

Continued from Page 22

Attorney Ripper

Well, I think just as a testimony, Steve, that went with the Inland/Wetlands Commission. I am very sensitive to the people concerns, I mean, if I lived in that area and I had not only the pond but an open parcel like that in my backyard, I tell you I would love to have it. Unfortunately, I'm not saying this in a derogatory way, it is really unfortunate that they did not see it as a neighborhood association and either encouraged the community to acquire it or to buy it themselves. The forgotten parties in here, you know, really, are not even my client but the Marinos who own that land, they have owned it for a number of years and have acquired it with the right to do whatever everyone else is allowed in the community that is permitted under the zoning regulations. That pond that's there, if you can detach yourself from being a neighbor of it, from an Inland/Wetland standpoint, it is insignificant. Now to say that it is an insignificant pond to someone that lives in the neighborhood is cutting them to the core. The truth is, it is not connected with any other significant wetland areas, it is serving very little, if any, function as a wetland area. The fact that it is a tremendous recreational area for kids in the community and the open space in the back is a recreational area I won't contest one iota. The truth is, is that no private property owner, be it Mr. Carta, Mr. Marino or any one of the individuals that have spoken this evening, you know, has any obligation to provide recreation to his neighbor, they don't.

Comm. Leinwand

You may be missing my point. Inland/wetlands deals with one set of issues and P&Z deals with another. I voted, as everyone in this room knows, to allow you to fill that pond and I would do it again tomorrow when I wear my inland/wetlands hat. Everything you just said is right about what I believe is insignificant in terms of the overall issue of inland/wetlands. Here, I wear the hat that deals with the future viability of that parcel, I worry about the people that may have to live there so I'm not, I'm trying to get at Mr. Lowe's question....

Attorney Ripper

Yes, first of all, the only....

Comm. Leinwand

....How do you say that you can build a house there that will work?

(Change of Tape)

Attorney Ripper

....the Commission hearing, you know, were addressed at that thing, I suspect every one of them, including the ability to build on there. There is testimony from our engineer, there is testimony from a soil scientist, there is indication, you know, some people are using the Purcell Report as a criteria, various other reports indicating that there really should be no objection to this and in fact I believe our engineer was requested to submit to the Planning - the Inland/Wetlands Commission - or an agency of Middletown a proposal on how that would be accomplished with certain drains and whatnot and it's not only feasible, it can be accomplished very easy with engineering. It is not - #1, you have to really distinguish the water in that area along two lines, and I really do encourage the Commission members to read the reports and the minutes of the Inland/Wetlands Commission meetings because we were before that Commission on three occasions, that I recall and maybe even a fourth, and we were asked to provide additional information and we gave it to them and they were still satisfied. It was a unanimous decision at Inland/Wetlands, I mean, they didn't have any doubts. But there are two situations - you have a drainage situation in there that this subdivision clearly corrects, there are allegations which I don't know are true or not, I mean, reading the report it is very questionable that a significant amount of this water is spring fed. A lot of people are saying it is spring fed, I haven't

Continued from Page 23

Attorney Ripper

seen any here, you know, objective evidence to that at all. I think that even though people may dig in their backyards and encounter water, is that surface water or is it subsurface water? I suspect a lot of it is, you know, is your surface water drainage situation there. Again, I don't know what role the Planning & Zoning Commission has in considering that pond. Obviously, if it is a public health safety or welfare issue you've got as much right to look at that as, you know, as the Inland/Wetlands but I don't see it as a public health safety and welfare issue, I see it as a situation where many of the neighbors have enjoyed a certain situation in their backyards, I can certainly understand that they would be upset, I would be upset, too, but our society is not structured nor the planning & zoning regulations structured to allow us to make somebody do something or not do something unless it's somehow associated with the public health, safety and welfare and I don't see how the filling of this pond is offensive to the health, safety or welfare of the people in that area. The fact that they have enjoyed an aesthetic benefit, yes, I understand that, but they have no God given right to have that pond there. #1, it was an artificially created pond years ago, anyway, it's not something that is there as a matter of Nature, you know, it was an excavation in the beginning.

Chm Gionfriddo  
Jim...

Attorney Ripper

I don't know if I'm being responsive, Steve(Gionfriddo), I'm trying to be.

Chm Gionfriddo

I have a few things I wanted to ask you. The easement from Sienna that has come under controversy here?

Attorney Ripper

Yes, I went through my records, I have a Xerox copy of an easement from Sienna, I will make copies of all three of them and provide them to the Commission tomorrow, let's say by the end of the week, I've got a very busy day tomorrow. It does have Mr. and Mrs. Sienna's signature on it, I did not do it, it was signed before a Notary Public, I would have to defer to the fact that that Notary either proved that the people signed it were Mr & Mrs. Sienna or not. Now, if there has been fraud perpetrated on my client that is one thing, but I do have a document that is signed by, allegedly, signed by the Siennas and I have no reason to believe that it is not their signature. It was signed approximately a year ago.

Chm Gionfriddo

How many - this is addressed to the Commission then I will address something to you - How many members of the Commission have already been on the property? Do you see any benefit of going on the property with the developer or his engineer to...sometime between now and the next hearing?

Unidentified Commissioner

Yes...(inaudible)...engineer

Unidentified Commissioner

I second that.

Chm Gionfriddo

Alright. Is there...can you contact staff and what I am going to suggest to you, Jim, is a Saturday. Between now and the next meeting. Maybe you can contact George (Reif) either this coming Saturday, in the afternoon, or the following Saturday and see if there might be a time when we can meet you and your engineer on the site,

Continued from Page 24

Attorney Ripper  
Absolutely. I have no problem with that at all.

Chm Gionfriddo  
Okay, I'll call one more and then I'll call Comm. Passanesi and that's...there were questions that were asked by a gentleman who came up about the--do you have any idea, being that you are not an engineer, how high they are planning to fill the pond? Are they planning to fill ground level, above ground level?

Attorney Ripper  
Well, ground level. I'm under the impression that there...generally, what is going to be happening, the material that was removed from this pond when it was excavated was then put up in this area, we are going to be moving that back into the pond area so it is probably going to be filled about, I asked the engineer that question, about 3 feet above I believe, the water surface now. I say now, this day, you know, the average level of the water in that pond.

Chm Gionfriddo  
Would the sixth be a better day for members of the Commission? Can we - why don't you see if you can arrange to have your engineer there like at 10 o'clock on July 6? Yes, any one in the audience who has expressed an interest in viewing the site we will be there on the 6th, at 10 o'clock, okay?

Attorney Ripper  
I would appreciate, Mr. Chairman, just so this, we don't get into confusion and litigation or anything, that the parties understand that the Commission can request any information it wants but I, from past experience representing developers, I've seen this as an opportunity where every neighbor in the area decides they are going to have a demonstration and make all kinds of comments and subjecting the Commission to testimony which is outside the purview of the Public Hearing. I do not want to feel that I have to be there, you know, in that situation, so, you are welcome to be there, I think anyone should be free to ask questions, members of the public included, you know, comments and opinions should be restrained.

Chm Gionfriddo  
I agree. It is an information gathering. Commissioner Passanesi.

Comm. Passanesi  
I need to get back to this pond question again. You keep using the word filling and you keep using the word drainage. Is it possible that you are planning not only to fill but to do other things as you fill?

Attorney Ripper  
Other than fill the pond?

Comm. Passanesi  
Yes

Attorney Ripper  
No sir, that's all it is.

Comm. Passanesi  
You are going to physically fill it with earth and not put any other drainage lines in area?

Continued from Page 25

Attorney Ripper  
The underdrainage lines in the area would be involved in the construction of the housing that would be built on there. That is an issue that is really controlled....

Comm. Passanesi  
That means that the people that purchase the lot will have to put in their own underground drainage lines in the site? Is that what you are saying?

Attorney Ripper  
Well, I mean, anyone that builds a house now has to accomodate, you know, the conditions.

Comm. Passanesi  
In answer to my question, you are not providing any drainage pipes in that pond area, is that right?

Attorney Ripper  
We have a swale to take care of the surface drainage....

Comm. Passanesi  
Well, answer my question, I'm asking, are you putting any drains within the confines of the water? Pond area?

Attorney Ripper  
Well, part of the pond area, sir, is where the line itself goes in the roadway.

Comm. Passanesi  
Well, you are not answering my question. Are you planning to put any drainage lines to drain that pond?

Attorney Ripper  
No

Comm. Passanesi  
Okay. Thank you, what you are going to do, is just barely fill it, right?

Attorney Ripper  
That's correct.

Comm. Passanesi  
Okay, then I would suggest that on these drawings that you indicate how much you are going to fill. We have drawings that indicate existing contours but none that indicate new contours so we don't know whether you are going to put six feet in there or three feet or twenty feet.

Attorney Ripper  
Well, that's....yeah....

Comm. Passanesi  
Well, you just said that they are going to fill it approximately 3 feet.

Attorney Ripper  
We have no objections to that, that is a very good point.

Comm. Passanesi  
No, I'm just quoting you, you said that you were going to fill that pond possibly with three feet of earth.

Continued from page 26

Attorney Ripper  
That's right

Comm. Passanesi  
Right?

Attorney Ripper  
This is the information I've received from the Engineer.

Comm. Passanesi  
But there is nothing on there that says that you are going to put six feet or ten feet or eight feet, you have no existing new contours, you have existing contours, you have no new contours. I would recommend to your engineer that he would show this Commission not only existing grades but new grades on your site that are required by the regulations.

Attorney Ripper  
Okay, I'm not opposed to that at all, sir. In other words, we can submit a grading plan if that grading plan has not been submitted to the Commission and it is required by the Commission it will be forthcoming.

Comm. Passanesi  
Well, it's not here, ... unless I read these reports... (inaudible, too much background noise) any new... dotted contour lines that indicates 164, 166, 168 etc. it doesn't indicate to any new existing, anything other than an existing contour and I would like to know what new contour is.

Attorney Ripper  
We just....

Comm. Passanesi  
Could you possibly-a lot of your trouble cleaned up and cleared up if you indicated just a little bit more information on your drawing. Now a question was asked about the swales swales appear to be only three feet wide at the bottom and only eight inches deep. Now it doesn't take too much water to fill an eight foot, an eight inch ditch and you've got possibly in that pond right now, you probably got a quarter of a million gallons of water

Attorney Ripper  
What you have to understand, sir, is that a lot of that water -- yeah, but that water is going to be -- the water that is in there will not be there in the future and the water that is coming into that....

Comm. Passanesi  
They could disappear....

Attorney Ripper  
Yeah, and the water....

Comm. Passanesi  
If it is spring fed on the bottom, sir, how are you going to take care of the water that is going to come up

Attorney Ripper  
There would have to be some--you know--some subsurface....

Comm. Passanesi  
You are looking for the owner to do that prior to the construction of a residence, right?

Continued from Page 27

Comm. Passanesi  
How much more would it cost you to put in maybe a 12 inch line, PVC pipe down into the bottom of the pond to ensure the drainage of that water and it wouldn't cost you, I bet, ohh, a heck of a lot of money. I think you would clear up the problem that a lot of people have.

Attorney Ripper  
We are willing to do that and you are welcome to make that stipulation on your approval

Comm. Passanesi  
Well, I think maybe I would make that a recommendation that you look at that possibility, okay?

Attorney Ripper  
I believe, sir, that this is again, I'm dealing somewhat at a loss because the engineer of the project had another meeting he had to attend this evening. If he were here he would answer the question directly. I....

Comm. Passanesi  
But you haven't got him here.

Attorney Ripper  
Yeah, I don't want to-I don't want to answer a question that is out of my area of expertise. When we have talked about the plan I believe he had indicated to me that although it does not show on the plan, there will be a line connected to do that. Now, I think your - you have two suggestions, primarily, one is to have such a line, I agree with you, we don't have a problem with it, we will do it. Number 2, is to have a grading plan showing the contours that will be changed to again, we have no objections to doing that and we will provide that to the Commission.

Comm. Passanesi  
I'm sure they are required anyhow, I don't see any great problem in not showing them, I'm more or less satisfied until you began to say we are going to fill it approximately three feet. But when you talked about approximately six feet, that frightens me a little bit, like if it were six feet, four feet, five feet, three feet, I don't know. Now it's the question in my mind well, maybe you better indicate (inaudible)....

Attorney Ripper  
I have no problem with that.

Chm Gionfriddo  
Comm. Guiffrido

Comm. Guiffrido  
I would like to suggest, for the record, that leave the Public Hearing open until they bring their Engineer in here and we can publicly verify any problems that we....

Chm Gionfriddo  
Yeah, that's-that was going to be the suggestion I made, I, George, I also want you to contact Bill Kuhn and get the staff reports that were submitted to Inland/Wetlands from the Engineer and from Soil & Water Conservation, etc. Comm. Leinwand?

Comm. Leinwand  
Now that we are going to keep this hearing open there are four things that I need. One are going to need the copies of the easement agreements which apparently/signed and in Vault somewhere. You asked for the Inland/Wetlands record which gives us...(inaudible)

Continued from Page 28

Comm Leinwand  
from Soil Conservation Service, I guess I would ask for the Soil Conservation Service whether or not it would be worth while sending this plan and asking them for comments on the drainage plan, the issues that Commissioner Passanesi now raises, the question of viability of houses on lots 12 and 13. It would seem to me that that's separate and distinct issues so, along the lines of the Inland/Wetland record I would request that we send this, with a letter, George(Reif), to SCS and ask for comments specifically on the drainage plan. I would find it helpful to get a copy of the January hearing transcript, the previous hearing on the 20 lot thing, I seem to have misplaced mine. The last thing I need is, George(Reif), I would very much like to see from you and Nino(Martucci) a memorandum describing "save the pond operations", I would like to know whether or not we have a right to simply approve this without lot 12 and 13 and if we do, what does that mean for the rest of the subdivision and what does it mean for who owns 12 and 13? I would like for you to explain to me and to the Commission whether or not we are capable of deleting lot 13, drawing a line right through the middle of it, having half of lot 13, that is, half the pond go with lot 14 and half of lot 13 or have the pond go with lot 12. In both those cases, my questions are, 'can we do it, who maintains it, how does the pond then drain, whether or not additional easements need to be built into this thing'? But we need guidance in terms of what we can and cannot do with respect to responding to some of these issues if, in fact, we so deem it appropriate.

Chm Gionfriddo  
George(Reif), I was just--there is one other thing I think I'd like besides the reports, if it is possible, I don't know whether, how long, Bill keeps his tapes from Inland/Wetlands meeting, but maybe if he's got the tapes of the appearances of Commissioner Carta and his attorney at Inland/Wetlands and the testimony, if we could get transcripts made for the Commission and passed around as well as the reports, that would be beneficial, okay? Anybody else have any questions they would like to ask of Attorney Ripper? I see one member of the public who would like to speak who didn't get up before so....

Mr. Sienna  
My name is Mr. Sienna, I live on Deerfield Avenue, and I've got a letter here where Mr. Carta agreed to do and there is something on there about him putting a drain in the pond or putting up any skirts around the property for drainage surface drainage. I've got everything right here, if you gentlemen would like to see it.

Chm Gionfriddo  
Are you the Mr. Sienna whose name has been bandied about here?

Mr. Sienna  
That's right. Furthermore, I didn't sign that agreement, that is just by talk.

Chm Gionfriddo  
This isn't an agreement, it is a letter. Do you have anything you would like to say?

Mr. Sienna  
Nope, but I don't approve of -- cause according to him, he was supposed to pipe it, if he didn't do that thing and myself and Mr. Ranno agreed that if he lived up to his specifications, but he didn't live up to it.

Chm Gionfriddo  
Thank you. George(Reif), just make a copy of this letter, too, please and put in with the other material.

Continued from Page 29

Comm. Leinwand  
This is a cover letter. The question is did Mr. Sienna sign?

Chm Gionfriddo  
Yeah, that's not the issue. Okay. That's going to be - we are either going to see that or not when Jim (Ripper) provides us with what he's got in his file. Thank you. Anyone else wishing to speak on this matter tonight? This Public Hearing is not going to be closed, we are going to hold it open so we can get this additional material that we are requesting, so barring an objection we will continue the Public Hearing until the meeting of (George, what is our next meeting? Tenth? July 10?)

Mr. Martucci  
May I add one more thing? A list. To get a copy of the Inland/Wetland's permit, also?

Chm Gionfriddo  
Yeah.

Attorney Ripper  
July 10th?

Chm Gionfriddo  
Yes, if you could have your Engineer here, we would appreciate it.

Attorney Ripper  
Oh yeah, it would be very helpful.

Chm Gionfriddo  
Okay, thank you. Please, we've got other items on the Agenda, I ask you to....(inaudible, many people speaking)  
Public Hearing was closed

Chm Gionfriddo  
We will move to Item 6 and since Comm. Carta is not yet back, you got to read it.

Comm. Leinwand  
Item 6: Proposed land division located on 21 George Street in an R-1 zone. Applicant/Agent Irene C. Merritt/T.F. Jackowiak

ITEM 6: PROPOSED L.  
DIVISION/21 GEORG  
R-1 ZONE/APP/AGT  
MERRITT/TF JACKOW

Chm Gionfriddo  
Ted, before you start, I seem to see a number of people vanishing here. Well, I have to sure who is sitting for who. Comm. Passanesi has left. All right, go ahead.

Ted Jackowiak  
I'm Ted Jackowiak speaking on behalf of Mrs Merritt. This item was brought up two weeks and the question at that time was about the property, two properties, being served by the well across the street, originally, there were five houses on that well that were being by it but the others have since tied into other sources. That-rights that Mrs. Merritt to this well are rights in her deed and they have been there for a long time. I think everything else has been discussed - the lot sizes and what we are trying to do here - i you want me to go over that again I will, if not,....

Chm Gionfriddo  
Ted(Jackowiak), don't you have one very serious, basic flaw with this? In order to qual for this provision you have to have both water and sewer on your property?

Continued from page 30

Ted Jackowiak

No, I - when I spoke with George(Reif) about this here, George said that all we had to have was....

Chm Gionfriddo

George(Reif), what does the provision say?

Mr. Reif

You need both. The provision is, if you can do these things if a new lot has both City water and sewer. There was a time when that wasn't true, but it got changed and now you need both city water and sewer.

Ted Jackowiak

When did that change, George(Reif) because I asked you right in front of the Town Clerk's office three weeks ago.

Mr. Reif

The provision effective March 15, 1985.

Ted Jackowiak

Well, when I asked you about this three weeks ago, you said no.

Chm Gionfriddo

Ted(Jackowiak), if you remember, at the last hearing that you were at, the preliminary presentation Nino(Martucci) brought this same point up and I said we would give you the benefit of putting it on for a Public Hearing but he did raise the point that you didn't really comply with the section and that was two weeks ago.

Ted Jackowiak

Well, I did ask George three weeks ago prior to making this map, in front of the Town Clerk's office, whether we needed that, he said no that we didn't and maybe in March we didn't, I don't know.

Comm. Leinwand

Regardless of what George ....

Chm Gionfriddo

It doesn't matter, I can't change the...

Ted Jackowiak

Well, it's--well, it's very embarrassing to me because I did clear this with the staff and I was told that at that time I didn't need both.

Chm Gionfriddo

Well, now....

Mr. Reif

I tell people over and over again, I have no authority to....

Chm Gionfriddo

Well, now knowing that you do, you would have to acknowledge that you do need....

Ted Jackowiak

Oh, I certainly do

Chm Gionfriddo

Okay, is there any questions anybody would like to ask?

Continued from Page 31

Mr. Reif

This is the one that you are going to have 71 feet of frontage, there is no other lot in the area with 71 feet of frontage.

Chm Gionfriddo

Well, that's....maybe you're wrong....

Ted Jackowiak

Yes there is, George, there are some that are less.

Chm Gionfriddo

Okay, is there any member of the public wishing to speak in favor of this proposal? Any member wishing to speak ....oh, I'm sorry, go ahead....

Ted Jackowiak

Did I hear George(Reif) that there were no other lots in the area that....

Mr. Reif

It's irrelevant, but....

Chm Gionfriddo

Than why did you bring it up?

Mr. Reif

Because it is also a factor.

Ted Jackowiak

But there are, there are many

Chm Gionfriddo

Well, Ted, even if there are, or not, it's ---you don't meet the requirements of the Code.

Ted Jackowiak

Well, the problem is that now I find out that you need both water and sewer here to qualify under the provision of the Code, and you do not. If you want to address the Commission....

Mrs. Merritt

Oh, I'd love to, because I didn't understand--I couldn't hear what all saying-- I bought the house over 30 years ago with rights to the well across the street. Originally, there were four families on it and now there are two. Okay. My deed says that I can use this well and so can my heirs, all the way down, I understand that it wasn't at the time I bought it, but I understand now that if I should ever sell this house, a well has to be dug on the grounds of this house. What I would like to do is subdivide this lot and in the event, at any time the subdivision would be sold that would have to have a well, too, naturally. I don't understand what the big problem is. Sewer, we have. Just got through paying for it last year.

Chm Gionfriddo

George(Reif), why don't you read to her the section involved so she understands what the problem is.

Mr. Reif

Modifications of Frontage and Area Requirements: New subdivisions along an existing city street may be approved by the Commission who have the same frontage and area as existing within 1,000 feet if those lots were established prior to 1982. If the new lots have both city water and sewer, provided that no new lot shall have a frontage of less than 50 feet

Continued from Page 32

Mr. Reif

nor an area less than 7,500 square feet. Revision effective March 15, 1985.

Chm Gionfriddo

So what the general problem is, is that you are creating lots of a smaller size than is required by our Code in that particular area and that would be permitted only if you have both city water and sewer, which you don't, so, unfortunately, the way our Code is written at this particular time you are not eligible the use of this provision because you don't have city water. Okay? That's the problem.

Mrs. Merritt

I didn't understand it that way before, at all. My understanding was that if there were lots around that area that would be the same....

Chm Gionfriddo

That's one of the provisions but that....

Mrs. Merritt

Well, that was the only provision that I knew of. I also knew there was a problem that my home would have to have its own well if it was ever sold, I've known for a while, for a few years because the people across the street had to dig their own well and they bought the house about 15 years ago, so I assumed I would have to do that if I ever sold the property but, no, I don't understand that law at all.

Chm Gionfriddo

Well, that's ....

Mrs. Merritt

You know, because we have small lots all around us.

Chm Gionfriddo

That's the provision that we are forced to operate under.

Mrs. Merritt

I have had that rule, so to speak, read off to me and nothing was said about water and sewer

Chm Gionfriddo

Well, it is in there, we are not trying to slip it in on you until after, it is there.

Mrs. Merritt

No, no, if I had understood it and been told, had I known I wouldn't have started all this.

Chm Gionfriddo

I understand all that and we are sorry that it has got to this point but it is in the regulation and there is no way, by our regulations, that we can approve it. We just want you to understand the reason.

Mrs. Merritt

Thank you.

Chm Gionfriddo

Okay? Thank you. Is there anyone else from the public who wishes to speak to this? If not, we will close the Public Hearing. Is there a motion to make it 7.6 for basis of voting? Any discussion? If not, all those in favor? Opposed? That will be item 7.6. We'll move back to Item #3 on the Agenda which is discussion with Public concerning Topics which are not or

Continued from Page

Chm Gionfriddo  
have not been the subject of a Public Hearing. Anyone wishing to speak under Item 3?

ADJOURNMENT

Transcribed by

Dorothy Wilson