

From: Lois Laczko March 15, 2010 10:50:26 AM
Subject: Planning Commission Minutes 02/23/2010 ADOPTED
To: SimsburyCT_PlanMin
Cc:

ADOPTED

PLANNING COMMISSION MEETING
February 23, 2010
REGULAR MEETING

I. CALL TO ORDER

Chairman John Loomis called the regular meeting of the Planning Commission to order at 7:05 p.m. in the Main Meeting Room at the Simsbury Town Offices. The following members were present: Ferg Jansen, Tina Hallenbeck, Michael Paine, Chip Houlihan and Carol Cole. Also in attendance were Hiram Peck, Director of Planning, Howard Beach, Zoning Enforcement Officer, Robert DeCrescenzo Town Attorney, as well as other interested parties.

II. SEATING OF ALTERNATES

Chairman Loomis appointed Commissioner Cole to serve in the absence of Commissioner Post.

Commissioner Paine made a motion to move Item III, Minutes after Item IV. Commissioner Houlihan seconded the motion, which was unanimously approved.

III. DRAFT PLANNED AREA DEVELOPMENT (PAD) ZONE REGULATION CGS 8-3a
REFERRAL

Chairman Loomis read State Statute 8-3a to the Commission members. He stated that it is key that this Commission consider the Plan of Conservation and Development relative to what is proposed. As part of their recommendations, they also need to cite reasons that relate to the Plan.

Chairman Loomis stated that they will be working primarily with the February 1, 2010 draft document. This is the only draft that will be going to the public hearing on March 15th.

Mr. Peck suggested that if there are recommended changes by the Planning Commission, these changes be put into the record; this will help the Zoning

Commission work on these issues and it will also be transparent to the public. Attorney DeCrescenzo agreed. He stated that the draft document that will be going to the public hearing needs to be in the Town Clerk's office the day of the publication of the notice.

Attorney DeCrescenzo responded to the questions that Chairman Loomis raised via e-mail to the Commission members and Town staff. He also highlighted the changes in the draft regulation from the prior draft.

Regarding Section One, A.2., there was some discussion regarding the wording, "relevant parties". The Commission members agreed that this was very broad. Attorney DeCrescenzo stated that this was the intent. Commissioner Houlihan stated that the more this is discussed, the more he does not like the term, "relevant parties". Relevance involves judgment by someone. He would rather use the wording, "interested parties". The Commission members agreed.

Chairman Loomis stated that this zone, if approved as submitted, could supplant the yet to be finalized Town Center Zone Form Based Zoning Regulations. Commissioner Houlihan stated that he does not believe there will be a conflict. The same Zoning Commission will be deciding on the PAD Regulation; this is optional zoning. He stated that rules can be set and decisions can be made if a plan was not consistent with what the Town is looking for. Mr. Peck stated that the Town Center Code is a code with standards; it has specific parameters. If someone meets those parameters, they will get approval. The PAD Regulation is a floating zone that requires a zone change; there is a much higher burden than just coming in with an application in an established zone. He stated that there are a lot of requirements in this Regulation.

Questions from the letter that Chairman Loomis e-mailed to the Commission members stated, "To what extent can the PAD Regulation, in general, and its Standards, in particular, expose the Town to legal challenges? How can the proposed PAD be modified in its structure and content to minimize legal exposures?" Attorney DeCrescenzo stated that these questions are regarding minimizing legal exposure in overturning a denial of a PAD and minimizing legal exposure in defending an approval of a PAD. He has looked at cases for denial of a zone change; the bar is extraordinarily high for a Court to say that a Commission wrongfully denied the adoption of the floating zone.

Commissioner Houlihan stated that this regulation gives the Commissions a chance to see what an applicant is bringing forward without commitment. Mr. Peck stated that if the Commissions do not like an applicant's idea, the applicant can come back with another informal plan. This cannot currently be done.

Attorney DeCrescenzo discussed the denial and approval of a PAD with the Commission members. He stated that there has been consistency in cases that, as long as they are properly drafted and they have the essential elements, the actions of the Zoning Commission in adopting zone changes under the floating zone mechanism are permissible under Connecticut law.

Chairman Loomis questioned how the PAD Regulation differs from the PDD Regulation. Attorney DeCrescenzo stated that there was a review of the PDD Regulation which pointed out some of its deficiencies. Also, the PDD never got through the process like the PAD Regulation has. He stated that the PAD draft is more comprehensive and has more detail than the PDD Regulation had. Mr. Peck stated that the PDD never got vetted. The PAD Regulation has been presented to all of the Boards and Commissions, the Chamber, and many different groups; several revisions were written from all of their input. Attorney DeCrescenzo stated that one of the main differences between the PAD Regulation and the PDD Regulation is the clarity of the language.

Commissioner Houlihan suggested that the focus be on the PAD Regulation and its own merits. Chairman Loomis stated that the Town needs to be prepared for these types of questions from the public.

Attorney DeCrescenzo reviewed Section One, B. with the Commission members. He stated that when they talk about zoning, they often talk about what it prohibits in a good way. They don't often talk about the bad consequence of those prohibitions. He stated that traditional zoning is now encouraging suburban sprawl. This is key to why many Towns are adopting PAD type regulations.

Chairman Loomis asked Attorney DeCrescenzo to explain what it is meant by, "...the Town of Simsbury's comprehensive plan...". Attorney DeCrescenzo stated that the law requires that if there is a zone change, it must be consistent with the comprehensive plan. Mr. Peck stated that it links this document with the rest of the zoning regulations where applicable. Attorney DeCrescenzo stated that it is also intended to make this regulation consistent with the comprehensive plan.

