

April 3, 2007

MEMBERS PRESENT: Mr. Charles, Mr. Frank, Ms. Gager, Mr. Rimsky, Mrs. Roberts

ALTERNATES PRESENT: Mrs. Braverman, Mr. Carey

ALTERNATE ABSENT: Mr. Fowlkes

STAFF PRESENT: Mrs. Hill

ALSO PRESENT: Mr. Boling, Mr. McGuinness, Mr. Shapiro, Mrs. Connolly, Mr. Treadway, Mr. Neff, Mrs. Beck, Mr./Mrs. Greenfield, Ms. Canning, Mr. Sears, Atty. Litwin, Mr. Copen, Mr. Shaw, Mr. Szymanski, Mr. Mack, Mr. Adams, Mr. Mills, Mr. Lufkin, Ms. Rowe, Residents

PUBLIC HEARING

Young Elliot's Farm, LLC./110 Calhoun Street/2 Lot Subdivision

Mrs. Roberts called the public hearing to order at 7:31 p.m. Mr. Charles recused himself. Mrs. Roberts seated Members Frank, Gager, Rimsky, and Gager and Alternate Carey for Mr. Charles. Mr. Frank read the legal notice published in the **Waterbury Republican** on 3/22 and 3/29/07 and the list of documents included in the file.

The map, "Proposed Site Development Plan," by Mr. Neff, revised to 3/30/07 was reviewed.

Mr. Frank read the 3/21/07 memo from the Conservation Commission, which recommended that the proposed open space be reduced in size since much of it is composed of wetlands already regulated by the Inland Wetlands Commission and in its place open space be set aside along Calhoun Street to protect "the rural character and streetscape of the property in the Historic District." He then read the 3/29/07 memo from the Historic District Commission, which strongly recommended that proposed Parcel A be placed under a conservation easement to "preserve the rural historic character of the Stuart Farm and the entire south end of the Calhoun Ives Historic District." He then read the 4/3/07 email from Mr. Mustich and Mr. Cornet, which urged the Commission to require more open space along Calhoun Street to be preserved.

Mr. Neff, engineer, presented his map, "Revised Site Analysis Plan, revised to 4/3/07, which proposed an additional approximately 120 ft. wide strip of open space along the western-most portion of Parcel A. He reviewed the application to subdivide the 39+ acre parcel into two lots of 14.39 and 24.83 acres. The 14+ acre lot would contain the existing house and barn, which, he said, would be renovated, but not changed. He pointed out the proposed feasible house site on a high point on the larger lot and the driveway access to it over the narrowest part of the wetlands. Including the addition of .83 acres of open space along the west side of Parcel 2, he stated that 31% of the total property was proposed as open space and that the open space was composed of 30% wetlands/70% non wetlands.

Mr. Carey noted that all of the additional perc test locations were outside the proposed open space area.

Mr. Frank asked if there were any provisions to prevent the property from being subject to future resubdivision applications. Mr. Neff said there was not. He added, however, that there was also the potential for the owners to donate additional open space for future tax deductions.

Ms. Gager said she thought it was more important to protect more of proposed Parcel A than the

wetlands, where she suggested the amount of open space could be decreased.

Mr. Carey asked if nine potential lots had been calculated for the parcel under the density regulations. Mr. Neff said this was so. Mr. Carey then asked if the donation of the additional .83 acres on the west side of Parcel A would affect the total possible lot count. Mr. Neff it would reduce it to eight. He added that the owners wanted to leave potential sites on Parcel A for future tax deductions and to eliminate this possibility would decrease the value of the property.

Mrs. Roberts asked for questions and comments from the public.

Ms. Rowe asked if anything could be built in the proposed conservation easement area. Mrs. Roberts said, No.

Mrs. Greenfield asked how many lots were proposed along Calhoun Street. Mrs. Roberts said two lots were proposed. She noted although eight were possible, the Commission could only consider the current application. Mrs. Greenfield stated the natural historic character of Calhoun Street was already changing and she lamented the loss of character of the historic district, "which we believe in."

