40 feet away from the property line.

William Root, Milone and MacBroom, stated he is a proponent of open space, and it is an important benefit for the Town to have open space ownership rather than limited control with single owners. There is also a significant health and safety factor with the flood plain, wild life protection, and passive recreation. The subject area soils are sand and gravel based and an important connection with the aquifer and they are an important reservoir for the Town as a drinking water supply. The area is an attractive forest, has good species of wild life, and flood protection is important for the Town. It is an important piece of land to be owned by the Town and under its control.

On the map, Mr. Root pointed out the open space areas.

Ryan McEvoy, P.E. Milone and MacBroom, pointed out the yellow shaded/green shaded areas which represent the wet lands on the site. The open space boundaries for the Town include the entirety of the yellow shaded area and a portion of the upland areas, about 1/3 of the site. The remaining 4 acres are proposed for open space to the HOA which will go around the residential proposed lots, providing a buffer between the neighboring residential properties. There are 7 3/4 acres dedicated to the Town, and about 4 1/4 acres to the HOA.

The open space acres to the Town has been discussed with Ms. Simone, Environmental Coordinator, and Mr. Fazzone feels the Town would be interested in acquiring this open space.

If the Town was not interested in this open space, Mr. Todisco asked about the different in impact on the open space, if any.

Under the current proposal, Mr. Fazzone said if the Town did not want to take it, the property would go to the HOA. It would be clearly labeled as a non-encroachment area; there would be a conservation easement over it for as much protection as possible; and the area would be clearly marked with posted signs that the property belongs to the Town of Cheshire. There is no active maintenance involved. This open space would be under the stewardship of the Town; the Town owns the other side of the river; and would then control both sides of the river.

Revisions to the Plans 4/9/15 - Mr. McEvoy reported on the ultimate placement of the driveways in the cul de sac per the Engineering Department, particularly related to snow removal and placement of snow. There were concerns about the proximity of driveways at the end of the cul de sac, particularly lot #8, and the applicant flipped some

of the driveways, rotated them for more space to facilitate snow removal. Working with Mr. Nolte, an agreement was reached on the driveway placement.

Mr. Voelker stated that lots will be identified as shown on the site plan, and the property owners will be advised. The Engineering Department had concerns about the cul de sac and room for plows to dump snow.

A question was raised by Mr. Veleber about 3 driveways allowed on a cul de sac, and he counted 4 driveways.

Mr. Voelker said that lot #9 is not on the circular radius of the cul de sac, and the Engineering Department determined moving the driveways to locations to make sense. They pushed the driveways to provide for snow removal.

Mr. Veleber said some development plans have snow reserve easements for designated areas for snow removal and placement.

There is a set back line and Mr. Voelker said it provides more than sufficient areas for snow issues.

Mr. McEvoy assured the Commission that if something was built in the right-of-way there will be a phone call from Town staff. With the 10+ feet distance to the right-of-way itself and placement of the driveways, the Engineering and PW Departments will agree with the area for placement of snow.

For sidewalks, there are details and specifications on the plans for sidewalks.

The Fire Department requires a 2nd fire hydrant. Two existing lots at the end of the applicant's proposed road, 966 and 986 Jarvis Street, sight line easements are provided in accordance with the regulations.

Mr. McEvoy said there are notations on the title sheet added regarding maintenance responsibilities of storm water management features, and these are detailed in the HOA language and requirements.

Earth Work Proposed - Mr. McEvoy commented on earth removal discussions at prior public hearings. An 11x17 plan was displayed. The applicant testified that no grading will be within 25 feet of the property line on Maplehurst Court. The plans show the cross section and limits of clearing, grading and planting; identification of major trees in that particular corridor; one property with one tree; one property has vegetation and major trees; and the applicant is not clearing within 25 feet of this zone. There is a ridge line running along the property line (pointed out on the plan); the ridge line will be maintained so there is no change in the runoff pattern; and there is no effect of additional runoff. All existing trees on neighboring properties will be protected by the extent of grading, and the applicant's property will not be disturbed by the grading activities. The material to be removed is sand and gravel, and no blasting will be done.

Mr. McEvoy distributed a handout of what a conventional subdivision layout would look like on the subject property. The red highlights show the layout configuration using the R-40 Zone criterion. Setback requirements are greatly reduced for the subject development than a regular R-40. The estimate is 8 new lots; the existing house is lot #9; the houses would be further away from the roadway, closer to the wetlands; at the end of the cul de sac the lots would be significantly further back due to setback criteria; driveways would be elongated. With the proposed smaller lots there is no change in the impervious surface; there is no requirement or provision for open space in a conventional subdivision; and the ownership of the flood plain and wet land areas would remain with the individual lots.

Excavation - Mr. McEvoy stated that the applicant is not looking for a waiver of the entire 50 feet (Section 25), but is looking for 25 feet of grading of the property line.

Mr. Voelker said the plan presented to the Commission will show no closer than 25 feet, and if the applicant goes beyond this limit, there is a violation.

The remaining excavation is proposing less intensive grading along the property line than in the neighboring development and Mr. McEvoy noted the chart showed the grading to the property line (black line). The chart shows 15 feet of clearing line, preservation of trees within the 15 feet of the property line, and excavation will not begin within 25 feet of the property line. The regulation has no excavation within 50 feet of a property or street line, i.e. typically for mining operation. In the subject case, it is strictly to be able to grade so the back yards of the lots can be usable and it will quickly be stabilized and vegetated.

Mr. Todisco asked about the grading effects of the subject property on the neighboring property.

There is no effect, and Mr. McEvoy said it is on the ridge line so there is no impact with respect to drainage, vegetation. It is excavation on the back side of the hill, with no root systems effected by the grading. There will be material taken out for the back yards with no impact on neighbors.

At the last public hearing there were environment issues raised and Mr. Veleber asked if the applicant looked into this, and if issues were resolved.

Mr. McEvoy stated a few items were mentioned about storm water management and design, the nature of the material to be excavated, and the applicant has provided information on the updated plans. Regarding storm water management design, he said the drainage is in accordance with Town standards on this Town roads, and the applicant must comply with the guidelines from the Engineering Department. With respect to the design of the catch basins, they are not designed as infiltration basins. The basins are designed to hold back flow rates, are controlled with an alloy control structure, flow is metered exiting out of the basin, and runoff is not increased during a

storm. The drainage design is in accordance with Town/DEEP/Corp. of Army Engineer standards, and this was included in the IWW approval.

There were some questions about this style of development in this particular zone and Mr. McEvoy said the proposal provides affordable housing and open space, and is identical to the neighboring property. The development has IWW approval which should ease concerns and questions of the Commission.

Mr. Veleber commented on discussions about water flowing, water basins on adjacent property, and part of the issue may have been feeding water away from it and harming adjoining property.

This was in respect to a small wet land area to the property to the north (adjacent to Orelton Court) and Mr. McEvoy said there was a minor decrease. The proposal is for some lawn areas in the back of the properties, diverting water away from the driveways and houses, and a landscaped area generates some run off. There is no change. Lots 12, 13 and 14 are opposite Maplehurst properties. There is a small area in the corner of the property which drains towards the wet land corridor. Some of the area will be lawn space, and there is no change in the degree of runoff.

PUBLIC COMMENTS AND QUESTIONS

Sigrun Gadwa stated she submitted written information to the Commission which is part of the file. She addressed the Commission with responses to some of the statements made about turtles, runoff, wet lands, flood plains, less grading, leaving 20% of trees, combining of driveways, conventional subdivision with larger lots allowing turtles to exist, etc. She stated the Box Turtles spend time in the forest, eat leaf litter/flowers in the forest, can live in other areas; and Wood Turtles spend early Spring, late Fall and Winter in the river, go a long way and forge out from the river to forests and various habitats. Taking turtles to the other side of Town causes loss of weight, disorientation, and other issues as they are home bodies. Ms. Gadwa considers 5,000 cubic yards of excavation as reasonable and opposes 7 acres of excavation. She commented on the Town owning the open space rather than the landowners, dumping going on at the Moss Farms Village open space, vernal pools on the subject site, the stream on the site which has not been mentioned, use of fertilizer and pesticides on the lawns, HOA easement and property resale, neighbors not informed about the IWW hearing and PZC earth removal public hearing. Ms. Gadwa wants a subdivision approved to minimize the impact to the river and wild life species.

Chairman Kurtz stated that all the legal documents were posted in the newspaper and no letters to adjacent property owners are required under the regulations.

With respect to the proposed development, Ms. Marinaro stated that land owners may not know what is in their back yards, and she suggested Ms. Gadwa provide an educational program about the turtles, their habitat and the water ways. People could then consider greener alternatives to lawn care and wild life through the HOA providing information to homeowners in the developments along the river.

According to Ms. Gadwa she posts information on her web site all the time, and has pamphlets and brochures for homeowners. She does not approve of this application and said they should come back with a plan to protect the river, brook, and wild life, and the application should not be approved.

Debra Mason, Wallingford CT, stated her support of Ms.Gadwa's statement to the Commission. She commented on road kill of turtles which are moved around, their food sources and getting back to their original location, and trucks in and out of the construction site as dangerous to the turtles.

Mr. Voelker read comments from the Fire Department and Police Department into the record.

Regarding the 35,000 cubic yards of material and 7 acres of trees to be cut, Mr. Todisco asked if these amounts are necessary, if they could be reduced to address some of the concerns without affecting the project.

In response, Mr. McEvoy said that it has been reduced to 25,000 cubic yards of material, and 7.5 acres over 15 lots is a minor amount of clearing. There is 20 acres on the property; 7 acres is 1/3; and with the property and allowable density on the site, it is a reasonable number given the number of lots proposed. For the earth work it is needed to excavate material to construct the development. Mr. McEvoy explained that measures have been taken to minimize the excavation; that the excavation is necessary; the slope is reduced 2 to 1; and with a conventional subdivision there would be greater excavation required further into the wetland corridor, further towards Orelton Court, there would be no open space, and grading would be more for an R-40 subdivision.

Mr. Todisco asked about storm water basins in the terms of pollutants going back into the river.

According to Mr. McEvoy the basins have water quality to them, and they are designed in accordance with DEEP regulations. The first flush of runoff is held in the lower portion of the basin where sediment is allowed to settle out of the runoff; pollutants are taken off runways; and they conform to Town and State and Federal standards.

Mr. Todisco questioned the clear stream and whether IWW knew about it.

The Commission was told by Mr. McEvoy that the stream is in the wet land boundary, it is a narrow stream, and is shown on the plans.

Attorney Fazzone commented on the 5,000 cubic yards of material excavation, and the fact that with a permit from the PZC, an applicant can bring in or excavate 5,000 cubic yards per lot in a subdivision for a landscaping project. The 5,000 per lot on a 15 lot

VI. ADJOURNMENT

MOTION by Mr. Dawson; seconded by Mr. Veleber

MOVED to adjourn the public hearing at 9:30 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk