

## • April 6, 2004

MEMBERS PRESENT: Mr. Bender, Mr. Byerly, Mr. Charles, Mr. Rimsky, Mrs. Roberts

ALTERNATES PRESENT: Mr. Fairbairn, Mr. Frank

ALTERNATE ABSENT: Mr. Buck

STAFF PRESENT: Mr. Cannavaro, Mrs. Hill, Mr. Sears, Mr. Solley, Mr. Wyant

ALSO PRESENT: Mr./Mrs. Weydig, Mrs. Averill, Mr. Carron, Mrs. Taylor, Mr. Boling, Mr./Mrs. Lyon, Mr. Gitterman, Ms. Morrill, Mrs. Friedman, Mr. Neff, Atty. McDermott, Residents, Press

### PUBLIC HEARINGS

#### **Application for Scenic Road Designation/.9 Mile Gunn Hill Road**

Mr. Bender called the public hearing to order at 7:30 p.m. and seated Members Bender, Byerly, Charles, and Roberts and Alternate Frank for Mr. Rimsky. He then read the legal notice published in the **Waterbury Republican** on 3/24/04 and 3/31/04. Mr. Rimsky entered at this point and was seated.

For the record, Mr. Bender listed the documents in the file and asked for comments from the public. Statements from the public included the following:

- Mr. Sears, First Selectman, spoke on behalf of the Board of Selectmen and submitted a statement dated 4/6/04 (attached). In short, he said the Scenic Road Ordinance allows adequate provision for addressing road safety and maintenance issues that may arise in the future and requested the Planning Commission notify the Board of Selectmen when future scenic road applications are submitted.
- Mrs. Averill, 10 New Preston Hill Road, spoke on behalf of the First Ecclesiastical Society in favor of the application.
- Mr. Carron, 58 Gunn Hill Road, listed many reasons the application should be approved, including 1) it met all but one of the scenic road criteria, 2) all the resident property owners signed statements of support, which totaled 75+% of the frontage property owners, 3) routine maintenance was permitted under the Ordinance and there were procedures outlined for correcting future problems as they may arise, and 4) it would be possible to modify the Ordinance in the future if needed.
- Mark Lyon, Fire Chief, represented the Fire Department. He noted the difficult access to Gunn Hill and Tinker Hill Roads and the ongoing winter maintenance problems. He said the Department was concerned not only with emergency access to the properties on these two roads, but also about the safety of Town volunteers. He said emergency access was difficult in this case because Gunn Hill was not a year round through road.
- Atty. McDermott represented Ms. Morrill, owner of two properties at the north end of the .9 mile section under consideration. He stated she generally favored the application, but shared the Fire Department's concern about emergency access because the road is currently in poor condition. He asked for a guarantee that approval as a scenic road would not prevent Gunn Hill Road from being maintained and improved so that emergency vehicles would have access over it all year long. Mr. Bender responded the First Selectman had stated scenic road designation would not prevent the Town from maintaining the road. Atty. McDermott said he understood, but was putting this concern on record for the future. He said when the mid section of the road is closed in the winter, emergency vehicles must travel 2.5 miles further around the lake to access these properties and he did not want to trade a scenic road designation for a dangerous situation. Mr. Bender stated future road maintenance and improvements would be between the

property owners and Board of Selectmen; the Planning Commission would not over rule any decision by the Selectmen.

- Mr. Gambino, New Milford resident who owns property on Gunn Hill Road, stated he, too, was concerned about safety and access by emergency vehicles, but agreed there were adequate provisions in the Ordinance to provide for future repairs and maintenance. He supported efforts to preserve the scenic and rural character of this section of Town.
- Mr. Anderson said he was committed to preserving the road as it is in order to preserve the unique and rural character of this section of Washington.
- Mr. Cannavaro, Road Foreman, strongly recommended that in the future, when a scenic road application is submitted, the Town be given an opportunity to inspect the road in question and bring it up to acceptable standards before the application is approved. He said this process would be similar to that followed when the Town adopts a Town road. He knew of no long or short term plans for significant changes to Gunn Hill Road, but said the Highway Dept. did not want to have to fight for changes that might be needed in the future. Mr. Bender said the Commission would notify the Selectmen's Office at least 30 days prior to acting on any scenic road application. Mr. Cannavaro stated this would not be enough notice to do any work, if needed. Mr. Rimsky asked if Gunn Hill could be made a year round road in its present state. Mr. Cannavaro said it could not without costly engineering and major work. He detailed some of the current drainage problems on the road and the work that would be necessary to correct these situations.

There were no other questions or comments. Mr. Bender closed the public hearing at 8:10 p.m.

### **Taylor/38 New Preston Hill Road/2 Lot Resubdivision**

Mr. Bender called the public hearing to order at 8:10 p.m. Mr. Charles recused himself. Mr. Bender seated Members Bender, Byerly, Rimsky, and Roberts and Alternate Fairbairn for Mr. Charles. Mr. Bender read the legal notice published in the **Waterbury Republican** on 3/24/04 and 3/31/04.

Mr. Bender reviewed the documents in the file for the record.

Mr. Boling of Open Space Equity said that independent of the current application, the applicant was pursuing an open space preservation plan that would preserve more open space than required under the **Subdivision Regulations**. He said he would request a waiver of Sections 5.8.2 and 3.5.1 He presented a colored map based on the map presented at the previous meeting, "Site Analysis Plan," by Mr. Alex, revised to 1/29/04, which showed 4.12 acres would be preserved under the provisions of the Regulations compared to the 6 acres that would be preserved voluntarily. He pointed out the possible areas to be protected included property adjacent to the Judea Water Company well, the viewshed, and wetlands. Mr. Boling stated Weantinogue Land Trust was interested in the open space and would likely decide whether it would be accepted within 30 days. For the record, Mr. Boling submitted the draft conservation easement to be considered by Weantinogue.

The public had the following questions and comments:

- Mr. Ralph Averill voiced his support for open space near the Judea well so that septic fields would not affect the water quality.
- Mr. Avery, New Preston Hill Road, was concerned runoff from the Taylor property would affect his well. Mrs. Taylor pointed out a conservation easement was proposed for the land adjoining his property and Mr. Neff, engineer, explained the drainage does not flow towards the Avery property and the

proposed septic fields were an acceptable distance from both the Judea and Avery wells.

- Mr. Fleet, New Preston Hill Road, thought the entire area proposed for development was wetlands and was concerned activity there would cause drainage and runoff problems on his downhill property. Mr. Bender noted the Inland Wetlands Commission had approved the application. Mr. Neff stated a soil scientist had flagged all the wetlands soils on the property and they were shown on the map.

Mrs. Taylor pointed out the wetlands, possible conservation easement areas, and proposed building area on the map.

Mr. Bender closed the public hearing at 8:30 p.m.

These public hearings were recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

## REGULAR MEETING

Mr. Bender called the Regular Meeting to order at 8:34 p.m. and seated Members Bender, Byerly, Charles, Rimsky, and Roberts.

### Consideration of the Minutes

MOTION: To accept the 3/2/04 Regular Meeting minutes as presented. By Mr. Byerly, seconded by Mr. Rimsky, and passed 5-0.

MOTION: To accept the 2/14/04 Special Meeting minutes as presented. By Mrs. Roberts, seconded by Mr. Byerly, and passed 5-0.

MOTION: To add subsequent business not already posted on the agenda. By Mrs. Roberts, seconded by Mr. Byerly, and passed 5-0.

### Pending Applications

#### **Application for Scenic Road Designation/.9 Mile Gunn Hill Road**

The portion of the road under application was pointed out on the Assessor's Map and Mr. Bender noted it was from the intersection of New Preston Hill and Gunn Hill Roads to the intersection with Camp Road.

Mr. Frank noted the Scenic Road Ordinance does not have a provision to allow the Board of Selectmen to revoke it and asked what would happen if there were dangerous conditions present that had to be corrected. Mr. Fairbairn said the Board of Selectmen had the option to recommend discontinuance of the road. Mr. Gitterman responded that if conditions on a scenic road change, the Selectmen can make improvements to ensure it remains safe. Mr. Bender advised the Commissioners that the Planning Commission has limited authority; it can designate or not designate a scenic road, but may not get into quality or maintenance issues. Mr. Fairbairn stated the Town is responsible for maintaining Town roads in a safe condition.

MOTION: To approve the designation of .9 mile of Gunn Hill Road as a scenic road per the application submitted by Mr. Carron under the pertinent Town Ordinance. By Mr. Rimsky, seconded by Mr. Byerly, and passed 5-0.

#### **Taylor/38 New Preston Hill Road/2 Lot Resubdivision**

Mr. Charles recused himself. Alternate Fairbairn was seated for Mr. Charles.

Mr. Fairbairn was in favor of granting the request for a waiver of the open space requirement. He thought more open space would be protected in the end than what the Commission could legally exact. He noted, too, that if the Commission conditioned the resubdivision approval upon donation of the open space, the property owner would lose any tax exemption he might otherwise realize. He added he would not contemplate granting such a waiver for a large subdivision.

Mr. Boling stated wetlands and regulated areas comprise more than 15% of the property and these could not be developed. He requested a waiver of the open space requirement in Sections 5.8.2 and 3.5.1 of the **Subdivision Regulations** due to the physical characteristics of the property and submitted the written request and a letter of authorization both dated 4/6/04.

Mr. Bender opposed the granting of the waiver for the following reasons: 1) he thought approval would start a trend for all subdividers who want great personal financial gain, 2) the **Subdivision Regulations** require 15% open space, 3) the Planning Commission would be waiving the requirement for the financial benefit of the applicant who could then get a tax deduction, and 4) the Commission would be waiving its right to ask for open space on behalf of the Town.

Mr. Rimsky noted that according to the Regulations, applicants are entitled to request waivers. He also thought approval of this request would benefit the community because it would ultimately lead to an open space donation of more than 15%. He thought each case could be judged on its own merits and so an approval now would not set a precedent.

Mr. Fairbairn said he was not concerned about the benefits for the applicant and pointed out approval of the waiver would enable more open space to be protected than the Commission could legally exact. He suggested the **Subdivision Regulations** be amended to encourage this type of proposal.

Mr. Boling said he hoped the approval of the waiver would encourage future applicants to preserve more than the required 15% prior to submitting their subdivision applications because they would know when they did so, the Commission would waive the 15% requirement upon submission of the application. Mr. Bender asked why the applicant did not want to also donate open space to the Town. Mr. Boling stated when there is no financial incentive for them to do so, applicants tend to donate less open space and so there is less benefit to the Town.

Mrs. Roberts thought the waiver could be used to encourage applicants to donate more open space than is required.

Mr. Frank asked how, aside from the possibility of getting more than 15% open space, did this proposal differ from most of the applications considered by the Commission. Mr. Bender responded in this case the Commission was being asked to give up its right to require 15% open space for the Town.

Mr. Bender read the request for the waiver.

MOTION: To approve the request by Mrs. Taylor for a waiver of the open space requirement for the Taylor 2 lot resubdivision application for 38 New Preston Hill Road. By Mr. Bender, seconded by Mr. Byerly, and passed 4-1. Mr. Bender voted No for the following reasons: 1) The Subdivision Regulations require the open space set aside. 2) He did not think the Commission should waive its right to ask for open space. 3) Such a waiver would be for the financial benefit of the applicant. 4) Granting of the waiver might cause future applicants also to request a waiver of the open space requirement for their financial gain.

Mr. Bender stated the Commission would not act on the application until the final Record Subdivision Map is submitted. The applicant did not leave the colored map used for the discussion for the file.

## New Applications

### **Beck/129 Calhoun Street/2 Lot Resubdivision**

Mr. Neff, engineer, represented the applicant.

Mr. Bender noted the application was incomplete because the following had not been submitted: 1) Health Department approval, 2) Conservation Commission report, 3) Inland Wetlands Commission approval, 4) site development plan, and 5) draft language for conservation easement. He noted the property was located in the historic district, but said it was not necessary to refer the application to that Commission. Mr. Bender also noted driveway approval by the Selectmen was not necessary because access would be over an existing driveway.

Mr. Neff submitted the map, "Proposed Site Development Plan," by Mr. Neff, dated 4/5/04. A 5.95 acre lot with the existing house and an interior 5.02 acre lot were proposed. Mr. Neff pointed out the proposed open space along Ives Road and the southern boundary. He also stated the proposed house site was set back 500 feet from the road and most likely would not be visible from Calhoun Street.

It was noted the Commission had 65 days in which to commence the public hearing. Mrs. Hill will refer the application to the Conservation Commission.

### **Talbot/44 Bell Hill Road/2 Lot Subdivision**

Mr. Talbot was present.

Mr. Bender noted the following items had not yet been received: 1) Health Department approval, 2) sign off from the Inland Wetlands Commission, 3) verbal approval for the location of the proposed driveway to Lot #2, and 4) application fee. It was noted the application fee would be for two lots. Mrs. Hill will check the new Town ordinance to find out whether the fee per lot is \$300 or \$350.

Mr. Bender noted Mr. Talbot had indicated at the last meeting that he would request a waiver of the open space requirement because the property would be transferred to him from the family trust for no cost. Mr. Bender had advised him to consult his attorney about whether he would fall under this exemption in the state statutes as the property was owned by a trust, not an individual. He read the 2/24/04 letter to the Planning Commission from Atty. Federer, which stated the transfer did qualify for an exemption under the state statutes.

Mr. Talbot also submitted a written request dated 4/1/04 for a waiver of Section 4.5.4, which requires the site development plan to show 2 foot contours for the entire parcel. Mr. Talbot indicated the 2 foot contours had been surveyed for the house and septic sites and 10 foot contours had been taken from the USGS maps for the rest of the site.

MOTION: To waive the requirement for 2 foot contours for the entire parcel for the 2 Lot Subdivision application for 44 Bell Hill Road submitted by Talbot Realty Trust. By Mrs. Roberts, seconded by Mr. Charles, and passed 5-0.

A site inspection was scheduled for 11:00 a.m. on Friday, April 9, 2004.

Mrs. Hill will refer the application to the Board of Selectmen, but not to the Conservation Commission

because there is no open space required. The application has been submitted to the Inland Wetlands Commission for review because although there are no activities proposed within the regulated area, there are wetlands on the property.

#### Other Business

**Review-Revision of the Subdivision Regulations:** Mr. Fairbairn reported Section 8-25 of the CGS authorizes the Planning Commission to require open space set asides, a fee in lieu of the set aside, or a combination of open space and a fee in lieu. The ten percent maximum, he said, pertains only to the determination of the fee in lieu, which could not exceed 10% of the presubdivision value of the parcel. The statutes do not reference ten percent in terms of the maximum open space exaction the Commission can require. Mr. Fairbairn thought the Commission should reconsider its regulation that previously donated conservation easements don't count towards fulfilling the open space requirement. Mrs. Hill noted Atty. Zizka strongly advised land use commissions not to require signs be posted on properties under application. She also reported the Zoning Commission has begun work on regulations to protect scenic resources and that it thinks this effort should be coordinated between the Planning and Zoning Commissions.

**Washington Depot Business District Study:** Mr. Charles contacted Mr. McGuinness, Director of the NW Ct. Council of Gov'ts, Mr. Platus from Yale, and Mr. Weston from UConn regarding the possibility of conducting a charrette to broaden the Commission's knowledge of what issues should be considered, what kind of studies are available, etc. Mr. Charles informed the Commissioners the Board of Finance had cut the funds for this study from the \$100,000 requested to \$35,000. It was noted Planning would not know the exact cost of the study until bids were received from interested consultants, but it was the consensus the Selectmen and Board of Finance had been "shortsighted" in cutting the budget request.

**Sheinfeld/110, 112 Lower Church Hill Road/Signing of Revised Mylar:** The map, "Site Analysis Plan, Conservation Easement Map," by Mr. Alex, revised to 3/4/04 was briefly reviewed. Mr. Bender will sign it so it may be filed on the Town Land Records.

**Referral from Board of Selectmen/CGS 8-24/Municipal Improvements:** Mr. Bender read the 3/15/04 letter from the First Selectman describing proposed improvements to Bryan Memorial Town Hall. These included installation of an elevator, upgrading of restrooms, and improvements for handicapped access. It was noted all the work proposed would be within the existing building. There were no objections to the proposal.

**MOTION:** To send the Board of Selectmen a letter stating the Planning Commission has no objection to the plans, which include installation of an elevator, updating of the rest rooms and improvements in access at Bryan Memorial Town Hall to meet ADA requirements. By Mrs. Roberts, seconded by Mr. Byerly, and passed 5-0.

#### Communications

Mr. Bender gave Mrs. Roberts a letter to review from the State Office of Policy and Management regarding the State Plan of Conservation and Development and advised her to respond in whatever way she deemed appropriate.

**MOTION:** To adjourn the meeting. By Mrs. Roberts.

Mr. Bender adjourned the meeting at 10:31 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator