

The June 2, 2008 meeting of the Planning Board of the Township of Chatham was called to order at approximately 7:30 p.m. by Chairperson Joel Jacobson. The Open Public Meetings Act Statement was read into the record. The agenda for the evening included a discussion of conservation easement procedures, Ordinance 2008-09, and Applications for Ronald Gunn and Hazel Dudley.

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#### Roll Call

Board members present included Mr. Jacobson, Mr. Brower, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Cohn, Mrs. Kenny, Ms. Hagner and Mr. Hurring. Board professionals present included attorney Bill Robertson, planner Frank Banisch and engineer John Ruschke.

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#### Discussions

##### Conservation Easements

Mr. Jacobson clarified that Mr. Robertson had circulated a memo regarding conservation easements. Mr. Robertson stated the memo was designed to update the Board on the status of the issue of conservation easements. Mr. Caprioglio provided an inventory of the conservations easements in town. Mr. Ruschke and Mr. Robertson indicated there was a uniform approach to the filing of the easements.

Mr. Robertson and Mr. Ruschke agreed the best approach to control filing is to insert a condition in all Resolutions that no building permits shall be issued until the conservation easements have been filed.

Regarding monumentation, Mr. Robertson stated he would work with Mr. Ruschke to set forth a standard. Mr. Ruschke recommended concrete monuments should be installed. In addition, a 4'2" minimum width marker with the words "conservation easement" marked on them should be installed. Mr. Robertson stated that condition could also be placed in every Resolution until it is formalized through the adoption of an amended ordinance.

After discussion and public comment, Mr. Jacobson directed Mr. Robertson to send a letter to the Township Committee outlining the recommendations including monumentation, authorizing language and the penalties.

#### Ordinance 2008-09

Mr. Jacobson asked Mr. Ruschke to review the ordinance proposal that the Township Committee will consider on June 12, 2008.

Mr. Ruschke gave a brief history of the ordinance proposal and stated that he works with the Board of Adjustment and reviews the lot grading plans. In that capacity, Mr. Ruschke identified inconsistencies that needed to be reviewed. The issues included:

1. Definition of garage
2. Maximum building coverage
3. Minimum allowable disturbance of steep slopes categories (500' s.f. total)
4. Identification of wetlands on lot grading plans
5. Accessory Structures/Patios distance from the sidelines
6. Interpretation of landings (front door)

Following additional discussion, Mr. Jacobson directed Mr. Robertson to send a comment letter to the Township attorney, Carl Woodward, outlining the Board's comments.

Mr. Jacobson asked Mr. Ruschke to help draft a comment letter to the Township Committee regarding Ordinance 30-64.3A (no net change) to be considered by the Planning Board at a later date. Mr. Jacobson stated he understood that it should not be a part of the letter of recommendation for the June 12, 2008 meeting as the Committee is not acting upon it; however, the Board has had a lot of discussion work done on the ordinance that comes up frequently during the application process.

#### Cougar Field Lighting

Mr. Jacobson commented that the Board members received a letter from an opposition group in connection with the Cougar Field lighting. Mr. Robertson outlined the role of the Planning Board stating that traditionally, the Planning Board has taken the position that any of the educational facilities would be considered capital projects and would require a courtesy review of the project. Mr. Robertson stated that an attorney (Mr. Simon) representing the opposition group makes an argument that the lighting is not for instructional or educational purposes. Mr. Robertson would like to review the administrative code that has been cited and will report back to the Board regarding Mr. Robertson's opinion as to Mr. Simon's argument.

#### Master Plan Schedule

Mr. Robertson reviewed the schedule of elements for the Master Plan. It was determined that the walkway/bikeway plan is scheduled for discussion with Mr. Banisch and the Board on June 16, 2008. Regarding the Housing Element, while the third round regulations were adopted with proposed revisions, the comment period is through August 15, 2008. Mr. Banisch stated a comment letter must be sent during the comment period. Mr. Robertson will go over the regulations with the Housing Element subcommittee. The Land Use Element has to wait for the Housing Element data, but will be late this year.

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## Applications

### Gunn

Attorney Samuel DeAngelis was present on behalf of the Applicant with engineer Mr. Cunningham in the continuation of the hearing. Mr. DeAngelis referred to three documents that he wished to be entered as exhibits and included:

A5: Mr. Cunningham's revised (5/23/08) proposed drainage system extension

A6: Letter to Mr. Robertson from the Shade Tree Commission (5/29/08)

A7: Appraisal on the care of a damaged tree

Mr. Jacobson asked Mr. Ruschke to give a report of the site visit to the subject property. Mr. Ruschke indicated the Board visited the subject property on Saturday, May 31, 2008. Mr. Ruschke stated the majority of the focus of the site walk was in the vicinity of the limits of disturbance, which exceeded that permitted under the original subdivision plan. Inspections included the third wall, which was constructed but not included on the original plan, the conservation easements on both properties and the concrete monument installed between the two properties distinguishing the limits of the conservation easement.

