

MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, FEBRUARY 24, 2020 AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Earl J. Kurtz III, Chairman; Sean Strollo, Vice Chairman; Jeff Natale, Secretary;
Members: Robert Brucato, John Kardaras, Gil Linder, Louis Todisco.
Alternates: Casey Downes and Robert Anderson
Absent: Matthew Bowman, S. Woody Dawson and Tom Selmont
Staff: William Voelker, Town Planner

I. CALL TO ORDER

Chairman Kurtz called the public hearing to order at 7:31 p.m.

Chairman Kurtz read the emergency public service notice.

II. ROLL CALL

The Clerk called the roll.

III. DETERMINATION OF QUORUM

Following roll call, it was determined that a quorum was present for the public hearing.

Secretary Natale read the call of public hearing for the applications.

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| 1. | Zone Map Change Petition
<u>Clearview Farm Preserve LLC</u>
947 Cornwall Avenue Extension
R-80 to R-20 | PH 1/27/20
PH 2/10/20
PH 2/24/20
MAD 4/29/20 |
| 2. | Resubdivision Application
<u>Clearview Farm Preserve LLC</u>
947 Cornwall Avenue Extension
7 Lots, including existing house | PH 1/27/20
PH 2/10/20
PH 2/24/20
MAD 4/29/20 |
| 3. | Waiver Request
<u>Clearview Farm Preserve LLC</u>
947 Cornwall Avenue Extension
25.3.2 to waive Subsection 9 under
Section 25.5 | PH 1/27/20
PH 2/10/20
PH 2/24/20
MAD 4/29/20 |
| 4. | Earth Removal, Filling and/or Regrading
<u>Clearview Farm Preserve LLC</u>
Cornwall Avenue Extension | PH 1/27/20
PH 2/10/20
PH 2/24/20
MAD 4/29/20 |

Secretary Natale read the communication from Town Attorney Al Smith dated 2/24/20 into the record.

Town Planner Voelker read comments from the Town Engineering Department dated 2/20/20 into the record, and the response from Attorney Anthony Fazzone dated 2/24/20 into the record.

Attorney Anthony Fazzone, Two Town Center, Cheshire CT represented the applicant. He informed the Commission that Darin Overton, P.E. and Dave Sullivan, P.E. were present to also represent the applicant. For the record, Attorney Fazzone submitted the resumes of Mr. Overton and Mr. Sullivan, which show their qualifications , licenses and certifications for representation of the application.

Darin Overton, P.E. Milone and MacBroom, LLC, said he would address some of the comments and testimony from the prior public hearings.

A storm water study analysis was issued for the subject property, and copies were submitted for the application file. Analysis part A was about Cornwall Avenue Extension and south. It showed a 100 year storm generating 40 cfs and under the proposed plan this is reduced to 28.8cfs. Analysis B is for the north part of the site, and with infiltration provided there is no discharge from the development; discharge will be stored or infiltrated.

Mr. Overton talked about comments from Mr. Grimshaw about storm water 3.7 miles northeast of the subdivision, and flows into the Quinnipiac River. Mr. Overton said the water drains into the water shed into Hamden and not into the Quinnipiac River close to the Grimshaw house. Regional Water Authority (RWA) has reviewed the subject application; letters from RWA have been read into the record; the design is in compliance with RWA standards; and the applicant meets the water quality standards of the RWA.

Regarding the Testa house at 35 Mountain Edge and runoff to Mr. Testa's yard, Mr. Overton reviewed the town's topographical mapping. The water runs east to the southwest corner of the Testa house and neighboring house, and stays off the property to Mountain Road. None of the storm water running to the Testa property enters from the subdivision.

In looking at the storm water management basins for an application, Mr. Overton said there is first a staff review of the regulations and then basins are designed accordingly. All these subdivision lots are frontage lots, exiting on a town road; there will be more impervious surface; the Town Engineer has reviewed the report and concurs with the findings. There is provision of sediment controls on the plans; there are short term water controls during construction, which are designed to meet town and DEEP erosion control standards.

Attorney Fazzone asked Mr. Overton how long he has been presenting before the PZC, his professional credentials, and if the mapping complies with the design standards of the subdivision regulations.

In response, Mr. Overton stated he is a Licensed/Certified Professional Engineer in the State of Connecticut; he has been with Milone & MacBroom LLC since 1993, and working for 26 years on designs and subdivisions coming before the Commission. And, the mapping does meet all standards.

Mr. Fazzone stated the applicant has complied with, or offered to comply with, all the recommendations of the Engineering Department, RWA, Cheshire Fire and Police Departments. As confirmed at the last public hearing the applicant will do a crosswalk at Mountain Road with a handicapped accessible ramp.

If the Commission and Town will accept it, the applicant will provide a fee ownership to the town, deed to the 4foot wide strip of land from the cul de sac immediately to the west of the subdivision. This would be in the same area as the RWA access and road to get up to the mountain and water pipes up there. This would take place when the cul de sac is accepted and deeded to the Town of Cheshire and would be on lot #4. In the same area, RWA access is wider. The current property owner is the Estate of Mabel Bens, and the Bens maintain the road to go up to the mountain and have the right to use the road.

The Plan of Conservation and Development (POCD) encourages protection of the ridge line, and this has been protected by the purchase of the Bens property by the Trust for Land Preservation. None of the land in the subject application is in the ridge line itself.

Attorney Fazzone talked about the town's 50 foot right-of-way which ends to the top of the mountain to Prospect CT...which was abandoned before 1971. The Burns house was built about 1971. The map lays out that subdivision; the north side of the extension shows the 50 foot right-of-way.

Grading Waiver – Mr. Fazzone stated there is conflict between the subdivision regulations and earth removal/regrading regulations. The earth removal and regrading regulation talks about grading within 50 feet of a town road, which requires a waiver. The applicant has to grade to get driveways up to the road and one detention basin will receive runoff from the cul de sac. This portion has been maintained by the town; there is a discharge pipe; it is well within the 50 foot setback of no grading within the zoning regulations.

Attorney Fazzone read an excerpt Section 6.8 of the Subdivision Regulations. To meet that regulation there would have to be grading within 50 feet of the existing town road. This is why the waiver is requested.

Mr. Voelker read an excerpt from Section 25.5.9 into the record.

At a point in time when a subdivision was presented with existing and proposed contours, and Mr. Fazzone said the Commission approved the proposed contours or approval of the regrading.

Attorney Fazzone stated the applicant has attempted to make sure the application is consistent with the POCD. Some of the POCD protects water in the region, ridge line protection along the west boundary, no interference...and there is a brook running on the southwest corner with the applicant staying away from this brook. IWW stayed away from the 50 foot setback and an IWW application was not needed because the project stays away from the wetlands area. RWA has no objection to this as there is protection of the natural areas, rivers and streams and staying away from the brook on the property.

The applicant has submitted to the State of Connecticut Diversity Data Base and guidelines will be followed with respect to wildlife on the site.

POCD - The goal of the POCD is development planning which minimizes intrusion into the wetlands, and Mr. Fazzone said the design is low impact development technique. He noted that Mr. Overton stated the application is reducing discharge and retaining on site and out of the wetlands. This application would qualify as low impact development. The development stays away from the flood plain and brook and 50 foot upland area. Because the plan is in the water shed area, the applicant will comply with RWA recommendations. Mr. Fazzone said the application is consistent with these requirements.

Off-Site Improvements - Mr. Fazzone cited certain factors.

A portion of Cornwall Avenue, west of Mountain Road...Cornwall Avenue Extension is an existing town road.

The applicant is not proposing a new road, but some improvements to the existing road including a cul de sac; these present a safety addition to the existing town road where there is no real turn around point.

Cornwall Avenue Extension has existed since 1971 when the Burns house was built. The key point about off-site improvements is that the applicant is not proposing any intersection or new roads.

Section 8.25 talks about safety aspects that apply to proposed roads as they will affect intersections with town roads.

Section 8.25 allows off-site improvements in three (3) circumstances.

A road is proposed and intersects with an existing town road; this is not proposed by the applicant;

The drainage report shows this subdivision not creating any problems in downstream culverts.

Section 6.2 can require off-site improvements when such improvements are necessary to create harmony with proposed roads and intersect with town roads.

Without adding a new road, and with the fact that Cornwall Avenue Extension has existed as a narrow street for so long, it would be presumed to be in harmony with Mountain Road and other roads in the area.

The town is responsible for the upkeep of safe roads and has not improved this road at all.

Buttermilk Superior Court Case – the Town Attorney agrees with the off-site improvement report.

In addition to not being able to require off-site improvements, the Commission cannot write subdivision regulations which says...to require or deny an application because it is not safe. Based on the Buttermilk case, it is not something on which the application can be denied.

Mr. Natale understands the Commission cannot require off-site improvements. He talked about the 14.2 foot width of the proposed driveway as being too narrow for a delivery truck (i.e. oil truck) and car. He read the Town Attorney's letter into the record.

Mr. Natale asked how, at the narrowest point, the road is not causing undue traffic congestion.

In response, Mr. Fazzone cited the testimony of Mr. Sullivan (Traffic Engineer) who reported the traffic on this road will be very low, 10 cars in the a.m. peak hour entering Cornwall Avenue Extension...a car every 6 minutes. Beyond that, Section 6.2 would not stand up in a court challenge. Section 8.25 only allows the Commission to take this information into consideration when the applicant is proposing a new street that intersects with an existing town street. This is the statute which allows the town to adopt regulations concerning subdivisions.

The 10 trips were noted by Mr. Natale, who also noted the proposal was offering to give an easement to the town. He said without parking available, there could be additional parking issues.

According to Mr. Fazzone there seems to be some interest in access from the street and the applicant is willing to do the easement if the town wants it. As for a parking problem, the Commission does not have to accept the easement offer.

Dave Sullivan, Traffic Engineer, reviewed some of the traffic report information. The 14.2 foot wide area is on a section of the road with a shoulder so two vehicles can pull out on either side of the road. Without a shoulder this would have to be wider. With regard to delivery trucks, each home has a driveway, and deliveries are usually in the driveway. He reiterated there is no recommendation for widening existing conditions.

The issue of parking on someone's property was raised by Mr. Brucato who said the town owns the problem, and with that thinking he could drive down streets and park on property.

Mr. Sullivan said a car would be off the travel way into the shoulder area for another car.

On the lower portion closer to Mountain Road, Mr. Brucato said there are trees and poles and no place to pull over...buses, trucks, etc. are 8 feet wide...and he questioned having a car on the same road.

This has been happening since 1970 and Mr. Sullivan reported that research shows no accidents, and there is a look at requirements or indications that there are concerns to be addressed. In this case, none could be found. If a car is parked, another car can get around it, and drivers can see if it is safe to go around.

Mr. Brucato asked if the applicant went to the town for an upgrade to this road to 18 feet wide.

Stating "no", Mr. Fazzone said if a car is coming, the other car will hesitate and let it pass. Since 1971 the same road has existed; most of the houses on Cornwall Avenue Extension were built; it is not expected the town will improve the road conditions; people have lived there and it has worked. Six (6) more houses will not make the road "not work", and the town is responsible to maintain safe streets, not the applicant.

Mr. Sullivan explained the improvements and displayed pictures of the 14.2 foot wide section of the road, showing a car parked adjacent to the utility pole, and how the road shoulder is used. Picture #6955 was submitted for the file.

It was stated by Mr. Linder that he was not at the last public hearing, but submitted a letter which was read into the record of the meeting. He totally agrees that the applicant does not have the responsibility for off-site improvements for the development, and the town is totally responsible to improve this road. Mr. Linder cited the road as one of the worst in Cheshire; it is not an acceptable road; and recommended the Town Manager and Town Council be contacted to make this road a high priority for repairs in the capital budget.

Page 31 of the POCD was read into the record by Mr. Brucato. He stated it is on the PZC to insure roads are safe, and look out for safety of children and make roads safer.

Attorney Fazzone recognizes the Commission's concerns, but stated this property owner wants to sell the property...and the applicant wants to develop the property...and cannot be made responsible to fix this road. The POCD is a guideline document, and things must be done in accordance with State Statutes.

In looking at the whole development, Mr. Stollo asked about the possibility of signage on the road...i.e. "no parking". He knows this would be a Police Department matter. Additional access to the hill area would be ok, but parking would be needed, and this is not a PZC issue.

Town Planner Voelker commented on the fact that the town can accept the 4 foot wide easement but this is up to the Town Council.

PUBLIC COMMENTS

Tracey Jewett, 920 Cornwall Avenue, stated her opposition to phase #2 of the Clearview Development, and read a statement into the record citing her reasons for opposition. She cited additional traffic to the area, environmental impact, the development not aligning with the POCD, impact on the wildlife in the area, and unsafe crossings of the road.

Tom Grimshaw, 470 Riverside Drive, reviewed his history of 12 years with the Quinnipiac River Partnership. He said this river is affected by this development as water runs north and is affected by the rain. He does not believe there is zero impact. The development violates everything in his environmental impact statement, and box turtles travel at night, not 3-6 p.m. during the day and this study should be re-examined, and present what species are endangered and should be protected. The development will have more impervious surfaces; pesticides will be used; longer driveways serve 2 or 3 houses; who is responsible for the detention basins; heavy rains will have water coming down the road spilling over to the south and town road. Huge detention basis and storm sewers would be needed. Mr. Grimshaw talked about heavy rains, major increase of flows directly into the Quinnipiac River. If the development is approved, he asked about a homeowner not having access to emergency services due to an inappropriate road or blocked road...and the town's liability in such a situation.

Mr. Voelker stated that he nor the Commission can make a statement about the liability of the Town of Cheshire.

According to Mr. Grimshaw there has been no chance for the public to engage in the process of informal meetings with the developer. He considers Paul Bowman to be an ethical person, willing to talk to the people who live in the area, and possibly make some accommodations. Mr. Grimshaw is willing to engage in such a process. He talked about a house within 15 feet of a wall and it being inappropriate to take a beautiful setting and have an extended driveway. He visits a home in this area and has to back in to leave space for people to get by.

Chairman Kurtz noted that the public has had plenty of time to speak at the public hearings on this application. He said the Commission welcomes public input.

Attorney Fazzone stated the questions and comments have been addressed in the response of Mr. Overton earlier in the public hearing. Regarding the box turtles, the applicant has submitted to the DEEP information on species of concern seen in the area. The applicant is required by DEEP to file certain procedures for protection of these species.

Detention Basin Maintenance – Mr. Fazzone pointed out that these basins are different from others; they do not have a structure; they are large areas of grass that can be easily mowed once a year by the homeowner on whose lot the basin is located. At the last public hearing he submitted an example of the guidelines from the Town Engineer on maintenance of the basins. The basins will be on someone's land/lawn, and will be identifiable by the homeowner.

Regarding public input in the process, Mr. Fazzone pointed out that the application has been through three (3) public hearings in just over a month; no one has tried to get in touch with Mr. Bowman or Mr. Fazzone to discuss the application. There have been professional engineering comments reviewed by the Town Engineer, and RWA on the drainage and direction of water flow.

Mr. Todisco asked for clarification on the access ramp.

This has been referenced as a "handicapped access ramp" and Mr. Fazzone explained it has padding to make someone aware of the ramp location. There are such ramps on the east side of Mountain Road. The ramps are now up to code; CPD wants a crosswalk to link to the sidewalk on the other side and the ramp will be upgraded to current standards.

On the plans, Mr. Overton pointed out the detention basins (blue/green color) on lots #2 and #5.

Mr. Grimshaw asked about where the heavy rains flow from the basins.

On lot #5 there is a natural flow path, and Mr. Overton said the two other basins are in link with the pipe under the driveway. No water leaves the basins; it goes into the ground. Mr. Overton also pointed out the Analysis A and Analysis B areas, modified to handle increase with impervious surface. There are no improvements for storm drainage on Cornwall Avenue Extension itself. Mr. Overton reviewed the storm drainage that goes down Mountain Road; it then heads south into Hamden/Lake Whitney, and meets the Mill River.

Highland Avenue is the splitting road for the Mill River and Quinnipiac River flows.

Mr. Brucato asked about the water collection and the applicant raising the elevation to allow water to flow to the catch basin.

The road has no curbing and Mr. Overton said the only change is the cul de sac at the end. There will still be draining on the north side; catch basins will work as designed.

VI. ADJOURNMENT

MOTION by Mr. Kardaras; seconded by Mr. Stollo.

MOVED to adjourn the public hearing at 9:00 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk