

From: Lois Laczko March 2, 2009 12:38:19 PM  
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Cc:

ADOPTED

PLANNING COMMISSION MINUTES  
FEBRUARY 10, 2009  
REGULAR MEETING

I. CALL TO ORDER

Chairman John Loomis called the regular meeting of the Planning Commission to order at 7:10 p.m. in the Main Meeting Room of the Simsbury Town Offices. The following members were present: Secretary Gerald Post, Ferguson Jansen, Susan Bednarczyk, Carol Cole, Carl Eisenmann, Mark Drake and Julie Meyer. Also in attendance were Hiram Peck, Director of Community Planning & Development, Howard Beach, Zoning Compliance Officer, Robert DeCrescenzo, Town Attorney, as well as other interested parties.

II. SEATING OF ALTERNATES

Chairman Loomis appointed Mark Drake as alternate for Charles Houlihan.

III. UPDATE ON THE TOWN'S LEGAL REPRESENTATION ON LAND USE ISSUES WITH TOWN ATTORNEY ROBERT DECRESCENZO

Chairman Loomis explained that at a February 2, 2009 meeting he attended with First Selectman Mary Glassman, Zoning Commission Chairman Austin Barney and Town Attorney Robert DeCrescenzo, he emphasized on behalf of the Planning Commission the perceived need for a highly qualified land use attorney to work with the commissions on large and/or highly complex projects. Chairman Loomis noted the extent to which Attorney DeCrescenzo will be available in his newly defined role will most likely be determined by input from all parties involved (i.e., the commissions, Hiram Peck, the First Selectman, as well as Attorney DeCrescenzo himself).

Attorney DeCrescenzo noted that, although he is the face of the firm of Updike Kelly & Spellacy in Simsbury, the firm in its entirety is the legal representation for the Town. Therefore he has access to all the resources

of that firm, including 3 land use attorneys, to adequately support the Town. In addition, when matters arise that are outside the firm's specialty, recommendations are made to the Board of Selectmen to obtain outside counsel or even a planning consultant. This has already been done for such topics as retirement plans and labor issues, and will be suggested in the near future when it comes to obtaining a second set of eyes to critique the Planned Area Development draft regulation prior to a public hearing. Attorney DeCrescenzo indicated that he will continue to work with Mr. Peck and Chairman Loomis to ensure that specifically the Planning Commission's needs are met on an ongoing basis. And although that has always been the case, there is a perceived need now especially with taking on the redraft of the Zoning Regulations, as well as the work on the PAD mixed use regulation. The timing is good because nothing at this point is applicant driven which will allow for a more lengthy and thoughtful approach. Chairman Loomis suggested that with the Conceptual Master Plan (CMP) in particular there has been some applicant-driven pressure that may have been mitigated, if not alleviated, with earlier legal involvement. In his opinion, there may not have been as much progress as the commissions would have liked due to the lack of the hands-on legal involvement that is now being offered. Attorney DeCrescenzo agreed. He took the blame for the delay indicating he had received the draft back in November 2008 and should have been more proactive in contacting Chairman Loomis directly.

Upon request of Chairman Loomis, Attorney DeCrescenzo gave a brief overview of the 2-9-09 Zoning Commission meeting and workshop. In the workshop, the commission reviewed the PAD regulation. He stated he would be gathering information for them on other towns where similar mixed use regulations have been in effect for a long time. The commission also considered the Continuing Care Retirement Community (CCRC) text amendment. Originally the amendment included CCRC as a 3rd classification of Special Use Permit within the Zoning Regulations for housing aimed at senior citizens. Secondly, in order to reduce the cost to the applicant the amendment would, for the first time, allow the applicant to receive a Special Exception Permit without simultaneously having a review of the Site Plan. The Special Exception Permit would be issued based on the information contained in the CMP. He noted that a Site Plan would still be needed later on in the process. He stated that the Planning Commission Subcommittee added a lot of the detail from the Site Plan Requirements back into the CMP. Their reasoning was that the Zoning Commission needed the proper tools to make a determination whether a Special Exception was merited for a particular site. Upon his review of both amendments, Attorney DeCrescenzo advised not to leave the CMP as originally drafted or as revised by the Subcommittee because it would have only been available to the CCRC and not other forms of Special Exception. Chairman Loomis noted that after some discussion the Planning Commission had also previously proposed its general availability.

Attorney DeCrescenzo stated there is a way to incorporate the CMP process into the Zoning Regulations, either as a pre-application review process or as a conscious decision to allow the Zoning Commission to grant Special Exceptions based on CMPs, with Site Plans to come later. He referenced a recent decision on a case involving South Windsor where a functional equivalent of the CMP was cited as authorized under 8-2 and legal in CT. In addition, it was determined that the way the regulation had been applied was invalid because the local Planning & Zoning Commission had interpreted the CMP as set in stone and not able to be revisited upon approval of the Site Plan. Attorney DeCrescenzo noted that rigorous distinctions need to be made between the CMP and the Site Plan in the Zoning Regulations.

Attorney DeCrescenzo indicated that last night it was decided to take the CMP out of the text amendment altogether and just address the addition of the CCRC as a 3rd form of Special Exception Use. In addition, the commission recognized today's business and development climate that precludes breaking ground on construction of the approved Site Plan within one year. They eliminated that very requirement from the amendment altogether and it now references the particular State Statute which allows for Site Plans to be completed in 5 years. This portion was not acted upon, however, because it was not part of the original public legal notice for that meeting. It will be re-noticed with possible action on March 2nd.

Chairman Loomis invited First Selectman Mary Glassman to comment. She thanked the Commissioners for serving the Town. She indicated recently there had been a sense that a better process was needed to move things along in a timely manner. She assured the Commissioners that while the Board of Selectmen respects the independence of each of the commissions they also understand their role to provide what the commissions need to do their jobs. She stressed to the Commissioners that the full resources of the Town will be made available to them and Chairman Loomis could call upon Attorney DeCrescenzo at any time. She also clarified the delay in the review of the CMP, stating that Attorney DeCrescenzo did receive the CMP draft in November but thought there may be a conflict of interest within the firm. The Town contacted other attorneys and by the time that process had been sorted out it was discovered that there was no conflict. Attorney DeCrescenzo estimated that approximately 6 weeks had been lost in that process.

Commissioner Bednarczyk acknowledged that the commission needs to ask for legal support earlier on in the process. She noted, however, that the legal support needs to be more from land use attorneys versus real estate attorneys. Attorney DeCrescenzo noted that several attorneys within the firm, including Susan Hayes, are in fact land use attorneys. He also reiterated that the firm will advocate for outside representation should the need arise.

Commissioner Drake questioned the First Selectman as to whether the commission should be more concerned with the overall concept of items such as the text amendment, rather than debating and word-smithing the specific language. The First Selectman agreed the commissions should not be getting bogged down with the language and legal counsel should be available to review the wording to eliminate as much of the Commissioners' anxiety as possible. The Commissioners are there to make the best decision for the Town in as expedited a manner as possible and most of them are not lawyers. Attorney DeCrescenzo gave the example of contractual language that is always reviewed by legal counsel prior to being given to the Board of Selectman and that that same type of process could also be set up for the other commissions.

Commissioner Meyer then requested a clarification on the CMP as it had originally existed. She questioned if it had been adopted and approved by the Zoning Commission would the applicant have satisfied the special requirements and have been granted a Special Exception approval? She indicated the Commission had been told there was no Special Exception approval but rather it was only the submittal requirements for one. However, she understood Attorney DeCrescenzo as saying tonight that the original draft language would result in having an actual Special Exception approval and from there the commission could get into trouble with creating a defacto Site Plan with that CMP.

Attorney DeCrescenzo noted that under the original draft it was very clear that the adoption of a CMP was not the adoption of a Site Plan. What was of concern was when an application was received for a Special Exception Use with the CMP, and if that application was approved by the Zoning Commission, the Special Exception Use would have been approved. There was then some concern that an unscrupulous applicant could make the argument after the statutory time had elapsed that the CMP was in fact a defacto Site Plan and they actually had Site Plan approval as well. Commissioner Meyer noted that it had been adamantly stated to the commission that the applicant would not get Special Exception approval out of that CMP had it been adopted. Attorney DeCrescenzo noted that had not been the original intent. Commissioner Meyer indicated that an audience member at a previous meeting suggested the applicant was in fact looking to get the adoption of the Special Exception out of the CMP, but that Mr. Peck had stated they would not get that. Commissioner Meyer questioned who drafted the original CMP language and whether it had been reviewed by a land use attorney prior to the commission receiving it. Later in the meeting, Attorney DeCrescenzo applauded the Town Staff and their effort to present a concept to allow applicants to come in with projects that could potentially be very good for the Town, despite the fact that the version of the draft text amendment that came to the commission was not where they wanted it to be. He

acknowledged the imperfect process, the effort to try to improve it, and his responsibility to provide the commission with what it needs prior to voting on items of such complexity.

First Selectman Glassman indicated that is the very internal process she is seeking to clean up. Commissioner Meyer expressed concern that no other regulations come before the commission that are not vetted. She also requested clarification of the whole complicated process and how all the pieces (i.e., the PAD, the CMP, etc.) fit together. Attorney DeCrescenzo suggested the Planning Commission take part in a series of workshops similar to those the Zoning Commission has been holding an hour or so prior to their meetings. Commissioner Bednarczyk indicated she would like more of a transparent process that would allow both the commission and applicants a clear understanding of what is in front of them and avoid being in legal jeopardy. She would also like input on what other towns, such as North Branford and South Windsor, have done.

Commissioner Jansen expressed his high comfort level that the commissions are well represented, between the Town Attorney and Town Staff. He characterized last night's Zoning meeting as having great dialogue with layman's language. He believes everyone is heading in the right direction in terms of the PAD.

Attorney DeCrescenzo urged the Commissioners to mark up the latest draft of the PAD and give their input to Town Staff. He agreed that the structure that has worked elsewhere can be applied but it needs to be adapted to the unique land use issues in Simsbury.

#### IV. DISCUSSION AND POSSIBLE DECISION

1. Application of HARCO Property Services, Inc., Owner, John R. Mallin, Agent, for a subdivision of land located at 200 Hopmeadow Street, Assessor Map F-16, Block 153, Lot 009, I-1 Zone.

Referencing maps that were distributed, Mr. Peck explained the application before the commission was for a proposed subdivision that is the creation of one lot. The property includes the existing site where The Hartford is located, which is an interior lot of approximately 33 acres. The interior lot is then surrounded by one 139-acre lot. The Planning Commission is being asked to draw a line from Hopmeadow back to the Farmington river to create a 3rd lot of approximately 40 acres. In response to Chairman Loomis, Mr. Peck stated there is no potential application with this subdivision.

Attorney John Mallin, representing The Hartford, explained that this

property is actually owned by a subsidiary called HARCO Property Service. He gave a brief history of the land in question. In the early 1980's, The Hartford acquired from the Town of Simsbury the total 172 acres. In 1984, the area which now contains the Hartford Life complex was created as a first cut resulting in the 33-acre interior lot (Lot #2) and the surrounding 140-acre lot (Lot #1). He noted the applicant is asking the commission to simply create Lot #3 which would be a 40-acre parcel that would include the land north of Minister Brook. He indicated that the Hartford is not proposing to the commission any plan to develop this property, but simply asking to establish it as a separate lot. He acknowledged that this may be different from the typical subdivision proposals that tend to come before the commission, but is perhaps the easiest form of subdivision. He confirmed for Commissioner Meyer that subdivision of the property is the only legal way for the lot to be sold since the free cut had already been taken back in 1984.

Commissioner Bednarczyk read the Purpose section found in the Simsbury Subdivision Regulations. She noted that usually when an applicant comes in with a subdivision that possibly could be sold they come in under those regulations. She suggested that this may not be a complete application, especially since it is commercial property which historically has been filed with a site plan. Attorney Mallin referenced the CT Statutes which defines a subdivision as dividing a parcel into 3 or more parcels and does not require any plan of development or specific requirements. The Statutes do give the planning commissions the opportunity to adopt regulations that may apply in specific situations, but where there is no development proposed there is no requirement to provide information about development. He reiterated The Hartford has no plans to develop the land and at the most is in a contractual relationship with someone else who is developing plans.

Commissioner Jansen confirmed that any future applicant would have to come before the Planning Commission prior to development. Commissioner Meyer questioned how it would be ensured that the open space requirements would be satisfied in the future if they do approve the subdivision now. Commissioner Drake suggested it would be a part of the application for developing that property. Attorney DeCrescenzo acknowledged the struggle that often happens between subdivision regulations and the right of a landowner to separate out a lot under the General Statutes where you do not have a development plan. He recommended all the Commissioners forward to Mr. Peck their questions and concerns regarding this application and a memo could be drafted, with the allowed input from the applicant, prior to the next meeting that would offer them guidance in this decision. Chairman Loomis noted that the commission would not want to abrogate any rights that they would otherwise have if they were acting on all the elements of subdivision.

Attorney Mallin stated that the concept of subdivision in the Town's regulation (i.e., defining lots for housing development) is not the same concept of subdivision in the pure sense (i.e., dividing a parcel of land into 3 pieces). He likened this subdivision to more of an industrial type subdivision where the lot is divided first and then the development plan is presented later. In response to Commissioner Bednarczyk's citing of p.6, #17 in the S.D. Regulations, Attorney Mallin indicated that although there is no site plan in the sense of development plans, the applicant has submitted 40-scale drawings with the building lot shown. Commissioner Drake suggested in this case the building lot happens to be the whole piece of property. Commissioner Jansen referenced a similar subdivision that the commission approved near Squadron Line. Secretary Post also thought there had been a similar application on Wildwood as well.

Commissioner Meyer suggested all the commissioners receive the rest of the information from the file, including a letter addressed to the Planning Commission where the Conservation Commission discusses the compliance with the wetlands on the property. Commissioner Meyer stated it seems the applicant did a very good job of respecting the wetlands and the floodplain zone when the proposed lot line was drawn. Although Chairman Loomis was not of the opinion that a site walk was necessary right now, it was agreed the Commissioners could walk the site independently. Chairman Loomis confirmed that Attorney DeCrescenzo will be with the commission in 2 weeks.

V. DISCUSSION OF MINUTES; POSSIBLE APPROVAL OF MINUTES FROM January 20, 2009 and January 27, 2009.

Mr. Peck indicated the Committee is meeting this week on the template form for commission minutes. The draft will then go for review to both Attorney DeCrescenzo and the FOI Commission. It will then come back to the commissions for implementation. Mr. Peck was unsure whether the First Selectman would come and present the new template to the commissions or not. Mr. Peck noted the intent was for provision of some cost savings, creation of a uniformity in minutes across commissions, as well as increasing the speed in which minutes will be posted on the website. In response to Secretary Post, Attorney DeCrescenzo discussed the impact the recent regulation has had on small towns and their technical inability to comply with the posting of the minutes to their websites.

Chairman Loomis noted there was still unfinished business with respect to the minutes of 1/13/09. They had been tabled pending a decision to produce a verbatim version in order to clear up some discrepancies in how the Commissioners' comments were represented. Mr. Peck noted after discussion

with the First Selectman there would not be any verbatim minutes produced. Commissioner Meyer indicated she had substantial concerns with the minutes reflecting comments she felt were inaccurate. The commission reviewed her changes and after discussion, Commissioner Eisenmann motioned to incorporate the following corrections to p. 2 paragraph 6 of the 1/13/09 minutes: delete the first 3 lines and replace with "Commissioner Meyer took issue with the statement that developers consider Simsbury to be a burdensome place to develop. She stated that Avon and Simsbury have almost identical site plan requirements and yet Avon does not offer a CMP to its applicants'. The motion was seconded by Secretary Post and unanimously approved.

Commissioner Eisenmann motioned to amend p. 3 paragraph 5 of the 1/13/09 minutes as follows: delete the last 2 sentences and replace with "Commissioner Meyer stated her concern with a reference made that the CMP is a forum. She stated that the CMP approval is a part of the application and may be binding. She also stated that she is concerned because she has not been able to find evidence of a CMP being used in other towns." The motion was seconded by Commissioner Drake and approved unanimously.

Commissioner Eisenmann motioned to approve the 1/13/09 minutes in their entirety as amended. The motion was seconded by Secretary Post and passed unanimously.

Secretary Post motioned to approve the 1/20/09 minutes as amended. The motion was seconded by Commissioner Bednarczyk and unanimously approved, with Commissioner Jansen abstaining.

Secretary Post motioned to approve the 1/27/09 minutes as amended. The motion was seconded by Commissioner Meyer and unanimously approved.

## VI. STAFF REPORT(s)

Chairman Loomis asked for a status and outlook on both the Charrette and the PAD. Mr. Peck indicated that comments should be received back from the Consultant on the Charrette hopefully by early next week. The Subcommittee will then meet by the end of next week or the beginning of the following week. In response to Chairman Loomis' request for the earliest date for a pilot project Charrette for Town Center, Mr. Peck stated the difficulty has been coordinating the 5 pending grant applications. He is hoping to hear about the grants in March. It is difficult to ask the consultants to put together their services without knowing what monies are available. The \$40,000 the Town had from the outset does need to be invoiced before the end of June, so an actual study needs to take place in either April or May. He has had approximately 18 property owners express interest specifically



in having a housing opportunity study done on their parcels. He believes only 6 can be chosen, although the consultant prefers to only study 3. He envisions those could include both an infill and larger site study on the Center Zone, a green space and mixed use development study on the north end, the Tariffville Mill and one or two properties toward the south end. Mr. Peck distributed background information on one of the specific grants called the Incentive Housing Zone Program. In response to Commissioner Bednarczyk, Mr. Peck stated that the monies from all the grants total approximately \$175,000. He noted that the Subcommittee expressed concern with what deliverables could actually be achieved with the original \$40,000 amount.

With reference to the PAD, Mr. Peck stated that the Zoning Commission requested that the current proposed draft regulation be circulated for comment. He requested the Commissioners formulate their comments or questions and forward them to him by the next meeting. After discussion, the commission decided that immediately prior to their next meeting (starting at 6:30 p.m.) they would do an hour-long workshop similar to the ones Zoning has been holding in order to get more of an understanding on the PAD. Commissioner Meyer questioned what the applicability of the PAD would be and where it would apply. Mr. Peck indicated the PAD would be eligible to land in any zone except residential zones. Attorney DeCrescenzo described it as a floating zone. Commissioner Meyer questioned what it would give the applicant versus coming in under the design development district. Attorney DeCrescenzo suggested that would be covered in the initial workshops.

Chairman Loomis indicated he attended the Board of Selectman (BOS) meeting where the Planning and Land Use budget was discussed, including matching funding for finishing up the Zoning Regulations, as well as a possible \$20,000 for update of the Subdivision Regulations. Mr. Peck did provide more details, per the request of the First Selectman, but was unsure of the result of last night's BOS discussions. Mr. Peck confirmed for Chairman Loomis that another suggestion that Mr. Peck offered in the budget discussions was for commissions to meet less often. In his opinion, with more turnaround time for Town Staff to get adequately prepared for subsequent meetings the commissions could have the necessary information they would need to be even more productive and efficient. In response to Commissioner Bednarczyk, Mr. Peck indicated that an agenda item could be added for the commission to discuss budget issues and possible future projects. He also noted that his priority is to retain staff. He invited the Commissioners to provide him with information on any available grants.

## VII. COMMUNICATIONS AND ADMINISTRATIVE BUSINESS

Commissioner Cole stated she was fascinated by the CRCOG Regional map and related material that had been distributed, noting its similarity to the form-based development material. Mr. Beach commented on some inadvertent deletions that had been made in reference to Simsbury.

#### VIII. ADJOURNMENT

Commissioner Jansen motioned to adjourn the meeting at 9:05 p.m. The motion was seconded by Commissioner Drake and unanimously approved.

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Gerald A. Post, Secretary