Mr. Ruschke reported that on Lot 31 it was clear that all of the undergrowth on the lot has been removed and a seed mixture has been placed in the area to establish a landscaped lawn, which is a violation of the conservation easement. Mr. Ruschke continued that on the adjoining lot, there was some question as to whether undergrowth was removed. On Lot 31 (51 Ormont Road), it is possible that some additional grading into the conservation easement was observed. On the adjoining Lot 31.01, (47 Ormont Road), although the as-built plans do not identify any grading extending into the conservation easement, there does seem to be some encroachment.

Mr. Ruschke continued that other observations were made and included that the as-built plan and the approved subdivision plan identified all walls would be less than 6' in height; however, it was

noticed that in the vicinity of the garage and the stairs, there are areas that exceed the 6' height from an additional 4" to an additional 18". Mr. Jacobson asked Mr. Ruschke to explain how the walls were approved at the higher height; Mr. Ruschke stated that reliance was placed on a licensed surveyor who prepares the as-built plan and the corners on the as-built plan are identified as being less than 6'. Mr. Ruschke stated that when the project is viewed in the field, it is clear the walls are greater than 6'.

Mr. Ruschke stated a fence was observed that was installed along the rear of the property and also between the two properties and is within the conservation easement. Mr. Ruschke also referred to a dry sewer line that was installed. Mr. Ruschke stated that it was part of the original subdivision plan – a utility easement was established and was to provide service to the potential build-able lots north. Mr. Ruschke stated a lot grading plan was not approved by him, the Township engineer.

Mr. Jacobson asked Mr. Banisch if he had any additional observations; Mr. Banisch stated that Board members pointed out damage to the roots of a large tree.

Mr. DeAngelis asked Mr. Cunningham to address the revisions made to the drainage plan. After speaking with Mr. Ruschke's office, Mr. Cunningham changed the size of the proposed pipe from 12" to 15" HDPE pipe. Also, Mr. Cunningham said there was a request to change the configuration of the way the drywell overflow pipe.

Mr. DeAngelis asked Mr. Cunningham if he had reviewed the report made by Mr. Linson of the Shade Tree Commission; Mr. Cunningham said he reviewed the report and was present on the site when Mr. Linson made his inspection. Mr. Cunningham said he was in agreement with Mr. Linson from a site planning perspective. Mr. DeAngelis read verbatim from Mr. Linson's report that concludes that "these plantings will sufficiently compensate for Mr. Gunn's deviation from the original plan..."

Mr. Jacobson asked about performance bonds for landscaping; Mr. Ruschke stated that if the landscaping requirements were incorporated into the site plan approval, there is an obligation to

maintain it and it is a violation if it is not maintained. Mr. DeAngelis stated there was a \$50,000 bond on each of the properties.

Mr. Brower asked about the undergrowth; Mr. Cunningham testified that he had been around the site since Mr. Gunn purchased it. Mr. Cunningham stated that it had been a yard at one point that was let go, but had been a yard almost to the rear property line.

Mr. Jacobson asked Mr. Cunningham if there was any unauthorized soil disturbance between the house and the first wall; Mr. Cunningham replied “no”. Mr. Jacobson asked about between the first and second wall and Mr. Cunningham replied “no”. Mr. Jacobson asked about between the second and third walls; Mr. Cunningham stated the original limit of disturbance that was approved was close to the face of the third wall. Mr. Cunningham continued that there was a permitted area of disturbance behind the second wall to facilitate the excavation that was required for the walls. Mr. Jacobson asked Mr. Ruschke if he saw this the same way; Mr. Ruschke stated he would question the limits of disturbance on Lot 31 and the bulk of the disturbance was 20’ off the second wall and behind the third wall. Mr. Ruschke stated that the land within the conservation easement was disturbed on Lot 31. Mr. Ruschke stated the third wall was not on the lot grading plan. Mr. Jacobson summarized that most of the damage occurred above the top wall, starting below the wall.

Mr. Cunningham reviewed the limits of disturbance. On Lot 31, the total approved disturbance was 12,452’ sq. ft. and an additional 1,918’ sq. ft. was disturbed. On Lot 31.01, the original approved amount of disturbance was 11,648’ sq. ft. and an additional 2,353 sq. ft. was disturbed. Mr. DeAngelis asked if there was disturbance in the conservation easement; Mr. Cunningham stated there was some thinning and that he had testified to the removal of a dead tree in the conservation easement; since the report was prepared, Mr. Cunningham stated there was additional vegetation cleared in the conservation easement on Lot 31.

Mr. DeAngelis asked Mr. Cunningham if he measured the wall; Mr. Cunningham did not. Mr. Jacobson asked if there were safety issues regarding the steps; Mr. Ruschke stated the railing requirements fall under building code and as there were no physical walkways in the vicinity of the walls, fencing or railings are not required under code. Mr. Ruschke stated he felt it made sense to include some protection along the top of the wall, even though the code does not require it. There was additional discussion about the walls and the intent of the conservation easement

Mr. Jacobson asked Mr. Ruschke and Mr. Banisch for their recommendations beyond the landscape plan. Mr. Ruschke recommended that the steps in the second and third walls be removed and the walls reconfigured; all fencing within the conservation easement should be removed; the conservation easement should be extended to the approved limit of disturbance; the third wall should remain in place; re-vegetation of the conservation easement beyond the addition of trees should be completed; trees should be moved out of the right of way and onto the property; the height of the second wall should remain intact but the structural calculations must be reviewed and appropriate fencing should be installed at the first tier for safety.

Mr. Banisch recommended that the conservation easement should be enforced and the fences should be removed; re-vegetation of the lower story below trees was necessary; the walls should remain intact; and the conservation easement should meet the limit of disturbance.

Mr. Robertson stated his opinion was that the conservation easement could not be extended, but the other recommendations were reasonable.

Mr. Brower stated the Planning Board was a resident-friendly board and he did not want resident Dr. Ghosh (51 Ormont Road) to be held accountable for Mr. Gunn's errors. Other Board members shared this sentiment.

Mr. Jacobson opened the meeting to the public to address questions to the witness. Mrs. Susan Hoag made comments relative to the discussion.

Mr. Jacobson allowed Dr. Ghosh to make a statement about his property and the purchase of this property from Mr. Gunn. Dr. Ghosh also asked the Board to consider his property separately from Mr. Gunn's in their decision-making process.

Mr. Jacobson asked if a Board member would like to make a motion approving the Application with conditions and then the Board could vote on each condition separately. Mr. Brower moved to approve the Application and Mrs. Chambers seconded. At roll call vote, all members present voted, "yes".

Mr. Jacobson asked the Board to consider each condition separately and called for a motion for Condition #1, the approval of the tree planting recommended by the arborist, with the exception of any plantings located within the right of way; Mr. Brower moved the condition and Mrs. Chambers seconded. At roll call vote, all members voted, "yes".

Regarding Condition #2, removal of fencing in the conservation easement, Mr. Caprioglio moved the Condition and Mrs. Chambers seconded. At roll call vote, Mr. Jacobson, Mr. Brower, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Cohn and Mrs. Kenny voted "yes" for both lots. Ms. Hagner and Mr. Hurring voted "yes" on Lot 31.01 and "no" on Lot 31.

Regarding Condition #3, removal of the third wall, Mrs. Chambers made the motion to remove the wall and Mr. Cohn seconded. At roll call, all members voted "no" on both lots except for Mrs. Chambers, who voted "no" for Lot 31 and "yes" on Lot 31.01.

Regarding Condition #4, removal of the steps to the third wall, Mrs. Chambers made the motion to remove the steps and Ms. Hagner seconded. At roll call vote, all members voted, "no" on both

properties except for Mr. Browne and Mrs. Chambers who voted, “no” for Lot 31 and “yes” for Lot 31.01.

Mr. Jacobson made a motion to request the Planning Board engineer and the planner to make recommendations regarding fencing, railings and vegetations in lieu of fencing and all members voted in favor.

Regarding Condition #5, Mr. Browne moved to extend the conservation easement to the original limit of disturbance and Mr. Jacobson seconded. At roll call vote, all members voted, “no”.

Regarding Condition #6, Mr. Caprioglio moved to require the re-vegetation of the conservation easement in accordance with the requirements of the easement as construed by the planner and Mr. Jacobson seconded. At roll call vote, all members voted, “yes”, except for Mr. Hurring who voted, “no”.

Regarding enforcement action, Mr. DeAngelis made a statement on the record of the fees and remediation the Applicant will incur and asked the Board to consider this information.

Following Mr. DeAngelis’ statement, Mr. Jacobson made a motion to recommend enforcement action to the Township and the motion was seconded by Mrs. Chambers. At roll call vote, all voted “yes” as enforcement relates to Mr. Gunn and “no” as enforcement relates to Dr. Ghosh, except for Mr. Brower and Ms. Hagner who abstained.

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#### Dudley

Mr. Cooper, the attorney for the Applicant requested an extension through July 7, 2008. Mr. Caprioglio moved to grant the extension and Mr. Brower seconded, with all in favor.

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There being no further business, the June 2, 2008 meeting of the Planning Board of the Township of Chatham was adjourned.

Respectfully submitted,

Katherine T. Hollerith  
Recording Secretary