Another resident voiced an objection to the construction of any mac mansions on Calhoun Street. Mrs. Roberts noted the Planning Commission can not comment on style; that would be under the jurisdiction of the Historic District Commission.

Mrs. Greenfield asked if the Historic District Commission meant anything. Mrs. Roberts responded that the Commission does its best to protect the district.

Ms. Rowe asked where the eight potential lots were located. Mrs. Hill explained there were eight theoretical lots possible based on soil type, but that since they were not proposed at this time, there had been no plan drafted, which would take into consideration setback requirements, access, health department requirements, etc. for specific lot locations.

Mr. Shapiro, one of the property owners, stated that should the owners decide to resubdivide, they would be penalized by having to donate another 15% open space. So, he said, if they ever intended to create eight lots, it would be smarter to apply now for them all. He said the present owners did not intend to resubdivide, but agreed a future owner would have the ability to do so.

Mr. Copen, another of property owners, also said he did not intend to apply for eight lots. He said he had invested in this property because it should be preserved in its current state. He reiterated Mr. Shapiro's earlier statement that no changes were proposed for Parcel A other than to fix up the existing buildings and to put as much of the property as possible into open space.

Mr. Smith asked how wide a strip along Calhoun Street was now proposed to be protected. Mr. Neff said it was approx. 120 ft. wide on the west end of Parcel A and 600 to 700 ft. along the southwest end of the property. Mr. Smith noted that even so, a house could be constructed only 50 ft. back from Calhoun Street in the future on Parcel A. He also noted he endorsed all of the points raised in the earlier read Mustich/Cornet email and said the open space should extend along the length of Calhoun Street. Mrs. Roberts noted that in historical New England houses were built close to the roads.

Mr. Carey asked if the well at the toe of the slope on Parcel A was viable and was it anticipated it would be used for a future building site. He also asked if the well had been tested. Mr. Neff said it had not been tested and that it was not necessary to use it to supply the Stuart house.

Mr. Adams asked where the driveway would be located for the second lot. Mrs. Roberts pointed it out on

the map. Mr. Neff said it would use the existing opening in the stone wall.

Mr. Mills asked where the open space was proposed. Ms. Gager pointed out the green hatched area along the wetlands corridor and along the western side of Parcel A.

Mr. Lufkin asked if it was the owners' intent to dedicate land that they were not building on to Steep Rock or to other conservation organization. Mr. Copen said they intended to preserve the land, but could not promise to do so or accept this as a condition of approval. Mr. Lufkin asked if they intended to restrict that land in some form so that it could not be developed in the future. Mr. Copen said they did. He added that the house and barn would be renovated, but would never look different and that this must be taken on faith. Mr. Shapiro stated he became involved because he wanted to preserve the open fields. Mr. Lufkin asked Mr. Shapiro if that was his intent. Mr. Shapiro stated it was. Mr. Shapiro said he had selected the feasible building site for Parcel C because it was not very visible from the road, but said as long as he owned the property, he would not build there. He said he wanted to donate the development rights on the two big fields that could be seen from the road.

Mrs. Connolly pointed out, however, that the proposed building site on Parcel C is visible from Calhoun Street. Mr. Shapiro agreed it was, but said it was less visible there than in the two large fields he wanted to preserve.

Ms. Canning noted the "full time" neighbors had negotiated to purchase the property and if they had been successful, the entire farm would have been "saved." She noted farms in Ct. and throughout the country are under siege and so thought it was important that the record show the neighboring property owners had worked, although unsuccessfully, to preserve this farm.. She urged others to do the same in their neighborhoods.

Ms. Phillips agreed this should be noted for the record to help people figure out how to avoid development in the future. She pointed out that the present owners were not guaranteeing the property would not be developed in the future as they were using terms such as "currently," "not necessarily," and "no other plans for now." She said while the owners might consider no development for 10 or 20 years to be "the long haul," the neighbors wanted to secure the property forever, not just for as long as it was feasible. Mrs. Roberts noted the Commission's goal is to preserve the rural character while working within the existing regulations. She agreed with Ms. Canning and Ms. Phillips that residents should make every effort to preserve what they consider to be valuable.

Mr. Frank said the only issue for the Planning Commission is whether the application complies with the Subdivision Regulations. Mrs. Greenfield asked if it did. The Commissioners said they would review the application and then make that determination.

Mrs. Roberts noted the Planning Commission can not address potential; it must address the specific application. Mr. McDonnaugh disagreed, saying that the Planning Commission should have a plan that looks forward as the Zoning Commission deals only with the present. He said Planning should consider potentials. Mr. Rimsky noted the Commission does not know what will happen in the future, can only deal with the reality of the present, has already defined what it wants to preserve in Town, and has established guidelines for doing so. Ms. Phillips stated the current owners admitted there is the potential for the future development of the property and have set up their proposal to leave it open for that possibility. She urged the Commission to take this into consideration.

Mrs. Greenfield noted the property is in the historic district. Mr. Rimsky said that was another value system also in place and that all the Town commissions try to work cooperatively.

Mr. Greenfield asked if those who were not satisfied with the current regulations could try to change them.

Mrs. Greenfield asked if the Town's historic district was a nationally regulated district. Mrs. Hill responded that the Calhoun-Ives District had been established by those who were property owners there at the time. She noted there was a state historic district commission, but she did not think the local district fell under its jurisdiction.

Mr. Carey directed those present to the Washington Subdivision Regulations and Mike Zizka's book, **What's Legally Required**, as documents that would spell out the Commission's jurisdiction. In response to Mr. Greenfield's questions, he thought the Commission should have been more emphatic in its regulations regarding requiring only net useable land to qualify to meet the subdivision open space requirement. He explained the regulations could be revised any time, but amendments could not be applied to pending applications. He also noted the Planning Commission is mandated by state law to draft a Plan of Conservation and Development and to update it every ten years, which it has done.

Mr. Carey noted that at the last meeting the Commission had asked Atty. Miles to respond to two issues: 1) to review the proposed language for the conservation easement and 2) to answer questions about the ambiguity of the A-2 survey and recommend how this should be resolved. He stated that until these matters were addressed, the Commission could not make a decision. Mr. Shapiro stated an outdated draft of the proposed easement language had been referred to the Conservation Commission, but once the latest draft was obtained, that Commission had reviewed it and its comments had been incorporated. Mrs. Hill noted the latest draft had been sent to Atty. Miles.

Mrs. Greenfield asked if the Planning Commission had the same rules as New Milford. Mrs. Roberts said it did not.

Mr. Frank noted the Subdivision Regulations state that the amount, location, ownership, etc. of the proposed open space must be acceptable to the Commission. He asked for comments from the public about whether it was satisfied or dissatisfied with the current open space proposal.

Mr. Smith said he would prefer the open space to be located along all the length of Calhoun Street. Ms. Canning and Mrs. Greenfield agreed.

Ms. Rowe said the preservation of open space should also consider wildlife habitats and recommended the open space be linked to other adjoining open space parcels to form wildlife corridors.

Mrs. Roberts noted that in the past the Planning Commission has requested the open space requirement be used to preserve the streetscape and to link with other preserved areas.

MOTION: To continue the public hearing to consider the application submitted by Young Elliot's Farm, LLC. for a 3 lot subdivision at 110 Calhoun Street to 7:30 p.m. on May 1, 2007 in the Land Use Meeting Room, Bryan Memorial Town Hall. By Ms. Gager, seconded by Mr. Frank, and passed 5-0.

As there were no other questions or comments at this time, at 8:45 p.m. Mrs. Roberts continued the hearing to May 1, 2007.

This public hearing was recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

REGULAR MEETING

Mrs. Roberts called the Regular Meeting to order at 8:55 p.m. and seated Members Frank, Gager, Rimsky, and Roberts and Alternate Carey for Mr. Charles. It was noted Mr. Charles was present.

Consideration of the Minutes

MOTION: To accept the March 6, 2007 Regular Meeting minutes as written. By Mr. Frank, seconded by Ms. Gager, and passed 5-0.

MOTION: To include subsequent business not already posted on the agenda. By Ms. Gager, seconded by Mrs. Roberts, and passed 5-0.

Other Business

Discussion Re: Possible Revision of Subdivision Regulations: Section 5.8.5: Exemption from Open Space Requirements: Mr. Boling circulated a draft proposal dated 4/3/07 and asked that this matter be discussed at this point in the meeting so that the Commission could consider whether such revisions would be merited as it discussed the pending applications later in the meeting. Mr. Carey asked if consideration of revisions to the Regulations now would affect the current applications. Mrs. Hill said it would not. Mr. Charles recused himself. Mr. Boling said it was good that the current Regulations include open space requirements, but said as written, they encourage development minded people to preserve the land with the least conservation value, and actually serve as a disincentive to preserve the more valuable land. He thought the current regs also create a disincentive for those who consider voluntary conservation easements for tax incentives as they offer no assurance that these voluntary easements will be counted towards meeting the open space requirement should a property owner later decide to subdivide his property. He noted this issue had been previously considered by the Commission in regards to the Taylor resubdivision on New Preston Hill Road. In that case it had granted the applicant a waiver of the open space requirement because the applicant had recently set aside lands under conservation easement prior to submitting his application. He recommended language to assure property owners that if they donate open space now, they will not be penalized with a requirement for an additional set aside should they decide to subdivide in the future. The standards he proposed were briefly reviewed. Mrs. Hill objected that the waiver would be mandatory, but as proposed, the Commission would not be assured that the land donated as open space would be the land containing the qualities the Commission thought were the most important to preserve. Mr. McGuinness, Director of the NW Ct. COG, agreed stating that as written, developers would donate only what they wanted to and the Commission would have no choice but to accept it. Mr. McGuinness also pointed out that the Regulations already contain a waiver provision and so thought this revision was not necessary. Mr. McGuinness went on to say that property owners were creating the conservation easement for tax purposes and finances were not dealt with by the Commission. He thought Planning would be abrogating its responsibilities if it let developers select which lands would be preserved as open space. The commissioners, however, understood what Mr. Boling was trying to accomplish and suggested he attempt a second draft after consulting further with Mr. McGuinness.

Pending Application

Young Elliot's Farm, LLC./110 Calhoun Street/2 Lot Subdivision: Mr. Rimsky did not think the proposal adequately protected the streetscape in terms of the preservation of this historic area and the traditional appearance along the road. He did not think the additional .83 acres set aside on the west end of Parcel A contributed much to this objective as a major portion of the land along Calhoun Street was still unprotected. He noted that even if all the land along the road were protected, the property could still be subdivided and "tax write offs" could be obtained elsewhere on the site. Ms. Gager recommended that the wetlands be taken out of the open space and more of the property along Calhoun Street, both at the west end of Parcel A and to the south of the barn, be placed under the conservation easement. She said

that the recommendations of both the Conservation Commission and the Historic District Commission should be heeded. Mr. Frank noted the land along Calhoun Street was important to the historic district and that the Plan of Conservation and Development encourages the preservation of the Town's historic resources. Mr. Rimsky thought that the Commission could have been clearer and firmer about what values on this property it wants to use the conservation easement to protect. Mrs. Roberts and Ms. Gager agreed. Mr. Carey said, however, that the Subdivision Regulations don't require the applicant to donate only net useable land as open space. Mrs. Hill thought this was a good example of why preliminary discussions are valuable in the application process. She noted the applicant should have come in to discuss the open space requirement with the Commission prior to finalizing the site development plan. Mr. Frank noted the Regulations encourage applicants to do so.

New Applications

Brown-Carroll (Mack)/41 Buffum Road/2 Lot Resubdivision: Mrs. Hill noted she had reviewed this application for completeness and Mr. Szymanski, engineer, had already responded to most of the points raised. Mr. Szymanski briefly reviewed the application to subdivide the 15.6 acre property into two lots. The residential density calculations showed that 4 units were possible. He noted no open space was proposed as the lot to be created would be given to the owners' grandson for no consideration. The lot coverage for each of the proposed lots would be under 10% and the new lot would share the existing driveway cut. Mrs. Hill said that Health Dept. approval and approval of a related lot line revision were required before Planning could approve the application, but were expected by the next meeting. A public hearing was scheduled for Tuesday, May 1, 2007 at 7:30 p.m. (The continuation of the Young Elliot's Farm application will take place immediately afterwards.) A site inspection was scheduled for Saturday, April 21, 2007 at 9:00 a.m.

Abella/44 Scofield Hill Road/3 Lot Resubdivision: Mr. Szymanski, engineer, noted he had only recently received Mrs. Hill's review for completeness and had not yet had time to respond. He briefly reviewed the application and described the site conditions on the property located on the north side of Scofield Hill Road. He pointed out two wetlands areas; a corridor running through the southern portion of the property and a pocket on the northwest side as well as a watercourse on the north side. The two proposed interior lots would share a common driveway, which would cross the wetlands in two locations with a bridge and a box culvert. It was noted residents along Mygatt Road had in the past experienced an increase in runoff probably due to development on Scofield Hill. Mr. Szymanski said he had considered this when drafting his plans, would fully address the issue of stormwater management, and the proposed development would not have an adverse impact on downhill properties. The residential density calculations were reviewed and it was noted "almost" six units would be possible. He asked the Commission what land it thought should be preserved as open space. This will be discussed after the Commission conducts a site inspection, which was scheduled for Sat., April 21, 2007 immediately following the Brown-Carroll site inspection.

Other Business

Revision of the Subdivision Regulations: Mr. McGuinness was present to discuss whether a general update of the November 2000 Regulations was needed. At a previous meeting the Commission had discussed whether it should specify how the length of a cul de sac should be measured. Mr. Charles asked if limiting the length of a cul de sac or the number of lots allowed on one was considered a method for limiting interior development. Mr. McGuinness said it was not; that traffic and safety issues were the main reasons that the limitations were imposed. He said the length is usually based on the length of fire hose available and is usually between 1000 and 1500 ft. long. Mr. Rimsky was concerned that not permitting longer roads to interior parcels could be considered a taking. Mrs. Hill responded that since such an interior parcel could still be subdivided, although maybe not yielding as many lots, it would not

be a taking. Noting that the Commission does not want wide blacktopped roads, Mrs. Roberts suggested the Regulations should be amended to require that some portion of the road surface use a construction technique that doesn't "look like a road." She thought perhaps if wider roads with these alternative shoulder surfaces were used, the length of a cul de sac could be increased to 1500 feet. Mrs. Hill pointed out that road construction standards were governed by the Town Road Specifications Ordinance. The commissioners noted the 3/20/07 letter from Mr. Sonder concerning cul de sacs and agreed a clear, concise definition was needed. Mrs. Hill will look into the Ct. court case, which explains why it is important to specify how a cul de sac is measured. Ms. Gager will work with Mr. McGuinness to review the Regs to determine whether other revisions are needed.

Referral from Zoning Commission/Revision of Zoning Regulations Regarding Restaurants: Mrs. Hill noted the proposal had recently been revised and she did not yet have the latest draft available. She said she would mail it out to the commissioners so it could be discussed at the next meeting.

MOTION: To adjourn the meeting. By Mr. Rimsky.

Mrs. Roberts adjourned the meeting at 10:02 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator