

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
February 15, 2011**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Spain, Cameron, Hutchison, Riccardo, Voigt

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

PUBLIC HEARING

Chairman Conze read the first agenda item:

Flood Damage Prevention Application #269-A, Arthur Collins, 45 Pear Tree Point Road.

Proposing to install a generator and propane tank on a platform, and perform related site activities within a regulated area. The property is on the west side of Pear Tree Point Road 800 feet south of its northernmost intersection with Long Neck Point Road, shown on Assessor's Map #60 as Lot #52, in the R-1 Zone. *POSTPONED.*

This matter must be rescheduled because there was a problem with the notices. Chairman Conze then read the **Cesare, 144 Five Mile River Road** agenda item. Because the applicant was not present, Commission members decided to skip this matter for the moment and move onto the next item. Mr. Conze then read the following agenda item:

Proposed Amendments to the Darien Zoning Regulations put forth by the Darien Planning & Zoning Commission—Proposed Modification of Subsection 922c.

Proposing to modify subsection 922 of the Darien Zoning Regulations--Permitted Signs (subsection 922c specifically addresses real estate signs). The changes affect the maximum sign size and permitted locations of such proposed signs.

Mr. Ginsberg reviewed his February 11, 2011 memo. He said that the sign regulations regarding properties "for rent" or "for sale" have been the same since 1988. The proposed zoning regulation amendments would eliminate the restriction of content, and would increase the size of the allowable sign from three square feet up to five square feet. The current regulation is that the signs must be located at least 30 feet back from the road edge, and the proposed regulations would allow the sign to be placed in the front yard, provided it is not within the street right-of-way and is only on the private property. Mr. Ginsberg included in his memorandum photographs of examples of some real estate signs. Some of those signs are too large and some are too close to the street. He said the matter was referred to the Connecticut Department of Environmental Protection (DEP) and they have responded indicating that they have no comment. It was referred to the South Western Regional Planning Agency (SWRPA) and they responded that they saw no adverse inter-municipal impact. He said that the Commission has received a letter from a member of the public indicating that they should not vote to amend the Regulations because the proposed Regulations would allow

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 2

the sign closer to the street which would be an eyesore and a distraction to drivers and obscure the view of small children.

In response to questions, he said that the proposed Regulation would apply to both residential and commercial zones. He said that he has been the Director of Planning since 1999 and that strict enforcement of the real estate sign regulations has not been a high priority due to the workload in the office.

Mr. Hutchison said that he is a Licensed Real Estate Broker. He does feel comfortable discussing this matter and will vote on this matter at the appropriate time.

Robert Baker of 14 Nolen Lane expressed his opposition to the proposal that would increase the size of the real estate signs from 3 square feet up to 5 square feet. He said that the size should remain as it is or, at the most, be increased to 4 square feet. He said that the keeping the restriction at 3 square feet is really not a problem. He said that one of the purposes of the Sign Regulations is to maintain the attractive nature of the community and increasing the sign area to 5 square feet and allowing them closer to the street increases the likelihood that the signs will impair sight line visibility of motorists and pedestrians and will not improve or maintain the character of the community. Mr. Baker submitted a copy of a 2004 letter from David Keating, Zoning Enforcement Officer, to the real estate professionals reminding them that 3 square feet and 30 foot setback is the current regulation and requesting their cooperation. He said that apparently the Regulations are being amended to accommodate the signs that are in violation rather than making the realtors change the signs to comply with the current Regulations. He said that the area of the signs should not be increased from the present 3 square feet and that if the setback dimension is to be changed, it should be something like 15 feet from the edge of pavement to make it easier to measure the allowable location rather than to have it the imprecise requirement that it be located outside of the street right-of-way which is not clearly marked or visible.

Susan Shutte, Chairman of the Beautification Committee, said that she has been on that Committee for 6 years and it is clear that the existing regulation has not been taken seriously due to the lax enforcement of those Regulations. She said that in Greenwich, New Canaan and Westport the Sign Regulations for real estate agents are clearly stated on the website, but the Darien website is not nearly as clear. She said that the effort to enforce the Regulations needs to include a better educational component so that the real estate community is aware of the restrictions, and then those restrictions need to be constantly enforced and fines must be imposed when violations are created and maintained.

Gunnar Edelstein of the Darien Board of Realtors said that he has spoken with many brokers and with many clients about this matter. He said having a real estate sign on the property is a personal choice of the seller or lessor of the property. He said that having a real estate sign is one of several marketing tools, but it is an important tool. He said that in 2009, 12% of buyers found out about the house that they bought because of the real estate sign. Mr. Edelstein said that there are three sign installation companies that work for the various brokers in Darien. He said that the signs are important because it makes the availability of the property known to the prospective buyers who can then look the property up on the internet. He said that the size of the proposed 5 sq. ft. restriction is fine, but having a 30 foot setback requirement is too great for many small properties. He said that

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 3

having a shorter setback would be workable, but there should be some exemption for various small lots.

Mrs. Cameron noted that the 3 square foot limitation has been ignored by the real estate community for a long time. If the Commission were to allow larger signs, then it might follow that the real estate community would use signs that exceed even the new, larger restriction. Mrs. Riccardo noted that many real estate signs include several hang-downs that are then placed underneath the main identification sign.

Mr. Edelstein said that the hang-downs or riders often contain additional information about the property or a web address for prospective buyers to check. Mr. Edelstein said that the number of home sales in Darien dropped from 320 in 2007 down to 187 in 2008 and 180 in 2009. That number has rebounded to 248 in 2010, but the Commission should not take any actions that would discontinue that rebounding effort.

Mr. Hutchison said that sight line and safety concerns are one of the reasons that the Real Estate signs need to be placed away from the road edge. Rather than a 30 foot setback, he suggested that the Board of Realtors adopt some guidelines for safety. Mr. Edelstein said that he thought that might be an acceptable idea, but he does not want to discriminate against smaller properties.

Mr. Spain asked why a 5 square foot limitation would be better than a 4 square foot limitation. Mr. Edelstein said that 4 square feet would be acceptable, as long as at least one rider or hang-down sign would also be permitted. Mr. Spain said that the proposed regulation would reduce the setback to 0 ft. from the property line and explicitly indicate that the sign could not be located within the street right-of-way. Mr. Edelstein said that many 1/5 acre or smaller parcels would still have difficulty displaying a real estate sign. Mr. Ginsberg explained that there are many times when real estate signs are displayed within the street right-of-way in violation of the Regulations.

In response to questions about compliance with the current or proposed Regulations, Mr. Edelstein said that the Board of Realtors can include information in their weekly or monthly distribution or newsletters and will work with the sign installers to make sure that they are aware of whatever restrictions the Commission adopts.

Mr. Spain asked if a broker is notified about a violation, if they would correct it to comply with the Regulations. Mr. Edelstein responded that the listing broker should be contacted and they will arrange to have the sign installer relocate the sign to comply with the Regulations. Mr. Spain asked why the compliance in other towns seems to be high, and yet in Darien, the regulations seem to be ignored. Mr. Edelstein replied that some owners want the signs to be displayed and others do not want the signs. He said that in New Canaan they only allow a very generic sign and most realtors comply with that restriction. He said that the Board of Realtors will make an effort to attain better compliance in Darien.

Mr. Conze said that he realizes that real estate is a very competitive market with respect to obtaining listings and sales. He said that the Town has limited resources to chase down signs and violations and that the Board of Realtors should police its own members. He suggested that there be something like a contract between the Board of Realtors and the Planning & Zoning Commission to have the realtors enforce the Regulations with respect to their own membership.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 4

Mrs. Cameron said that we need to have a setback requirement and other rules complied with. Mr. Conze said that 4 square feet of the total area and positive enforcement by the realtors would address these safety concerns.

Ruth Ann Ramsey said that she is a real estate broker and that she contacted the sign installer. Basic signs are generally 4 square feet plus a one square foot rider. She said that having more detailed information on the Town website would be helpful. In response to questions, she said that she is a member of the Zoning Board of Appeals and is aware of the Regulations and that her signs have complied with the Regulations and do not have any riders or hang-downs under the main sign.

Linda Goodyear said that she has been a resident for 28 years and a sign is not what attracted her to purchase her home. She supports Mr. Baker and the points that he has made regarding the smaller signage and the greater setback requirements. She said she is opposed to increasing the allowable signs by 67% because they will look terrible. She said that the Beautification Committee works hard to maintain and improve the appearance of the community and bigger signs would be contrary to those efforts.

Lucille Story said that she has been a realtor for many years and said that the Real Estate community needs to better inform and regulate the sign installers. She said that on behalf of the Board of Realtors, they will make a better effort to comply with the sign regulations.

William Flanagan of Stony Brook Road South said that he was a member of the Planning & Zoning Commission for 10 years and served as Chairman for two years. He said that having larger Real Estate signs and allowing them closer to the street is not in keeping with the residential character of the community and it is up to the Planning & Zoning Commission to tell the Real Estate agents what is allowed; and it is not appropriate for Regulations to be changed to accommodate the signs that are displayed in violation. He said that there are two Real Estate signs displayed on his street and neither of them complies with the area or setback requirements. He said that the setback regulation needs to be clear and it also needs to be clear that the Real Estate sign needs to be removed promptly after the closing takes place. He said that the Commission needs to enforce whatever Regulation is adopted, otherwise it would be a great mistake to the community because it would be detrimental to the residential character of the Town.

Mr. Edelstein said that within two or three days after the closing, the Real Estate sign is usually removed because the new owners do not want a Real Estate sign in their front yard. He said that signs are very important to the marketing effort and they result in calls to Real Estate agents and visits to websites. He said that the median price of a house has increased by 16% per year for many years, although not in the most recent years.

Mr. Baker said that in New Canaan, one of the ways that they enforce the Regulations about illegal signs is to place a large sticker across the illegal sign.

Suzanne Shutte said that the Commission has limited its discussion to Real Estate signs and it should be clear that those signs should have very strict time limits. She said that the Commission also needs to properly regulate things like political signs and tag sale signs. Mr. Spain explained

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 5

that the current proposal is only about real estate signs, so P&Z can't adopt any broader regulation now.

Dana Fead said that she has been a Real Estate agent for 16 years and that there are many Real Estate agents in the audience who have not spoken, but they all support the changes to the Regulations to allow the real estate signs to be slightly larger and to allow them to be closer to the street. She said that small signs farther from the road are less readable and therefore might actually increase the likelihood of traffic and safety problems. She said that the proper installation and display of Real Estate signs is very important to selling the property and that the signs do make a huge difference.

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. Spain and unanimously approved.

At about 9:25 p.m., Chairman Conze then 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.*

Peter Romano of Land Tech Consultants explained that revised plans were submitted and they account for the recent comments from the Department of Environmental Protection. He said that the February 15, 2011 comments from Kristal Kallenberg of DEP were a result of those revised plans. He noted that there was a letter in the file from an Environmentalist, Tom Ryder, dated February 8, 2011 regarding the birds on a typical residential site. He said that many of the special birds in the vicinity live in a habitat that is below the high water line and that those areas will not be disturbed by any of the construction work, and therefore those special birds will not be impacted by the proposed work. He also noted that comments from Tom Ryder regarding the trees to be maintained along the shore line. If the project is approved, then more details about the landscape will be submitted.

Mrs. Cameron noted that her observation of the site indicates that there are many more trees on the site than are listed by Mr. Ryder. She felt that his work was not complete with respect to the existing natural resources.

Mr. Hutchison noted that the proposed wall adjacent to the Kane property has not been eliminated or moved even though the driveway has been shifted west, away from the Kane property. He thought that something should be done to avoid the need for the wall.

Mr. Romano said that they met with the engineer for Mr. Kane and that the site plan has been revised to show both of the properties. Mr. Romano submitted a revised, red lined sketch of the revised driveway location which would then be 8 to 10 feet away from the property line. He said

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 6

that the area between the driveway and the property line could be used to plant large trees to provide some screening of the courtyard from the view of the Kane property. He submitted a cross section drawing. The scale of the drawing was not accurate.

Mr. Spain asked Mr. Romano to discuss the fact that the walls are referred to as flood control structures. Mr. Romano replied that the proposed walls had been moved inland from the high tide line, and therefore they are out of the DEP jurisdiction. They are not within normal tidal flows and would only be touched by flood waters. He said that fill on the upland side of the retaining wall would be about 6 in. higher than the top of the wall and that no coastal resources would be impacted due to the installation of the retaining walls.

Mr. Hutchison asked about the guest house. Mr. Romano responded that it would be built on timber piles so that you could see underneath it and this would eliminate the need for a foundation like structure. A small sewage pump facility would be installed to move waste from the guest house to the storage tank adjacent to the main house. A trench would need to be formed through the ledge for the sewer and water line connections. There would need to be some column from the floor down to the ground for the utility lines. He said that lots of that work could be done by hand to minimize disturbance of the surrounding resources. He said that if the project is approved, a more detailed sequence of construction activities could be submitted.

Sally Knowlton-Keen of 13 Edgehill Drive said that the list of birds at the site is much greater than as presented by the Environmental Consultant. She said that this salt marsh is a very productive environment and the upland area adjacent to the marsh land is home to many birds. She read a detailed statement in opposition to the application due to its impact on natural resources. She said much of the marshland has already been lost due to development and the proposed development would impact the remaining marsh lands.

In response to questions, Mr. Ginsberg said that the application materials have been referred to the Environmental Protection Commission and they were scheduled to meet on February 5th, but could not due to the weather. They do not have regulatory jurisdiction over the proposed work, but he is seeking their comments as the advisory Conservation Commission.

Mr. Romano said that the house location was shifted approximately two feet to the west and a landscape island between the driveway and garages has been reduced to move the driveway away from the Kane property. Mr. Spain asked about the notion that the backfill behind the proposed retaining walls could be swept out to the marsh lands and would therefore impact the marsh lands. Mr. Romano said that the main retaining wall is approximately 3 feet tall and would only be impacted in flood conditions.

Mr. Spain said that the site is currently stable and does not adversely impact the marsh land areas. He asked if some special nets or screening would need to be used to hold the proposed soil in place. Mr. Romano said that during the installation process, they will properly install a silt fence and other environmental protection features. The sediment controls proposed on the plan are common practice for development and will assure that during the vulnerable period, when the soil is not yet stabilized, that it will be managed properly so as not to impact the marsh land.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 7

Todd Robbins of 7 Edgehill Drive said that in 1972, an ecological study concluded that this was the second most productive marsh area in the country. He said that many of the residents around the marsh land have lived there for many years and they are fearful that the proposed development will adversely affect the natural environment. He submitted a disk with information about the existing conditions. He also submitted a photograph of the old house and noted that the tides and natural conditions of the site impacted the original house site design. The previous owner built up (vertically) rather than laterally in order to minimize the footprint of the building and the impact on the natural environment. He said that many trees will need to be removed to accommodate the proposed development and there are many more trees than cited by the consultant. He said many of the trees to be removed are 30 years old or older and the fact that they are growing on this environmentally sensitive site is a good indication that they should be preserved. He said that some of the work is landward of the high tide line at Elevation 5.3, but according to Kristal Kallenberg at the Department of Environmental Protection, the high tide line is actually 6.8 feet above sea level, thus making the proposed wall still within the jurisdiction of the DEP.

Mr. Robbins said that at high tide and other storm type conditions, salt water does flow through the center of the site, roughly between the proposed house and the proposed guest cottage. He said that when this area is walled and filled, there will be less flow to and from the marsh lands and that these changes will critically impact the marsh lands. He said that the proposed retaining walls are definitely a flood and erosion control structure that should not be permitted. He submitted a compact disc of the existing conditions. He said that the application should be denied.

Jim Kane explained that he is the adjacent property owner to the east on Five Mile River Road, and expressed concern about trucking in lots of fill to build a new island like condition on this site. He said that the proposed work would be disruptive to the site and he is not comfortable with the proposed activity.

Mr. Ginsberg said that he had received a February 15, 2011 email from Kristal Kallenberg at the Connecticut Department of Environmental Protection. He distributed copies of her comments.

Hugh Balloch of 15 Edgehill Drive said that there is approximately one acre of land at or above Elevation 7 and that this land does flood 7 or 8 times a year. He said that all of the neighboring property owners are entrusted to take care of this marsh land. He said that the old house was built up high to avoid flooding problems. He said that the new house is proposed to be spread out and will be placed on solid rock that would be difficult to work with. He said that once this fragile environmental area is damaged, the damage cannot be undone.

Mr. Ginsberg reviewed the letter from Glazer Construction. He also read the comments from the South Western Regional Planning Agency. He said that the Environmental Protection Commission is scheduled to meet later in February.

Commission members believed that it would be important to have comments from the Environmental Protection Commission. They discussed continuing the meeting on March 22, 2011 at 8:00 P.M. The continuation to that date would require approval from the applicant. Mr. Romano said that the continuation on March 22nd is acceptable to the applicant. It was decided to continue the Public Hearing at 8:00 P.M. on March 22, 2011.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 8

At about 10:20 p.m., Chairman Conze then read the agenda item regarding the Kaali-Nagy proposed dock.

Coastal Site Plan Review #229-B, Flood Damage Prevention Application #293-A, Foster Kaali-Nagy, 125 Five Mile River Road. Proposing to install a pier, ramp and float, and perform related site activities within regulated areas. The subject property is on the east side of Five Mile River Road approximately 800 feet south of its intersection with Davis Lane, and is shown on Assessor's Map #67 as Lot #3B, R-1/2 Zone.

Attorney Wilder Gleason represented the applicant and submitted a sketch of the proposed dock. He said that this is the same dock that was previously submitted and withdrawn. They have obtained approval from the Connecticut Department of Environmental Protection and the Army Corps of Engineers. They are seeking approval from the Planning & Zoning Commission under the Flood Damage Prevention Regulations and Coastal Area Management Regulations. He said that the jurisdiction of the Commission is limited to the area that is above mean high water, and that the pier projecting out over open water and the ramp and the float are not within the jurisdiction of the Commission. Mr. Gleason said that much of the construction work would take place via barge. He submitted photos from a previous file. He said that the Regulations do not permit the Planning & Zoning Commission to deny the proposed dock due to their desire to have shared docks by adjacent property owners. He said that there are no regulations pertaining to that item. He said that the proposed dock will have no adverse impact on coastal resources and there are no flooding issues with the proposed dock. He said that one thing that might be changed would be to substitute the installation of concrete piles that are poured in place rather than requiring so many 8 inch diameter holes to be drilled in the existing rock. He said that these would be considered by the Army Corps of Engineers and the Department of Environmental Protection as minor amendments to their existing permits, but if the Planning & Zoning Commission insists on the poured-in-place concrete, they would seek the necessary amendments from DEP and the Corps of Engineers.

Mr. Ginsberg read aloud the comments from the South Western Regional Planning Agency as dated February 8th, indicating that they saw no inter-municipal impacts due to the proposed work. The comments from DEP were read aloud and they indicate that permits have already been issued by the DEP. Mr. Gleason said that withdrawn application for this dock and the application for a dock on the adjacent property at 129 Five Mile River Road were submitted to DEP and Army Corps of Engineers at the same time.

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 and seconded by Mr. Hutchison and unanimously approved.

At about 10:25 p.m., Mr. Conze then read the following agenda item:

Coastal Site Plan Review #263, Flood Damage Prevention Application #300, Ralph F. Reynolds, Delafield Island Road (Lot #35). Proposing to construct a fixed timber pier, ramp, and float on Lot #35, and perform related site activities within regulated areas. The subject property is on the east side of Delafield Island Road, approximately 1,900 feet south of its intersection with Raider's Lane, and is shown on Assessor's Map #70 as Lot #35, in the R-1 Zone.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 9

Attorney Robert Maslan represented the applicant and submitted an authorization letter. He reviewed his detailed application booklet and said that the Army Corps of Engineers and Connecticut Department of Environmental Protection permits for the proposed pier, ramp and float had already been obtained. He said that the subject property is currently vacant and much of it is tidal wetlands. Approximately 22 feet of the proposed pier would be on land that is above mean high water. They are proposing to create a conservation easement in favor of the Environmental Protection Commission to preserve much of the land in its existing natural state. The primary use of the site will be a conservation easement and the accessory use will be as access to a float to provide a dock for recreational water craft. He said that there is no desire to develop the site other than to create the pier structure. At some point in the future, the owner may wish to shift or adjust the lot lines between the subject (vacant) property and the adjacent property that does contain a dwelling. At present, the use of the dock facilities will be shared by the residents of the Reynolds' house located across the street and the Reynolds' house located on the immediately adjacent site. Each of those houses is owned by members of the Reynolds family and access easements will allow for use of the dock facilities.

Attorney Maslan said that at some point in the future the conservation easement may be eliminated if the dock facilities are removed or if the lot lines are adjusted to include one of the houses as part of the site. At such time, the house would become the principal permitted use and the conservation easement would no longer be needed as the principal use. He said that as part of this plan, the owners of the two existing (Reynold) house lots have or will waive their right to have a separate dock facility on their own property. In both cases, the occupants of the two adjacent houses will walk to the pier structure because you cannot drive from the road down to the pier location. At times, the land between the road and the beginning of the pier is wet due to unusually high tide conditions. An easement will be created to allow the use of the pathway (or old road way) from the paved portion of Delafield Island Road to the pier.

John Casey of Robinson & Cole said that the access to the dock was debated as part of the DEP Permit Review process. The DEP wanted the pier to be as short as possible, but this meant that some of the walk from the street to the pier would be through some of the high tidal wetland. The DEP concluded that walking through the tidal wetlands would not impact those wetlands. An area of special concern is the prickly pear vegetation, but none of that prickly pear is located in the area of the walkway. The DEP permit indicates that the prickly pear area must be preserved and protected and that there would be no walking through that portion of the property which contains that vegetation.

Ralph Reynolds said that access would be via the southerly old roadway area and then approximately 10 feet of tidal wetlands. Mr. Voigt asked if this would become a public access point. Mr. Maslan responded that it would not be a public access at all. Delafield Island Road is a private road and the access walkway from the paved portion of Delafield Island Road to the pier would be a private walkway. Mr. Reynolds said that their small house on the same side of Delafield Island Road as the proposed pier does have a view of the pier site and thus, the residents of that house would be able to see anyone that is accessing the pier without permission.

Gene Markowski of 32 Tokeneke Trail said that the dock facility should not be approved. He said that it is an unsupervised site and that at low tide there is no water at the float. He said that at high tide, the rock is surrounded by water, so no one will be able to get to the pier structure.

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 10

Mr. Ginsberg read aloud the comments from the Connecticut Department of Environmental Protection indicating that they had issued a Permit. He said that the applicant is proposing to create a deed restriction or conservation easement in favor of the Town agency. Normally, those conservation easements are in favor of the Environmental Protection Commission, but Mr. Maslan would prefer to have the Planning & Zoning Commission be the holder of the easement so that if it is to be changed or altered at any point in the future, they would be able to discuss the matter and deal with only one Commission.

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

Mr. Conze read the following agenda item:

Coastal Site Plan Review #262, Flood Damage Prevention Application #299, Land Filling & Regrading Application #255, Kieran & Tiernan Cavanna, 38 Old Farm Road. Proposing to demolish a portion of the existing residence, construct additions and alterations to the residence, construct a new detached garage, and perform related site development activities within regulated areas. The subject property is on the south side of Old Farm Road approximately 235 feet east of its intersection with Driftway Lane, and is shown on Assessor's Map #66 as Lot #84, in the R-1 Zone.

Jeff McDougal of William W. Seymour & Associates represented the applicant and explained that a portion of the existing structure would be demolished and new additions will be constructed. Since the work is within the Flood Hazard Zone, a Special Permit is needed. Some of the work will involve filling and regrading around the proposed structure so that the structure will no longer be in the Flood Zone. The work is also within the 1,000 foot regulated area established by the Coastal Area Management Program.

Mr. McDougal said that storm water runoff from the proposed additions will be accommodated in a series of rain gardens. They are dealing with the water quality issues not water volume issues because the runoff from this site goes directly into a brackish, tidal water body and then to Long Island Sound. They have also applied to the Environmental Protection Commission because the adjacent watercourse is a named watercourse within the jurisdiction of the Environmental Protection Commission.

Mr. Ginsberg read aloud the comments from the Connecticut Department of Environmental Protection as indicated in their February 10th letter. They find no inconsistencies between the proposed work and the Coastal Area Management Program. He also noted that the Darien Health Department has approved the septic system aspects of the project. Mr. McDougal said that there are a number of neighbors in support of the application.

There were no comments from the public regarding the application. Commission members felt it would be best to wait until the Environmental Protection Commission has acted on this matter or at least, reviewed and commented on this matter to the Planning & Zoning Commission. Thus, the following motion was made: That the Commission continue the public hearing regarding this

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 11

matter on March 22, 2011 at 8:00 P.M. in the Darien Town Hall. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Chairman Conze then read the following agenda item:

Coastal Site Plan Review #131-B, Flood Damage Prevention Application #298, and Land Filling & Regrading Application #254, Leo & Diane Schlinkert, 3 North Road. Proposing to raze the existing residence and construct a new single-family residence with associated septic system and boathouse and perform related site development activities within regulated areas. The subject property is located on the west side of North Road, approximately 150 feet north of its intersection with Butlers Island Road, and is shown on Assessor's Map #67 as Lot #70, in the R-1 Zone.

Attorney Wilder Gleason represented the applicant and explained that the 1.14 acre parcel is shown on Assessor's Map #67 as Lot #70. There is a steep slope from the house location down to the waters of Butler's Creek. The proposed additions and alterations to the residence and creation of a replacement septic system are shown on the submitted plans. A proposed second driveway curb cut to allow access from, and egress to, the site is proposed to improve safety.

Mr. Gleason noted that there are rock ledges throughout the property. The existing 6,850 square foot six bedroom house covers approximately 9.1% of the land. There is a legally non-conforming, front yard setback. The 1962 septic system does not comply with the current standards and will be replaced. Filling and regrading of the septic area is necessary to comply with Health Code requirements. Some of the storm water runoff from the house flows toward the southeast, but primarily flows to the north toward the creek. Mr. Gleason reviewed a series of photographs of the site that were on a display board. He said that the existing retaining wall is almost five feet high at its highest point.

Mr. Gleason pointed out that there is approximately 150 feet between the existing Schlinkert house and the Hubbard house located to the west. Even with the proposed addition, there will be approximately 115 feet between the two houses. Since the minimum side yard setback requirement in the one acre zone is 25 feet, the minimum separation required by the Regulations is only 50 feet.

Mr. Gleason reviewed the proposed site work, including the new driveway. He said that the new driveway is necessary in order to provide proper and safe sight lines. He noted that the septic leaching area will require fill and that the proposed design for the septic area has been approved by the Connecticut Department of Health and the local Health Department. He said that the footprint of the enlarged house will be 4,185 square feet, but this includes some deck area. The proposed building coverage will be 12.9% of the lot and this includes the removal of the non-conforming shed near the Hubbard property and the construction of a boathouse/storage structure. The top of the boathouse/storage structure will be a patio type structure. The proposed retaining wall, enclosing the fill for the septic system, will be longer than the existing retaining wall, but will not exceed 5 ft. in height.

The Commission members noted that a letter of objection had been received from Mrs. Hubner, the resident to the west of the site. Mr. Gleason said that the plans have already been revised in

PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
FEBRUARY 15, 2011
PAGE 12

accordance with one of Mrs. Hubner's objections. The revision eliminates the walkway that had originally been proposed adjacent to the Hubner property.

Mr. Ginsberg reviewed the Memorandum from Richard Jacobson, staff to the Environmental Protection Commission, indicating that the EPC did not have jurisdiction over the waters of Butler's Creek. Mr. Ginsberg said that the matter had been referred to the Connecticut DEP, but they had not responded with any comments. He distributed copies of Mrs. Hubner's letter of February 14, 2011.

Leo Schlinkert said that has spoken with all his neighbors. Mrs. Hubner is the only one who has objected and he has spoken with her. He said that Mrs. Hubner had been traveling and had not had an opportunity to review the plans until just recently. He said that he has met with her and will continue to meet with her to address her concerns. He said that the filling and regrading of the property is necessitated by the need to upgrade the septic system to meet code requirements. He said that long/tall grasses will replace much of the lawn areas adjacent to the creek.

Attorney Gleason said that he will provide additional copies to the Commission of the revised plans.

Doug DiVesta explained that he is the engineer involved in the septic system plan. He submitted revised plans of the septic system to incorporate the changes required by the State and local Health Departments. He said that his plans were created before the most recent version reflecting the elimination of the walkway near the Hubner property. Mr. DiVesta also submitted copies of the State and local Health Department approvals.

Robert Avery said that switch grasses will be planted in the bio-filter areas that will be installed to accommodate storm water runoff. The switch grasses will be installed using a series of plugs rather than seeds in order to facilitate growth and stabilization. Mr. DiVesta noted that sheet flow of the storm water runoff is being utilized rather than concentrating the storm water runoff.

There were no comments from the public. It was noted that Mr. Schlinkert will continue to meet with Mrs. Hubner to address her concerns. The following motion as made: That the Commission close the public hearing regarding this matter. A motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved.

There being no further business, the meeting was adjourned at 11:20 P.M.

Respectfully submitted,

David J. Keating
Assistant Director of Planning