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Cc:

ADOPTED

PLANNING COMMISSION MEETING
March 10, 2009
REGULAR MEETING

I. CALL TO ORDER

Chairman John Loomis called the regular meeting of the Planning Commission to order at 7:40 p.m. in the Program Room of the Simsbury Public Library. The following members were present: Charles Houlihan, Gerry Post, Mark Drake, Julie Meyer, Ferguson Jansen and Susan Bednarczyk. Also in attendance were Hiram Peck, Director of Planning, Town Attorney Robert DeCrescenzo, as well as other interested parties.

II. SEATING OF ALTERNATES

No alternates were needed.

III. DISCUSSION AND POSSIBLE DECISION

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. (continued from meeting of 2/24/2009)

Chairman Loomis stated that the Commission voted at the last meeting that no public hearing would be needed for this application.

Mr. Mallin stated that this is a 172 acre parcel that HARCO acquired in 1982. Currently, the property is divided into 2 parcels, a 33 acre parcel and a 139 acre parcel. He stated that they are seeking permission to divide a 40 acre parcel north of Minister Brook, including uplands, which is a farm field. This would establish 3 lots, which would be a subdivision.

Mr. Mallin stated that, at the last meeting, the issue of open space arose. There was discussion of a provision of an open space area with respect to Lot 3. He stated that he would like to submit 6 acres of open space as a

conservation easement. The Regulations require a 20% conveyance of open space. He asked that the Commission waive this requirement because HARCO is seeking to divide this property to sell it; they will not be developing this land. He stated that because of this, it would be hard to identify a portion of the property that could be open space. Mr. Mallin stated that the 6 acres of open space he has identified will probably not be a utilized area. He feels confident that this area would not be used for passive recreation. He stated that unlike a normal situation, this parcel is in an I-1 zone. There is also a coverage limitation which would create additional open space on the property. The Regulations provide that no more than 40% of the area of a lot in the I-1 zone can be covered by impervious surface. He stated that if the amount of non-impervious surface was 40%, this would still result in 16 acres of this parcel being left in its natural state; it would not be pavement. Mr. Mallin stated that they believe, in balance, that between dedicating 6 acres of open space and a later application of the coverage limitations in the Zoning Regulations, this would be an ample amount of space that would be considered open space with regard to any development that would take place on this property. Also, he stated that the clear intent of the Subdivision Regulations is to provide open space in the context of residential development. Residential development on this property in the I-1 zone is not permitted.

In summary, Mr. Mallin stated that what he is presenting tonight is in the spirit of the Regulations and the purpose of what open space is. He feels that the division of the land they are proposing is appropriate; it is consistent with the Regulations of the Town of Simsbury in general. He believes that this Commission, in waiving the strict application, would not create a precedent because this is an unusual piece of land in an unusual configuration. Mr. Mallin respectfully requested that the Planning Commission approve this application as submitted.

Commissioner Meyer stated that the applicant is asking this Commission to waive 16% of the 20% open space requirement. She stated that 6 acres equates to 4% of the 28 acres that is technically required on the entire Lot 1. Mr. Mallin stated that the requirement is 20% of 40 acres. Commissioner Meyer disagreed. She stated that the requirement is 20% of 140 acres because this is the lot they are dividing. It has not been divided yet. Mr. Mallin disagreed. He stated that because they are taking a parcel off another parcel, he does not believe that they need to establish an open space requirement. He feels that the proper interpretation of what they are asking is for the establishment of a new lot.

Attorney DeCrescenzo stated that the Commission needs to acknowledge that the application they are acting on is being amended by the inclusion of the 6 acres of open space. Chairman Loomis stated that he would like to amend

the agenda so that the application now includes the request for approval for Lot 3, as submitted, to include 6 acres of open space as shown on the map that the applicant has submitted.

Mr. Peck stated that the practical implication is that one lot is being created; no activity is being proposed. He stated that should an application come in for a site plan for this property, the area that has been shown as a proposed conservation easement area abuts the Farmington River. He feels that this would be an appropriate area for the easement. From a planning standpoint, the open space shown as a conservation easement is appropriately located.

Commissioner Houlihan questioned if the applicant has done any calculations as to how much wetlands can be used in the open space calculation. Mr. Peck stated that they have not broken that down; the majority of the easement is a sloping area or in a floodplain area. He stated that this is an unusual case. There is no activity on the site at this time. When the site plan comes in, the potential of forcing the site plan to do something that is not anticipated at this point, is also a possibility.

Commissioner Houlihan stated that the Commission does not know what will be going on this property. The Commission has the option to approve this application with 20% open space kept as a floating requirement when a plan is submitted. Attorney DeCrescenzo stated that the action and citing of the open space has to be the action of the Planning Commission. The concept of floating open space does not work. The Planning Commission has to determine the area and location of the open space; it cannot be left to another agency to locate it.

Commissioner Meyer questioned why the activity would determine the calculations. Mr. Peck stated that this is an unusual situation. A blind application of a specific requirement to the Regulations is not in the long term best interest of the Town or the development of the site. Commissioner Meyer disagreed. She stated that this would be the more reason to make sure that they calculate the open space properly. She stated that she has done those calculations. She took Lot 3 and was able to approximate the number of acres in the wetlands, which is 2.94 acres. If these 6 acres that the applicant wants as open space, then 7% of the 40 acre parcel is wetlands. She stated that the Regulations read that the applicant can only have 7% of open space in the wetlands. In this case, that would total .42 acres. The applicant would not be allowed to place all 6 acres of open space in the wetlands. Mr. Peck stated that the Commission can waive this when appropriate; he feels that this is one of those times.

Commissioner Meyer stated that the applicant is asking to waive 16% of the

20% of open space. The second waiver that they would need is to modify the Regulations, Section 3.9c, where the Commission would need to change the percentage they allow in wetlands when they take the open space. Mr. Peck stated that, typically, this is not how the Regulations are applied.

Commissioner Houlihan stated that there is only one waiver. He stated that the open space requirement has two parts to it. The Commission can either require it or waive it.

Commissioner Meyer stated that once the conservation easement is taken in lieu of open space, she feels that it is still publically dedicated land. This would fall under 9.c, which states that the percent cannot exceed the amount of the land in wetlands. She stated that there needs to be 7.44 acres in dry land and .56 acres in wetlands.

Chairman Loomis questioned how much land in the conservation easement is deemed as wetlands. Mr. Mallin stated that he believes Commissioner Meyer's calculations are reasonably accurate. He stated that he believes that this would be one waiver. He is asking the Commission to waive the strict application and to accept the 6 acre area. He stated that if a developer, in the future, wants to divide this property further, they would have to come back before this Commission.

Attorney DeCrescenzo stated that there are several elements regarding the open space requirement. The first element is that the open space shall be required by the Commission in an amount and location that the Commission considers proper and reasonable. This language comes from the Connecticut General Statutes, which permits subdivision regulations to require open space. The second element in the Regulations state that unless otherwise determined by 2/3 vote of the Commission, the measure of what the Commission requires shall be 20% of the subdivision to be dedicated as public open space, parks or playgrounds. Attorney DeCrescenzo stated that because no development is currently being proposed on this property, this Commission needs to ask themselves what could be proposed here in the future under the underlying zone. They would then have to make an individualized determination of the required dedication of open space.

Commissioner Meyer stated that she would like the 7.44 acres placed along the front of the property because it complies with the POCD and it does not impact any developer. The .56 acres could be put along the back parcel. Attorney DeCrescenzo stated that before this Commission can require this as a modification of the approval, they would need to identify a legitimate public purpose for doing this, which would need to be found in the Zoning Regulations or the POCD. The Commission would then need to make a judgment that that amount of land is enough to protect that legitimate public purpose.

Commissioner Meyer made a motion to approve the HARCO Property Services, Inc. request for subdivision of land located at 200 Hopmeadow Street, Assessor Map -F16, Block-153, Lot-009, I-1 Zone with the following conditions: In lieu of deeded 20% open space the Planning Commission will accept a conservation easement of 20%, or 28 acres of the 140 acre parcel with the follow apportionment:

A 300' deep buffer and landscaped conservation easement shall be placed along the frontage of Hopmeadow Street on the newly created Lot #3 as indicated on the map submitted with the application. The front easement shall allow for a total of two 50' wide right-of-ways for ingress and egress.

The additional 18.75 acres needed to satisfy the open space requirement should be placed as a conservation easement on the remaining Lot 1 along Route 10 frontage, taking into consideration any existing easements. Any remaining acreage should be placed as conservation easement along the river in a continuous band on newly created Lots 1 and 3.

A note to this: the 300' easement will allow the current application or future owners/applicants to meet the maximum of 40% lot coverage as allowed by the I-1 zoning regulations. Commissioner Bednarczyk seconded the motion.

Commissioner Meyer stated that she would like to tie this motion in with the POCD. She cited many policy goals throughout the POCD that would apply to her motion, including: a goal regarding open space on page 24, Policy 1, Objective C; community character page 48, Policy 1; scenic resources, page 39, Policy 1, Objective A; a future by design page 59, Policy 1, Objective B, Policy 4, Objective C, Policy 6, Objective A; and goal of natural resources, Page 12, Policy 2, Objective C.

Commissioner Bednarczyk stated that the conservation easement cannot take away from the coverage ratio. She stated that the conservation easement is applied differently from open space.

Commissioner Houlihan stated that the Commission does not have any information to tell them what a 300' buffer will do to placing a building on this site until a site plan comes in. He feels that a 300' deep buffer is an arbitrary number. This could potentially mean that no development could ever occur. It could render the lot unusable for commercial development.

Commissioner Bednarczyk stated that CR3 submitted a report for the original application for the Hartford, which stated that locating a building at the rear of the site also ensured that the site line of Avon Mountain from

Hopmeadow Street would be preserved. She stated that a conservation easement would help to continue to show the scenic vista and maintain the 20% preservation of open space. She stated that this Commission needs to consider Lot 1 because Lot 3 does not currently exist. She feels that all of the goals would be accomplished, get some grand list growth and preserve the character of the Town as well.

Commissioner Bednarczyk stated that she would like to make one amendment to Commissioner Meyer's motion: that, "a 300' deep buffered, landscaped and bermed conservation easement..." be added to the motion. Commissioner Meyer accepted the amendment.

Commissioner Meyer amended her motion to include Commissioner Bednarczyk's amendment. Commissioner Bednarczyk seconded the amended motion. Commissioner Jansen stated that he feels that Commissioner Meyer's motion is a "deal killer". He stated that there needs to be trust in the Design Review Board and Zoning Commission. He stated that he does not feel that this is the right motion to help a taxpayer solve a problem.

Commissioner Houlihan stated that he has several concerns. Regarding the open space formula, he questioned if they should be looking at 140 acres or just 40 acres. He feels that the Commission needs legal guidance regarding this issue. Also, he feels that Commissioner Meyer's motion is premature; there is nothing to approve unless the applicant agrees to accept this. This Commission cannot approve a request for a subdivision conditioned on something that has not been offered in the presentation.

Attorney DeCrescenzo stated that a subdivided lot is Lot 1, which is 140 acres. If the language from the Regulations is applied, the Commission would impose the open space requirement on the entire lot. He stated that there are cases where the Courts have sanctioned the imposition of different open space areas as a modification of an approval when the Regulations allow the Commission to find an area and locate it. He stated that the question that the Commission would need to answer is if this amount of open space is the least amount necessary to achieve the goals that Commissioner Meyer cited after her motion.

Commissioner Post stated that when Commissioner Bednarczyk read a portion of the CR3 report, this was written with knowledge of a building. This Commission does not know where the buildings are going to go. He stated that he does find issue with asking for this setback because we do not know what views may be restricted. Also, he feels that this application is asking the Commission to simply accept this conservation easement in the back of the property. He feels that the Zoning Commission and Design Review Board will do their job correctly. Commissioner Post stated that he does not agree with Commissioner Meyer's motion.

Chairman Loomis stated the Wellness Center in Avon is set back 50' from the road. The Hartford's main entrance includes a berm that is not very high, although it is deeper with plantings. He stated that he walked Lot 3 on this property. He feels that 100' is a substantial setback. He feels that this would be sufficient to accomplish most, if not all of the purposes cited from the POCD.

Commissioner Meyer pointed out that a 100' setback on this property would obstruct the view of the ridgeline and that a mathematical calculation is the only way to prove the required distance from the road to maintain the view sector.

Commissioners Meyer and Bednarczyk voted in favor of this motion. Commissioners Post, Jansen, Houlihan, and Loomis voted in opposition to this motion. The motion did not pass.

Commissioner Houlihan made a motion to restrict the consideration to the 40 acre, Lot 3, with respect to open space as presented by the applicant. Commissioner Post seconded the motion.

Commissioner Meyer stated that this motion means that this Commission would be waiving 16% of the 20% open space requirement for this subdivision by taking a 6 acre parcel on Lot 3. Commissioner Houlihan stated that this was incorrect. This motion is stating that this Commission's consideration of the application is as presented and they are looking at the 40 acres that is being proposed.

There was some discussion regarding the wording of Commissioner Houlihan's motion.

Commissioner Houlihan withdrew his motion. Commissioner Post withdrew his second to the motion.

At the request of Attorney Mallin, Chairman Loomis stated that a 10 minutes recess would be taken.

Commissioner Houlihan made a motion to take a recess at 9:30 p.m. Commissioner Jansen seconded the motion, which was unanimously approved.

The meeting reconvened at 9:42 p.m.

Mr. Mallin stated that after listening to the Commission debate, he stated that he does not have the authority to agree or disagree with the Commission. He stated that some of the questions that have been raised tonight will require additional research. He is also mindful that the Commission is almost at the end of their 65 day limit. Chairman Loomis

stated that the Commission would request a 30 day extension from the applicant; Mr. Mallin agreed.

Commissioner Houlihan asked the applicant to consider open space on the other parcel, Lot 1 and to also consider a buffer.

Commissioner Meyer requested that a complete application be given to the Commission members, which they have not yet received. She stated that the map does not reflect the wetlands on Lot 1. Also, the missing parking lot needs to be represented on the map. Mr. Mallin stated that the 100-scale map shows the wetland lines, which has already been submitted to the Town.

Commissioner Bednarczyk asked for balloons to be placed at the 200' and 300' markers. The applicant agreed to the request.

Commissioner Jansen questioned if a site walk was needed. Chairman Loomis urged the Commission members to walk the front of the site themselves.

IV. POSSIBLE APPROVAL OF MINUTES from February 24, 2009

Several edits were made to the February 24, 2009 minutes

Commissioner Post made a motion to approve the February 24, 2009 minutes as amended. Commissioner Jansen seconded the motion, which was unanimously approved.

V. STATUS OF THE PROPOSED PLANNED AREA DEVELOPMENT (PAD) ZONE

There was no report.

VI. STATUS OF CONSULTANTS' PROPOSALS FOR A TOWN CENTER CHARRETTE

Mr. Peck stated that the First Selectman would like a final recommendation from the Subcommittee within the next several weeks.

VII. STAFF REPORT(S)

There were none.

VIII. COMMUNICATIONS AND ADMINISTRATIVE BUSINESS

There was none.

IX. ADJOURNMENT

Commissioner Jansen made a motion to adjourn the meeting at 10:00 p.m. Commissioner Houlihan seconded the motion, which was unanimously approved.

Gerry Post, Secretary