MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD AT 7:30 P.M. HELD ON MONDAY, OCTOBER 25, 2010, IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present
Sean Strollo, Chairman; Earl Kurtz, Vice Chairman; S. Woody Dawson, Patti Flynn Harris, Gil Linder, Sylvia Nichols, Louis Todisco.
Alternates: James Bulger and Ed Gaudio
Absent: Tali Maidelis, Martin Cobern, Leslie Marinaro
Staff Present: William Voelker, Town Planner

I. CALL TO ORDER
Chairman Strollo called the public hearing to order at 7:31 p.m.

Chairman Strollo read the fire safety announcement.

II. ROLL CALL
Mr. Strollo 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
Mr. Voelker read the call of public hearing for each application.

1. Subdivision Application     PH 10/25/10
   Diversified Cook Hill LLC  MAD 12/29/10
   Plank Road
   14-Lots

Ryan McEvoy, P.E. Milone & MacBroom, LLC represented the applicant, and presented an aerial plan of the 75 acre site which runs along Plank Road. I-84 is to the north; existing residences are to the east; and other residences along Plank Road to the south. There are gas transmission lines (26” to 30” diameter) which bisect the property. The subdivision is focused on the north and west sides of the lines, with no activity proposed to the south. There are four parcels on the property; the largest is 65 acres, the body of the site; two smaller strips are on the train line; and a one acre parcel owned by the applicant.

Mr. McEvoy presented a colored rendering of the existing conditions of the site. Darker areas are heavily wooded; along the gas lines and center of the site are open meadows; and there are large wetland pockets (yellow) on the site. The
The site has various topographical situations, with a high point elevation of 610 in the center, and low elevation of 532 in the southwest corner. Some areas are steep. Water sheds from a high point in the center of the site, to the south, east, west and towards I-84. All this runoff works its way to the front and under I-84. Highway I-84 runs along the north part of the site. This is near the Waterbury border, with Waterbury to the west and Cheshire to the east.

Proposal for the site – the subdivision will be north of the gas lines; 14 lots are proposed; the property was part of the Woodland Hills application, phase #2. 38 acres will remain as land of the applicant, and there could be a conservation easement or open space; the subdivision is accessed by a standard Town road; and extending about 1400 linear feet into the site. The average lot size is 2.5 acres, with some oversized lots up to 5.5 acres. The lots will be served by private wells and septic systems, and the applicant is working with Chesprocott for the feasibility.

There is no proposed rear lot access. One of the IWW issues was the sight line coming off the proposed road. A traffic analysis was done, and the average speed on Plank Road, east and west, is 41 mph. This requires a sight line of 450 feet, and this could be achieved to the east. To the west there was trouble with some vegetation, and this is being worked out with PW Department and IWW to determine which trees will come down for the sight distance.

The applicant is still working with the Fire Department for plans for firefighting apparatus onto the site, and a cistern and other issues to be addressed.

Town Planner Voelker informed the Commission that the Town is awaiting formal comments from the Fire Department. There is a concern because there is no public water in this area of Town; there is a 1400 ft. cul de sac which meets regulations; there are some long driveways off the cul de sac; and we are looking to improve the fire fighting capability in this area.

Drainage – the site will have traditional catch basin and pipe system designed to convey a 10 year storm according to Town standards. Runoff will be directed to two storm water management basins; there is no increase in runoff up to the 100 year storm. Some water quality features were added with incorporation of a water quality basin of the detention basins. The catch basins have deep sump, allowing sediments to be trapped and for easier maintenance of these basins. There are large sediment chambers to trap items from the roadway. The storm management measures are included as part of the application. There are detailed narratives on the sediment controls. The application has IWW approval. The Fire Department, Health Department and Engineering Department have some outstanding issues.

Mr. Dawson asked about the length of the driveways.
Mr. McEvoy said they are about 500 feet long.

Ms. Flynn-Harris asked about the challenge of laying out the parcels, and the wetlands noted on the plans. It seems the houses are laid out where there are wetlands.

According to Mr. McEvoy the wetlands are shown with the yellow cross hatch on the plans. There is no proposal for houses on the wetlands.

Ms. Flynn-Harris commented on the layout looking like a Chinese puzzle, and asked about the challenges of breaking them up, with two long driveways and others shorter.

There is a large rock outcrop in the center of the parcel and Mr. McEvoy said this must be avoided. There are two wetland pockets. Given the unusual topography features and wetland pockets the applicant had to be creative on the layout of the lots.

Mr. Todisco said he does not see how the rock area requires long driveways since they do not come near this area, and they are not due to the rock area.

In response, Mr. McEvoy said the purpose of the long driveways is due to frontage considerations. There are several acres of usable space in the northern part of the parcel, and to access them the long driveways are needed.

Mr. Voelker stated the developer tried to find bench areas (flat areas) where they could locate a home. They had to look at the developable portions of the property; can a house be sited on it; and how many lots can be yielded given the zoning regulations. On the longer driveways you can see areas that are suitable for home construction, and the houses with long driveways are created, but they have 50 feet of frontage on the roadway. They tried to maximize their yield with bench areas on those portions of the property.

Mr. Todisco asked if the testimony is that there could not be houses on the long driveways closer to the cul de sac and bench areas do not exist except where there are houses.

There are some minimum lot requirements and Mr. McEvoy said there are three lots in front meeting the minimum width, closer to the roadway. To access the rear of the parcel the long driveways were essential, or the road comes closer to the ledge crop out, and then there are other construction issues.

Mr. Todisco asked about more usable land in the back, and if there is space for more additional houses in the back.
The regulations require no more than 15% steepness in areas where houses are located. On lot #2 there is an area of 10%; in the back it is 25% or more. The 5.5 acre lot has an acre of developable land. With the steepness of the slopes, no more houses can be built in this area.

Mr. Todisco asked if the lot owners could develop more rear lots on their property.

In the future, Mr. McEvoy said he would suggest that the remaining portions of these large lots are challenging for a developer to build on, and the developer is not pursing development on these lots. The parcel will have 14 lots over 75 acres, using as much of the developable area of the property as possible.

Mr. Kurtz asked about frontage of the lots on the west side and if there is enough frontage to build on the rear lot.

It would be difficult to build a 15 foot wide road with 6 foot shoulders, and Mr. McEvoy said there are areas with steep slopes.

If the PZC has concerns about future developments on those steep slopes, Mr. Voelker said the applicant could be requested to explore putting a conservation easement on this portion of the property. This is not an unreasonable request.

On the plans, Mr. McEvoy pointed out lots 7 an 11, and regarding #6, the regulations requires a maximum of 3 lots coming off the bulb of the cul de sac.

Ms. Nichols requested clarification on I-84 and whether houses are set above this roadway or even with the road.

Mr. McEvoy said that the lots in the rear are located at or above the elevation of I-84.

On I-84, Mr. Voelker said you can see the back end of the property, but not the homes.

Mr. Bulger asked about drainage issues expected for the two long driveway lots due to the rock crop out.

There are no drainage issues, and Mr. McEvoy said there is only a small amount coming down from the top of the hill down to the wetlands, and there is little overland flow affecting these two properties.

Regarding lots #6 and #2 with the long driveways, Mr. Gaudio asked about the possibility of having sprinkler systems in these houses.
Mr. McEvoy said this is an issue of discussion with the Fire Department and the applicant.

Lot #7 has existing rustic cars, tractors, etc. and Ms. Flynn-Harris asked if there are more of this issue on the property. She also asked about the audible sounds from I-84.

Mr. McEvoy said some of the lots will hear noise from I-84. In terms of the rustic cars on the property, he noted that this property has been used in the past for dirt bikes, off road vehicles, etc. and many have been abandoned on the property. This has no relationship to I-84.

Mr. Dawson recalled an application with houses almost right on I-84 which the Commission approved. These houses sold quickly.

Mr. Strollo asked about the first two lots and if they come right up against the road.

In reply, Mr. McEvoy said these lots are located near and along the front setback.

Regarding the cistern on the property, Mr. Strollo asked if it would serve the entire development. He also asked about lots on the gas lines.

The first 500 feet on the south side of the roadway is the most logical location for the cistern, and Mr. McEvoy said the Fire Department is involved in this issue. The actual easement for the gas line is a 75 foot strip and will not fall in any of the proposed lots.

THE PUBLIC HEARING WAS CONTINUED TO NOVEMBER 8, 2010.

2. Special Permit Application
   Ruth A. Podgwaite
   353 Mount Sanford Road
   3-lots (2 lots to be accessed from rear lot)

3. Subdivision Application
   Ruth A. Podgwaite
   353 Mount Sanford Road
   3-lots and Modifications to Section 11.1
   Waivers of Regulations, Waivers of Regulations,
   Waivers of Sections 5.4.1 Subdivision Lots
   Existing Streets, and Section 5.5 Rear Lots
   Subsection A. General Provisions.
Attorney Anthony Fazzone and Matt Duscay, P.E. were present to represent the applicant.

Attorney Fazzone stated that this application was before the Commission in June and July 2010 and was withdrawn. The applicant, Ms. Podgwaite and her family, have owned this property since 1921, and Ms. Podgwaite has been the sole owner since 1960. The property is in an R-80 zone, requires a 40 foot setback from the street line. Assessor’s records show the house and barn on lot #1, and they were built in 1840. The barn meets the 40 foot setback requirement in the R-80 zone, but the house does encroach into the front yard street line setback and is a valid, existing nonconformity.

The applicant has requested some waivers with this application.

Mr. Duscay informed the Commission that the Podgwaite property subdivision is 6.9 acres in an R-80 zone. It is located on the west side of RT 10 in the southern portion of Town, bounded by the Hamden/Cheshire line to the south.

The topography on site slopes west to east, with the high point elevation being 222 in the south western corner; the low point is elevation 158 located in the south eastern corner of the property. There are .88 acres of wetlands on the property, and they have been flagged by a soil scientist.

The proposed subdivision is for 3 lots; one lot is the existing house and barn; and the other two lots are new. The new lots are 2 acres in size; the existing lot will remain 3 acres in size in order to allow horses on the property. The existing home has access from Mt. Sanford Road, and the 2 new lots will have access for the proposed rear lot access way. The lots will have public water and private individual septic systems. These systems have received feasibility approval from Chesprocott and the sanitation certificate is part of the file. The application has received IWW approval in July 2010.

The plan will utilize rain gardens; roof tops will drain to them; and they are intended to promote ground water recharge and infiltration. Each rain garden has a volume associated with it and the combined volume is designed to mitigate the increase of storm water runoff for all storms to the 100 year flood. Documentation to this effect has been submitted as part of the application.

The plan is for soil and erosion control measures, silt fence, hay bales, etc. during construction activity, with construction entrance pads located at the logical entrances to the property to prevent sediment leaving the property or getting into the wetlands.

Waivers – Attorney Fazzone informed the Commission that as part of the submission, a letter was sent requesting waivers. One waiver was with respect to Section 5.4.1A which requires establishment of a street line along the property
50 feet from the opposite side of the road or 25 feet from the center line of the road. In this case, on the opposite side of the road, the street line is not established. So, this falls into the category of 25 feet from the center line of the road. This could be done with the exception of the area of the barn with a spot where the applicant can only provide 24 feet, 8 inches. Otherwise this corner of the barn becomes nonconforming. The applicant is asking for a minimum waiver of about 1.2 inches out of 25 feet.

Where the house is located there is an encroachment on the front yard setback. On the plans, Mr. Fazzone pointed out the dotted line (front yard setback) and it runs through a significant portion of the house. He also pointed out the center of the road to the existing property line of about 24 feet, 2 inches to be provided. At the opposite end of the house there can be provision of 25.5 feet. On average, the applicant is 1.8 inches off the 25 feet. At the maximum point of 24.2 feet, there is a 9.2 inch shortage. Mr. Fazzone does not think the house can be more nonconforming by the Commission. It can be made more conforming by special permit.

The road in this area is rural, in an R-80 zone, and the existing property line is almost 25 feet in several locations. It allows for an adequate widening of the road in the future, if necessary.

If property on the other side were developed the regulation would allow requirement of 50 feet from the Podgwaite side of the road. The houses on the opposite side of the road are not as old at the subject house, and there is room to widen the road over there.

Mr. Fazzone advised that this plan was just given to the Engineering Department today.

Mr. Todisco noted that today, before the subdivision, the property line is slightly less than 25 feet from the road.

The property line was pointed out on the plans by Mr. Fazzone, and between the edge of the road and the property line there is about 10 feet. The waiver being requested is minimal.

Right now, Mr. Todisco said the property line is less than 25 feet from the center of the road, and no one is proposing changing the road as a result of this.

This is all about establishing a street line and Mr. Voelker said the regulation exists for the purpose of establishing a street line along frontages. The problem with this application is, if regulations are followed, it creates a nonconforming within an existing structure, and increases the nonconformity of the home.
In a regular subdivision the width of the paved area of the road is 30 feet, with 10 feet on each side of that for the tree lawn/sidewalk. In this case, the existing road, Mt. Sanford Road, is about 22 feet wide. If this were to be made into a 30 foot road there would be more than adequate space between the current edge of the pavement and the current property line.

Mr. Todisco said there are now concerns about establishment of the street line because the applicant wants to subdivide for rear lots. He does not see the impact on what we are doing here.

This is part of the subdivision regulations and Mr. Voelker said it has nothing to do with rear lots.

Mr. Fazzone said if this was raw pieces of land there would be no issue, and we could give the 25 feet from the center line. The only recent issue he can recall about this is on Cheshire Street with the subdivision have a stone wall encroaching about 1.5 feet. The Engineering Department wanted the stone wall taken down for 50 feet of unimpeded space, but the PZC let the wall remain. With regard to public safety, we are only talking about inches with this application.

Mr. Voelker stated that it is a standard practice in some communities to establish a street line where none exists…establishing a standard cross section for future improvements.

According to Mr. Todisco, this seems like a technicality, and he is trying to determine if there is a practical adverse effect to granting a waiver under these circumstances.

Mr. Fazzone said 5 to 6 feet could be a public safety issue. Regarding the next waiver request, Mr. Fazzone said the question is whether it is required, and if required, whether it will be given. It is his understanding that the PZC has concerns about a public road not being proposed with this application. The rear lot access way would be owned by the rear lot property owners.

Section 5.5A – Mr. Fazzone said the interpretation is that where a public road was logical and feasible, then it had to be built. After looking at this section, the waiver request was submitted, but he does not believe this is what 5.5A says.

Mr. Fazzone stated that the rear lot access way will serve only the two lots behind the current farm house and barn. The purpose of doing this is for Ms. Podgwaite to transfer one lot to a niece and one to a nephew. The property is rural in character; it rises in elevation from Mt. Sanford Road to the back by about 50 feet on lots 2 and 3. The rear lot access way, 15 feet in width versus a 30 foot wide road, is more than adequate to serve the two new homes.
This will maintain the character of the area to a greater degree than a 35 foot wide street.

There will be an increase in impervious surface over the 15 foot wide road will result in an increase in storm water runoff, with greater expense to maintain the road. There is a memo from the Town Engineer pointing out the question of the Town maintaining and repairing a public street which services only two lots.

Attorney Fazzone read an excerpt of Section 5.5A (1) into the record. “The approval shall not be granted unless the Commission finds that the land characteristics and physical site conditions make the creation of rear lots practical and desirable.”

In this area of Town the creation of rear lots does make it practical and desirable, as opposed to a 30 foot wide cul de sac street.

Mr. Fazzone read another excerpt into the record. “And only if the Commission determines that there is no logical or feasible alternative for the lots to be properly served by an accepted Town road.”

Mr. Fazzone believes there is a logical and feasible alternative – a rear lot access way instead of creating a 30 foot wide road with a large cul de sac to be maintained by the Town.

If the Commission agrees with him, Mr. Fazzone said the applicant does not need a waiver. He has always read this section of the regulations that the applicant had to prove that no reasonable or prudent alternative existed for the activity being proposed. In this case, if there is a logical and feasible alternative to the Town road, then it is acceptable. It is the opposite of what we are confronted with in a IWW situation.

In response to a question on the distance from the corner of this property to the house, Mr. Duscay said it is 65 feet.

Mr. Strollo said this is not enough to do two separate driveways. Mr. Duscay said that was correct.

When the first application came in, Ms. Flynn Harris asked if there was more than one lot to be divided on the opposite side.

In the future there could be access to other properties, but Mr. Fazzone stated that the other application did not show another subdivision.

Mr. Todisco stated he has not heard it is logical and feasible to build a public road. It is one thing to say a public road is possible in a certain location, but it is another thing to say it is logical and feasible. His interpretation is that if it was a
logical and feasible alternative to put in a public road there could not be rear lots. There are just two houses and it does not make sense to have a public road. He asked why it would not be logical to have a public road here.

In response, Mr. Fazzone said there is the expense of building a public road, and there is a Supreme Court case dealing with feasible and prudent alternatives in the wetlands area that says economic considerations can be a basis to say it is not a feasible and prudent alternative. Mr. Fazzone read an excerpt from the court case into the record.

Mr. Fazzone read another excerpt from Section 5.5. It goes back to Section 5.5 which does not say the Town road must be built where it is logical or feasible to build a Town road. In this case the logical and feasible way is with the rear lot access way.

Mr. Duscay advised that it is 350 feet from the road to the mini cul de sac, and the road would be 350 feet including the cul de sac.

We must be careful because the next situation could be different and Mr. Todisco further stated that with serving four houses it could be a different viewpoint.

Mr. Voelker advised the Commission that only one more house could be built on the rear lot access way, and the applicant would have to come back to the PZC for approval, and they would have to build a Town road.

According to Mr. Fazzone this application must meet the standards and purpose of CGS Section 8-25.

Attorney Fazzone reported that a letter was also submitted requesting a sidewalk covenant along lot #1 for this application because there are no sidewalks in this area.

Mr. Voelker said that the Town cannot require new sidewalks because this is an off-site improvement, and the regulations have been modified in this regard. The applicant can withdraw the sidewalk covenant request.

The cul de sac road is 250 feet long, not 350 feet.

Ruth Podgwaite, 353 Mount Sanford Road, pointed out other pieces of land where the Commission has concerns about 3 or 4 houses being put up is impossible because this area is mostly wetlands. There might be room for one house, but that is all.

THE PUBLIC HEARING WAS CONTINUED TO NOVEMBER 8, 2010.
VI. ADJOURNMENT

MOTION by Mr. Kurtz; seconded by Ms. Nichols.

MOVED to adjourn the public hearing at 8:51 p.m.

VOTE The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk