

July 25, 2012

Special Meeting

7:30 p.m. Land Use Meeting Room

MEMBERS PRESENT: Mr. Abella, Mr. Fitzherbert, Mr. Reich

ALTERNATES PRESENT: Dr. Craparo, Mr. Wyant

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Papsin, Ms. Jackson, Mrs. Krinsky, Atty. O'Hanlan, Atty. Andrews, Atty. Williams, Mr. Smith, Mr. Brooks, Mr. Showalter, Mr. Klein, Mr./Mrs. Condon, Mr. Piskuskas, Mr. Dutton, Mr. Solley, Mr. Klein, Mr. Stern, Mr. Ullram, Mr. Mitchell, Dr. Sachs, Mr. Small Mr. Meehan, Mr. Becker, Mrs. Peckerman, Residents, Press

The Gunnery, Inc./22 South Street/Special Permit: Section 4.4.10/ Athletic Fields

Mr. Fitzherbert reconvened the public hearing at 7:31 p.m. and seated Members Abella, Fitzherbert, and Reich and Alternates Craparo and Wyant.

Mr. Mitchell, 19 South Street, expressed his opposition to the project, saying it would destroy the atmosphere of the neighborhood in a way that could not be repaired. He urged if the Commission did approve the application that it enforce rigid conditions and make sure The Gunnery would be liable for any damages to neighboring properties.

Mr. Fitzherbert responded liability is not under the Commission's jurisdiction.

At the request of Atty. Williams, Mr. Fitzherbert outlined the order of the remaining business to be covered at the hearing; rebuttal by the applicant, 5 minute rebuttal by the interveners if new information was raised in the applicant's rebuttal, and final statement by the applicant. Mr. Fitzherbert noted how much material the Commission had already received, said it would all be read, and noted that summaries of all this material were not necessary.

Atty. O'Hanlan said the interveners wanted the opportunity to make a final statement, also, and argued for due process, saying it was inappropriate to make him give it now before the applicant's rebuttal. Mr. Fitzherbert said he was granting the request to speak that Atty. O'Hanlan had made at the last session of the hearing and that he would have the opportunity for a brief rebuttal of new information after the applicant's rebuttal.

Atty. O'Hanlan made a Power Point presentation entitled, "Why the Zoning Commission Must Deny The Gunnery's Application for Athletic Fields, Opposition Brief by Abutters Marjorie and Michael Stern, South Street, Town of Washington, Ct." This lengthy presentation included the following arguments: 1) The proposed use is illegal and inappropriate because athletic fields are not a permitted use in the district, the claimed "school" use does not meet the definition of school and can not be accessory to a school located on a different property, is inconsistent with the 2005 Special Permit granted for an environmental classroom, and discourages the "rural residential form of ownership." He also stated the proposed use ignored the fact that residential use is as of right in the R-1 District, the Commission has the duty to protect property values, and approval

would set a bad precedent. 2) The proposal violates 75% of the Special Permit standards; specifically Sections 13.1.a, 13.1.B.1, which includes the requirement that the proposal must be consistent with the goals of the Plan of Conservation and Development, 13.1.B.2 that the proposed use must be in harmony with and conform to the appropriate and orderly development of the Town and neighborhood and will not impair adjoining property values, 13.1.B.5 because the proposal would drastically alter the topography, ruin vistas, and impact the neighborhood with intense commercial use, 13.1.B.6 construction of the fields would result in a large loss of forest without providing any visual or auditory screen, 13.1.B.7 because the proposal obliterates the natural resources on the site and will cause changes in drainage, and 13.1.B.8, which requires that nuisance conditions such as noise not be created at or beyond the property line. He said the proposal was not consistent with the Plan of Conservation and Development because it was not an appropriate use of the land, would destroy vistas, would result in forest fragmentation, and would cause pollution and defilement of the ecology. He also said the proposal was an unnatural alteration of the topography and that the Commission would not allow this much site disturbance if it was proposed for a residential development. He added that the installation of the fields would thwart the use and enjoyment of their properties by nearby residential property owners. 3) The proposal fails to meet the standards of Section 14 of the Zoning Regulations due to engineering flaws, it would create steep slopes that could not be stabilized, it would cause long term pollution of off site stormwater discharge, blasting will be required, the erosion control plan and narrative is insufficient, the plans are incomplete and lack sufficient detail, etc. Atty. O'Hanlan urged the Commission to get an independent engineering review of the plans. 4) Other issues included there had been no effort to locate the fields elsewhere although other options were available, the fields would likely be used commercially, and the noise and property value analyses done by the applicant had been inadequate. 5) Due process arguments included that the interveners had been denied access to the site, the Zoning Commission had not conducted its own site inspection, the Commission had not gotten an independent engineering review, and that one of the commissioners has a conflict of interest and had shown a predetermination. Several photos and many computer generated views by Sean Jancski Landscape Architect, LLC. were used to illustrate the points made throughout the presentation. (The full presentation is available for review in the Land Use Office.) In conclusion, Atty. O'Hanlan stated the Commission must base its decision on facts and that the neighbors are owed greater consideration because they live in the neighborhood and have a right to be protected.

Mr. Becker, new Headmaster of The Gunnery, 1) spoke briefly about how important the project is to the school, 2) said the goal was to construct the fields with minimal impact to the environment and to the neighborhood, and 3) said the fields would be maintained to high standards.

Atty. Williams submitted rebuttal letters on behalf of The Gunnery from professionals who could not be present. These were: 1) 7/24/12 letter from Mr. Hunter to Ms. Andrews, which stated the two realtors who had written that the installation of the fields would impair the surrounding property values had not based their opinions on facts, 2) 7/19/12 letter from Dr. Cohen to Mr. Fitzherbert, which stated contamination from fertilizers was not a concern due to the product types recommended, tight regulatory controls, and the low environmental risks from the use of these products, and 3) the 7/25/12 letter with attachments A - I from Mr. Riefenhauser, which countered the 6/25/12 Goodin engineering review letter.

Atty. Williams began a Power Point presentation entitled, "Proposed South Street Athletic Fields, Final Rebuttal by the Applicant to the Washington Zoning Commission," dated 7/25/12. Atty.

Williams stated that the interveners had made misleading claims without proper analysis or study. He listed ten of these false claims and then provided factual information. These included: 1) The applicant's drainage calculations are based on the actual soil types as determined by three soil scientists. 2) There is no binding regulation prohibiting the use of more than 100 ft. of travel length for sheet flow, but even if that limit is used in the calculations, there will still be no increase in stormwater runoff. 3) The level spreaders were not improperly designed; this type of level spreader is commonly used and there is one functioning successfully on a steeper slope at Rumsey Hall School. Atty. Williams also claimed the interveners had misrepresented and misquoted from the DEEP manuals. 4) There would be very little stormwater pollution because 83% of the property would be open space, there would be minimal impervious surfaces, there would be no road sanding in the winter, and there were effective vegetated buffers on site. 5) The applicant's engineer, Towne and Aurell determined that blasting would not be an issue and there are many other non blasting options for the removal of bedrock. 6) You will not be able to see the athletic fields from the surrounding residences, or from Judea Cemetery or Plumb Hill Roads or from Rt. 47 and the intervener's computer generated simulations are not to scale, not signed and sealed, and are inaccurate and misleading. 7) There is no evidence that the proposed tree clearing will extend beyond the limit of disturbance proposed by the applicant. 8) The proposed seed mix will vegetate and stabilize the slopes proposed, an adequate bond has been required by the Inland Wetlands Commission to ensure this is accomplished, and monitoring is required for two years after completion of the project. 9) There is no evidence there are protected species on site and adequate best management practices are already planned. 10) The intervener's claim there would likely be sound impacts on adjoining properties was not based on measurements or a study of the site by a licensed professional and background noise from the Stern property will help to drown out any noise from the fields.

Mr. Smith, surveyor, continued the presentation. He addressed two additional points raised by Mr. Goodin in his 6/25/12 review. 1) He showed a photo of an intermittent stream channel that Mr. Goodin said should be lined with stone. Mr. Smith stated that Mr. Allan of Land Tech had inspected the channel with the Inland Wetlands Commission and had determined there was no need to do so. 2) Regarding the plans for the temporary stockpiles and associated drainage, Mr. Smith explained that the size of the stockpiles would vary during construction and that the plans contain adequate notations to ensure proper erosion and sedimentation controls are in place, that a performance bond had been required, and that an independent consultant would monitor the project on behalf of the Town. Mr. Smith then addressed the submissions by Mr. Jancski on behalf of the interveners. He stated these submissions were not to scale, misleading, and inaccurately drawn.

[At this point there were some mechanical difficulties with the computer and there was a break in the hearing from 8:44-8:49 p.m.]

Using many maps and plans signed and sealed by Smith and Company to illustrate his points, Mr. Smith reported the following information. 1) There is 490 ft. of vegetation between Judea Cemetery Road and the site of the proposed fields and 608 ft. of vegetation between Plumb Hill Road and the site to effectively block to view of the fields from these roads. 2) Camera location elevations where Mr. Jancski took some of his photos are 70 ft. below the elevation of the fields and so it would be impossible to view them from these points. 3) Mr. Jancski showed a 62% increase in the area to be disturbed, but Mr. Smith maintained this would not be necessary. 4) Mr. Smith addressed the existing natural vegetated buffer, which varies from 225 ft. to 850 ft. surrounding the site, and said this would screen the view from the roads. 5) Mr. Smith used a chart, "Slope

Diagram," to illustrate slope ratios and stated the 2.5:1 slopes that would result from the project could be seeded and stabilized. He also compared diagrams entitled, "Northern Fill Section," and Southern Fill Section," both dated 7/11/12, which showed the proposed slopes in true scale, to Mr. Jancski's slope diagrams, 2N and 2P, which Mr. Smith said were distorted to make them appear steeper. 6) Mr. Smith noted that none of Mr. Jancski's documents were signed or sealed and then read the state standards for landscape architects for signing and sealing. 7) Mr. Smith addressed Mr. Jancski's photo #2Q which showed a partially vegetated steep slope. Mr. Smith presented ten photos of existing fully vegetated and stable slopes in the area ranging from 1.5:1 to 3:1. In conclusion he stated that misleading and inaccurate material had been submitted by the interveners and that the fields would be constructed by a qualified contractor and maintained per the approved schedule.

Mr. Buck next addressed in detail the points that had been raised by Mr. Goodin in his 6/25/12 report. 1) Regarding the soil types used for the drainage calculations, he said that actual soil data obtained in the field by Mr. Beroz, soil scientist, and confirmed by Mr. Klein and Mr. Allan, also soil scientists, had been used and that this was more accurate data than the soils Mr. Goodin had used from an NRCS publication. 2) Mr. Buck stated that since 1986 it has generally been accepted that the overland flow limit is 300 feet, not 100 ft. as Mr. Goodin cited. He noted Mr. Allan had addressed this in his report and had concluded that 300 ft. was valid and correct. 3) Mr. Buck said that although the proposed level spreaders were not meant to function as detention devices, since some detention would occur during storms, this had been reflected in the applicant's computations. He also stated that Mr. Riefenhauser had run the computations using the 100 ft. maximum overland flow figure and no infiltration and the results still showed that the post development runoff would be less than the pre development runoff from a 50 year storm and so was in compliance with the Zoning Regulations. 4) Mr. Buck showed a photo of an intermittent watercourse and explained how it would be rip rapped with 6 inch crushed stone. 5) Mr. Buck said that because there would be very few impervious surfaces and the athletic fields would not be used in the winter, off site pollution with suspended solids was not a concern. He also noted per Section 14.7.5, provision had been made for the protection of watercourses and drainage and that using vegetated buffers for filters is an accepted method of stormwater management. 6) Mr. Buck explained that because this project will disturb more than 10 acres the applicant is required to submit the erosion and sedimentation control plan to the DEEP for review. 7) Mr. Buck stated that contrary to Mr. Goodin's opinion, it can not be proven that blasting will be required. He noted the contractor is confident he can remove the rock without blasting and he listed six other common methods used to remove bedrock. 8) Mr. Buck disagreed that the plans were incomplete and lacked detail. 9) Mr. Buck disagreed that an inappropriate design was proposed for the level spreader. He said that Mr. Goodin's remarks applied to a different type of level spreader than the one proposed and that the only application Goodin remarks were those from the Massachusetts Guidelines. He also spoke about the proposed reverse slope benches, how they would be enforced with synthetic erosion control fabric, and properly installed by the contractor. 10) Mr. Buck said Mr. Goodin's claim the project would result in the diversion of stormwater was false, that "stormwater diversion" has a specific meaning, and there would be no stormwater diversion on this site. He concluded that Mr. Goodin's complaints were misleading and in many cases wrong.

Mr. Klein continued with the presentation. He gave his credentials and rebutted claims made in the Evans, Jancski, and Goodin reports regarding the proposed erosion controls and the biological impact assessment. His points included; 1) Ms. Evans' statement that residential development has less environmental and biological impact is not true. 2) He said he had never claimed there were

no species of special concern on site, but had noted the entire site was not close to the circles on the natural diversity map, and added that the DEEP would review this when it receives the stormwater application. 3) He noted that forest is the most common habitat type in both the town and the state, in fact, covering 60.9% of the Town. 4) Mr. Klein said there was no evidence there would be adverse impacts to any of the species listed by Evans Assoc. and he showed many photos of species listed in the Evan report although he said it was unlikely they could be found on site. 5) Mr. Klein disagreed with Ms. Evans, saying steep slopes could be stabilized and he showed photos of two vegetated and stable steep slopes. He noted that the project would be bonded and third party monitoring had been required. 6) Mr. Klein said studies did not support Ms. Evan's statement that removing the trees from the site would increase runoff and erosion. He said a detailed erosion control plan would be in place, that there would be no soil disturbance until after the water table was down, and the goal of the project was to have a highly stable turf surface. He also said that there would not be long periods when the site would be open and susceptible to erosion because sod can be installed any time of the year. 7) Additional landscape buffering was not necessary because there were many evergreens located throughout the property and a minimum 225 ft. wide buffer was provided. He referred to an aerial photo of the site in winter. 8) Mr. Jancski had stated there would be additional tree loss beyond the toe of the slope of the proposed grading, but Mr. Klein did not agree. 9) Mr. Klein noted that the interveners' professionals greatly differed on the number of trees that would have to be cut; the number given ranged from 2400 by Ms. Evans to 6000 by Atty. O'Hanlan. In closing, Mr. Klein said the interveners had presented no credible evidence that the project would cause significant impacts to the hydrology and ecology of the site.

Mr. Brooks spoke next for the applicant on his acoustical study. He noted his resume was on record. Mr. Brooks stated the interveners had not developed a position of substance because their position was not based on data or on a detailed analysis. He said the sounds emanating from the athletic fields would have little or no impact on the surrounding neighbors. He rebutted both the 6/21/12 report by Mr. Cote and Atty. O'Hanlan's comments. Mr. Brooks presented data comparing sound levels at the southern boundary line in 2005 vs. 2012 after the Stern's tennis court equipment had been installed. Atty. O'Hanlan objected, saying this information was irrelevant and was a smear tactic. Atty. Williams responded it was necessary in order to refute the claim of the interveners' expert and said the applicant was not claiming there was anything wrong with the noise from the equipment, but was trying to demonstrate whether you would be able to hear noise from the field at this property line. Mr. Brooks also presented 2005 and 2022 noise level data comparisons for Rt. 47 and South Street. Mr. Fitzherbert asked 1) if the different elevations of the surrounding houses in relation to the fields would impact how much could be heard at the houses and 2) how many directions does noise travel. Mr. Brooks said noise travels in all directions and that elevation, distance, humidity, vegetation, and ground absorption would all impact how much noise would reach adjoining properties. He projected a sound level under 30 decibels at the boundary line and speculated that sound variations would have no impact 600 ft. away. He stated that at the southern property line the noise from the fields would be 15 decibels lower than that of the background noise, and this would be well below the limits of the DEEP regulations. Mr. Brooks said the interveners' claim that the data could not be verified was incorrect; he said they had not attempted to do so. Mr. Brooks also disputed the credentials of the interveners' expert, whom, he said, was not a licensed engineer. Mr. Brooks stated the contours between the fields and nearby residences would form a barrier so that the sound would have little or no impact on them.

Atty. O'Hanlan said the interveners' consultants had presented what they believe to be true and

said the differences in opinion between the consultants underscored the need for the Commission to get an objective review of its own. He spoke briefly in support of Mr. Goodin and Mr. Jancski. Atty. O'Hanlan questioned why Mr. Brooks had not taken noise level readings at the existing Gunnery field during a game in progress and had not used that data in his comparisons. Noting the differences in opinion between Mr. Buck and Mr. Goodin, Atty. O'Hanlan again urged the Commission to get an objective review.

Atty. Williams made the closing arguments for the applicant. His summary included the following points. 1) Contrary to statements by Atty. O'Hanlan and Mr. Peck, schools and school uses, which include athletic fields, are uses encouraged in residential zones by the court and the Zoning Regulations. He noted Mr. Peck had cited case law by Fuller and in response Atty. Williams read section 4.13 of Fuller's treatise and referred to Armstrong vs. ZBA of Washington and an earlier case in Milford. He said that the treatise and rulings showed the athletic fields were clearly an educational use. He also referred to Atty. Zizka's 2005 letter to the Commission and said he agreed with Zizka on this subject. Atty. Williams then noted that the record included a letter from Mr. Hayden of the NW Conservation District, who reviewed the proposed plans for the Conservation Commission after the Inland Wetlands approval. He noted that neither the Conservation District nor the Conservation Commission was limited to the consideration of wetlands issues and so Mr. Hayden had made a full review. Atty. Williams noted that Mr. Hayden, who found the proposed plans met the requirements of the 2002 CT Erosion and Sedimentation Guidelines is both a certified erosion and sediment control specialist and a member of the board of the statewide council that published the 2002 Ct E&S Guidelines, while Mr. Goodin is neither. Atty. Williams submitted a letter to Mr. Fitzherbert and the Zoning Commission dated 7/25/12 to address how the application meets all of the Special Permit standards under Section 13.1.B. He concluded that the application complies with the requirements of the Washington Zoning Regulations and the Plan of Conservation and Development. He asked that the Commission make a separate finding regarding whether the interveners had met their burden of proof that the proposal would cause adverse impact to the environment.

Mr. Fitzherbert asked each commissioner whether he thought adequate information had been submitted upon which to base a decision or if he thought the hearing should be continued. It was the consensus to close the hearing.

MOTION:

To close the public hearing to consider the Special Permit application: Section 4.4.10 submitted by The Gunnery, Inc. for athletic fields at 22 South Street.
By Dr. Craparo, seconded by Mr. Abella, and passed 5-0.

Mr. Fitzherbert closed the public hearing at 10:55 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill
Land Use Administrator