

## September 22, 2003

MEMBERS PRESENT: Mr. Martin, Mr. Owen, Ms. Page

MEMBERS ABSENT: Mr. Fitzherbert, Mrs. Friedman

ALTERNATE PRESENT: Mr. Brinton

ALTERNATES ABSENT: Mr. Abella, Mr. Shapiro

STAFF PRESENT: Mrs. Hill

ALSO PRESENT: Mrs. Rourke, Mr. Anderson, Mrs. Wilbur, Atty. Fairbairn, Mr. Wilbur, Mr. O'Donnell, Mr. Frank, Mr. Sears, Mr. McGowan, Mrs. Sutter, Ms. Baldwin

Mr. Martin called the meeting to order at 7:30 p.m., noted there was a quorum present, and seated Members Martin and Owen and Alternate Brinton for Mr. Fitzherbert. (Ms. Page arrived at 7:45:45 p.m. and was also seated.)

Consideration of the Minutes

Mrs. Hill noted there was a typo on page 4. In the first line of the last paragraph, the figure should be 15,890, not 1589.

MOTION: To accept the 8/25/03 Regular Meeting minutes as corrected. By Mr. Owen, seconded by Mr. Brinton, and passed 3-0.

Other Business

### **Washington Community Housing Trust/16 Church Street/Request to Modify Condition #12 of Special Permit for 11 Affordable Housing Units**

Mr. Martin noted the Commissioners had been sent copies of the Housing Trust's 9/4/03 letter requesting a modification to condition #12 of its Special Permit. He said he had consulted with Town Counsel who advised him as follows: 1) The Commission is required to evaluate and make a decision regarding the request. 2) A public hearing must be conducted to consider the request. 3) The Commission will address only the request to modify condition #12, and no other issues, at the hearing. 4) The criteria for making a decision must be the same as the criteria used when the original decision was made on whether to grant the Special Permit under the Affordable Housing Land Use Appeals section of the state statutes. The two questions to be considered will be 1) Will approval of the request cause substantial harm to a public interest? 2) If there is harm to a public interest, does that harm outweigh the need for affordable housing? Mr. Martin said the Commission would focus on its statutory responsibilities and would avoid getting involved with negotiations between the Housing Trust and the New Preston Water Company.

Ms. Page arrived and was seated.

A public hearing-Special Meeting was scheduled for Wednesday, October 8, 2003 at 7:30 p.m. to consider the request. Mrs. Hill will check to see what room is available. Atty. Fairbairn was advised to mail out notification to all adjoining property owners as soon as possible.

### **Revision of the Zoning Regulations/Section 17.5/Special Exception:**

Mr. Martin reported there had been no changes to the draft text since the last meeting and that the proposed amendment had been referred to appropriate agencies as required by state statute. A public hearing has been scheduled for October 27, 2003.

Mr. Owen brought up the problem of the Washington Club golf course property. It is a grandfathered use that is currently not permitted in the R-1 District. According to Atty. Byrne, changes other than those for maintenance and repairs to any of the Club buildings would require a variance. Mr. Owen noted the golf course had a long history in Town and did not think it right that it was now basically prohibited from making any changes at all. He recommended the Commission consider either adding golf courses to uses permitted by Special Permit in the R-1 District or adding it under the Special Exception section. Mr. Martin noted that per the proposed language of Section 17.5, only residential properties would fall under this section and that Mr. Owen's suggestion would be too major a change to include in the October 27th public hearing. He thought the Commission might consider it at a later date. Meanwhile, he said the Club was a unique situation and agreed with Atty. Byrne that it should apply to the ZBA for a variance.

### **Revision of the Regulations/Definitions for Lot Coverage and Setback**

A few minor changes were made since the last meeting. The final draft was referred to all appropriate agencies and the public hearing scheduled for October 27, 2003.

### **Revision of the Regulations/Section 14**

Mr. Oley's latest draft was mailed to the Commissioners for their review. Mr. Martin recommended a two person subcommittee review the draft and report back to the Commission.

MOTION: To suggest that Mr. Fitzherbert and Mrs. Friedman serve as the subcommittee to review Mr. Oley's revisions to Section 14. By Mr. Owen, seconded by Mr. Brinton, and passed 4-0.

### **Plan of Conservation and Development**

Mrs. Hill reported the public hearing would be held on Wednesday, October 29, 2003 at 7:30 p.m.

### **Accessory Apartments**

Mr. Owen noted that only one detached accessory apartment is permitted per residential property and the recent problems the Commission encountered when a building not intended to be an accessory apartment meets the definition of accessory apartment, based on its capacity to be a dwelling unit. He noted the current Regulations define apartments structurally according to size and amenities and suggested this be clarified. He recommended a statement be added that if any accessory structure, other than an approved accessory apartment, is being occupied without zoning approval, it is an illegal accessory apartment, and if there is an illegal apartment on a property, a legal apartment may not be applied for. He said this would also address situations where structures that do not meet the definition of accessory apartment are

being lived in. It was the consensus the inclusion of such a statement was a good idea. Mr. Martin asked Mr. Owen to submit draft language for review.

## Communications

The 2002-2003 Annual Report and letters from Mr. Hackney dated 9/1/03 concerning including gravel driveways in lot coverage calculations in the R-3 District and from Ms. Baldwin dated 9/10/03 regarding the Madoff fence at 241 West Shore Road were noted.

## **Revision of the Zoning Regulations to Enhance the Protection of Water Quality of Lake Waramaug**

Mr. Martin briefly reviewed the changes made to the draft regulations based on the input received at the 9/14/03 meeting of the Lake Waramaug Association. He noted the proposed amendments had been referred to the local councils of governments, Planning Commission, Town Clerk, Inland Wetlands Commission, and the towns of Kent and Warren and the public hearing had been set for October 27, 2003. Copies of the map of the proposed new boundaries of the Lake Waramaug District were circulated. The draft language and map are attached.

The following further revisions were suggested, but it was noted they would have to be taken up at the public hearing because the proposed amendments had already been referred to the appropriate agencies. 1) 6.6.1: "Either" will be added to state, "Only one dock and either one rowing shell dock or one float...." 2) 6.6.3: "Submerged land" will be added to state, "They must be removable on a seasonal basis and have no permanent contact with submerged land and require no excavation of the submerged land." 3) 21.1.17: The spelling of scull will be corrected.

Ms. Page submitted a written statement regarding her thoughts on why docks should be permitted on smaller properties around the lake. She asked the Commissioners to consider her arguments in the future after the Public Hearing on the proposed revisions. Mr. Frank noted he, too, had intended to raise this issue in the future.

Mr. McGowan entered the meeting at this point.

Mr. Martin noted that Mr. Hackney wrote a letter questioning why there was no differentiation between gravel and impervious surface driveways in the coverage calculations. Mr. Martin responded that most Litchfield County towns agreed with this approach because the degree of permeability between the two was not significantly different after the gravel drive had settled over a winter and had been compacted by vehicular traffic. Mr. McGowan noted engineers currently use different runoff calculations for gravel and impervious surface driveways. He also noted that due to variations in construction and maintenance, not all gravel driveways are equal. He suggested the Commission offer incentives for properly designed and installed driveways and explained one construction method using filter strips, which would more effectively absorb driveway runoff. The Commissioners were interested in receiving more detailed information about this type of construction and the incentive approach. Mr. Martin said it would also be helpful to recommend such construction techniques when projects are proposed by Special Permit under the proposed new Section 6.5.

Mr. McGowan noted his concern that the many non conforming structures around the lake might be allowed to expand under the Special Exception procedure proposed in Section 17.5. Mr. Martin explained, and the rest of the Commissioners agreed, that Section 17.5 was

proposed to deal with the setbacks listed in Section 11.6 and not the setback from Lake Waramaug addressed in Section 12.1.1.

Mr. McGowan thanked the Zoning Commission for its efforts to protect Lake Waramaug and circulated copies of the September 2003 Lake Waramaug Task Force newsletter.

#### Privilege of the Floor

Mrs. Sutter said she was bothered that there could be exceptions made to the Zoning Regulations that were contrary to the intent of the state scenic road designation. Mr. Martin explained the approval of the Madoff fence at 241 West Shore Road had not been an exception to the Regulations, but had been approved as a Special Permit as was allowed under the Regulations. He noted any fence over 2 feet tall requires a Special Permit and that with the condition imposed by the Commission that it would be installed downgrade of the existing hedge, the Commission had determined the proposed fence would not excessively block the view of the lake from the road. Mrs. Sutter complained the fence was too tall. The ZEO confirmed that sections of the fence were too tall and had ordered the Madoffs to lower it to the approved height. A lengthy discussion ensued regarding the difficulty of balancing the rights of property owners versus the public's right to have a view of the lake. Mr. Martin said Special Permit fence applications would continue to be reviewed on a case by case basis, but offered to refer them to the Lake Waramaug Association for comment. Mrs. Sutter said the Commission should adhere to the intent of the state scenic road designation. Ms. Page responded Mrs. Sutter could petition the Commission to amend the Regulations to reflect the state designation. Mr. Frank thought the current Regulations already take the ordinance into consideration. Ms. Page noted there are also issues of privacy and safety to consider. Mr. Owen noted the collective right includes the right of property owners to make improvements to their properties. Mr. Martin indicated the Commission may want to examine whether the balance of private vs. public rights should be shifted in light of the state scenic road designation and asked for input from the Lake Waramaug Association. Mrs. Sutter also questioned the use of plantings rather than fences as they can be planted close together to block views and can grow so tall that they eventually block the view from the road. Mr. McGowan noted the Association has been trying to promote the use of plants instead of fences to provide both screening and a filtered view of the lake.

MOTION: To adjourn the meeting. By Mr. Owen

Mr. Martin adjourned the meeting at 8:45 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, ZEO