Commissioner Cole suggested changing some of the wording within Section One, B. She suggested omitting, "consistent with" and replace it with, "in keeping with". The Commission further discussed this wording. Attorney DeCrescenzo stated that he would look into language for this paragraph.

Regarding Section Two, Definitions, Attorney DeCrescenzo stated

that there was a great deal of discussion regarding how many definitions are too many and how many are not enough. There was a balance that needed to be met. Chairman Loomis questioned if the Comprehensive Plan and/or the POCD should be defined in this section. Commissioner Houlihan stated that if the term, "Comprehensive Plan" is used, he feels that there should be a definition for this.

Regarding Section Three, Land Use, Commissioner Houlihan stated that he has struggled with the term, "regulation" regarding permitted uses in this regulation. He does not feel that permitted uses are defined. He questioned if "regulation" should be defined.

Attorney DeCrescenzo stated that the regulation is clear regarding prohibited uses, although he feels that the regulation should state that those uses permitted in the underlying zone are permitted in the PAD and those uses permitted within the four corners of the Zoning Regulations are permitted in the PAD. Also, he questioned if they should add a special permit requirement for uses that are permitted in the Regulations but not permitted in the underlying zone. Commissioner Houlihan stated that the uses are not defined until the PAD is adopted.

Mr. Peck suggested minor changes in the wording in the first sentence in Section Three under Land Use. Attorney DeCrescenzo stated that the title of this section may need to be changed as well.

Regarding a summary of the changes that the Planning Commission would like to make so far include: changing the word, "relevant" to "interested" in Section One, A.2.; changing the wording, "guided by..." in Section One, B; adding a definition for Comprehensive Plan; and clarifying the use related to uses. Mr. Peck suggested also changing the word, "zone" to "zone (s)" in Section One, A. He suggested this change because the PAD can be in multiple zones. The Commission agreed.

Regarding Section Three, Attorney DeCrescenzo stated that this is a critical section. A PAD cannot be applied for in a residential zone, although residential can be put within a PAD. Attorney DeCrescenzo stated that he does not recommend any changes to this Section.

Regarding Section Four, Attorney DeCrescenzo stated that the standards can be thought of as performance standards in part as well as design plan standards also. He stated that this is similar language that is in other recently written PAD Regulations in other Towns. Mr. Peck stated that the reason that these standards are in the regulation is that the Design Review Board may review the plans; they will apply these standards.

Attorney DeCrescenzo discussed Appendix A with the Commission members. Mr. Peck stated that Appendix A is context sensitive; this is important to know.

Commissioner Houlihan stated that the PAD Subcommittee spent a great deal of time regarding Section Four. The labels that are put on this have various uses and meanings. He stated that the concern is that the use of the labels, if very specific, would essentially design the site. Commissioner Houlihan stated that the Development Plan Design Standards, he feels, are essential; it focuses the dialogue regarding what the applicant has to bring to the Commissions.

Commissioner Jansen questioned what the difference between Village Center Type Development and Town Center Type Development and high and higher density residential means. Chairman Loomis stated that this is a suggestion of a gradation. Mr. Peck stated that each is very different in terms of where they are located. The density needs to be somewhat related to what is around it.

Chairman Loomis questioned if Form-3 would be attached to the Regulation. Mr. Peck stated that the Zoning Commission will need to decide if this will be a part of the Regulation. They will need to make this determination prior to the legal notice being published for the public hearing. Chairman Loomis stated that Form-3 should be looked at to see if it should be kept in Appendix A.

Chairman Loomis questioned if economic impact could be considered. Attorney DeCrescenzo stated that he believes that there are cases that state that the Commission cannot consider economic impact.

Regarding the Review Factors and Criteria Section, Chairman Loomis questioned how different this section is from the previous draft. Attorney DeCrescenzo stated that it is not much different, although he tried to clean it up and reformat it into groupings that made sense to go together.

Between now and the next meeting, Attorney DeCrescenzo asked that the Planning Commission members review the draft PAD Regulation and e-mail any comments or concerns to him. The Commission can then discuss this again at the next meeting.

Commissioner Jansen suggested adding the Economic Development Commission within the list of Commissions under Number 4 on Page 10. Attorney DeCrescenzo stated that the EDC was not in this listing because this is a list of Boards and Commissions that have responsibilities under the zoning sections of Title 8.

Commissioner Houlihan stated that the Commission has not discussed tonight, how open space fits into different types of developments. He suggested that the Commission think about these terms because open space means different things to different people. Chairman Loomis asked Commissioner Houlihan to work on possible language for this section.

IV. POSSIBLE APPROVAL OF MINUTES from the February 9, 2010 meeting

Commissioner Houlihan made a motion to approve the February 9, 2010 minutes as written. Commissioner Jansen seconded the motion, which was unanimously approved.

V. DISCUSSION OF REVISIONS TO THE SUBDIVISION REGULATIONS

There was no report.

VI. DISCUSSION AND POSSIBLE RECOMMENDATION OF PLANNING COMMISSION BUDGET PROPOSAL

There was no report.

VII. THE TOWN CENTER CHARRETTE NEXT STEPS

There was no report.

VIII. STATUS OF THE INCENTIVE HOUSING ZONE STUDY

There was no report.

IX. STAFF REPORT(s)

There was no report.

X. COMMUNICATIONS AND ADMINISTRATIVE BUSINESS

There was no report.

XI. ADJOURNMENT

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