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ADOPTED

ZONING COMMISSION MINUTES
APRIL 19, 2010
REGULAR MEETING

I. CALL TO ORDER

James Gallagher, Chairman, called the regular meeting of the Zoning Commission to order at 7:02 p.m. in the auditorium at Eno Memorial Hall, 754 Hopmeadow Street. Commissioners present were: Amy Salls, John Vaughn, Bruce Elliot and alternates Madeline Gilkey, Robert Pomeroy and David Ryan. Also present were Hiram Peck, Director of Planning, Robert DeCrescenzo, Town Attorney, Robert Sikowski, Attorney, Lois Laczko, Commission Clerk and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Gallagher appointed Commissioner Pomeroy to sit for Commissioner Pabich, Commissioner Gilkey to sit for Commissioner Barnett, and Commissioner Salls to serve as Secretary for this meeting.

Commissioner Salls read the Call for the continued public hearing.

III. PUBLIC HEARING(s)

a. Application of the Simsbury Zoning Commission for an Amendment to the Simsbury Zoning Regulations to adopt a new section entitled Planned Area Development (PAD) Zoning Regulation to be added to Article Ten, Special Regulations. (continued from meeting of March 15, 2010)

Chairman Gallagher said that Mr. Peck will speak first. He has responses to some of the questions that were asked at the last public hearing meeting. When Mr. Peck is finished, both Attorney DeCrescenzo and Attorney Sikowski will speak, after which the meeting will be opened up for public comment.

Hiram Peck, Director of Planning, said that he has responses to some of the questions that were brought up at the last public hearing, or questions

people had sent him via email since that meeting. The ten questions that Mr. Peck discussed are listed below. The questions with his responses are included in these minutes as Attachment I.

1. Does the proposed PAD zoning regulation have adequate metrics to protect the Town?
2. Does the PAD protect the Town from unacceptable levels of traffic on Route 10?
3. Does the PAD as drafted, limit the Zoning Commission's authority?
4. Won't the PAD invite a lot more litigation?
5. Won't this regulation allow the developers to "run the Town?"
6. Won't the PAD regulation encourage a big box store in Simsbury?
7. Doesn't the PAD give the Commission less say in proposed development proposals?
8. Why doesn't the PAD include residential zones?
9. Why doesn't the PAD include specific lot sizes?
10. Does the PAD allow for good planning and flexibility with adequate protections for the Town?

Robert DeCrescenzo, Updike, Kelly & Spellacy and Town Attorney for Simsbury said that at the last public hearing, that opened on March 15, 2010, they heard a significant amount of testimony regarding the layout and process that was outlined in the draft. The comments were well taken that they had to re-order some of the sections and give it a more logical sequence, and try to put the regulation in a format that someone could develop a check list of required information. They moved around a number of the sections to make it flow logically from the initiation of a concept plan to the final development plan consideration, action and post approval procedures including clearly identifying the role of the site plan approval process in the regulation. Attorney DeCrescenzo said that another change that has been made is that they changed some of the nomenclature within the regulation to make it more consistent with the rest of the regulation including changing the term final development plan to master development plan and zone change.

Attorney DeCrescenzo explained that the way the draft reads now is really a four step process.

First Step: Preliminary Plan Initial Staff Review. This will signal early on in the regulation that applicants are encouraged to come in and discuss informally with staff the type of application before it is developed into even a preliminary development plan. The applicant can get the benefit of the staffs understanding of the underlying regulations, the site, and the Commission's philosophy regarding the PAD.

Second Step: Preliminary Development Plan Review. Attorney DeCrescenzo said that the number of copies has been reduced from fifty-five (55) to twelve

(12) with one electronic copy.

Third Step: Master Development Plan and Zone Change. The term “and Zone Change” has been added to the heading to make it clear what is contemplated by the PAD. Attorney DeCrescenzo said that this is a procedure to process a zone change application. It will be a legislative act of the Zoning Commission with all its discretion granted to the Commission under Connecticut law. There is no right for an applicant to expect a PAD would be adopted. It is completely within the discretion of the Zoning

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Commission. He said that unlike Site Plan Review and Special Exception Review, which are both administrative reviews, this is a Zone Change process. It is a floating zone.

Fourth Step: Master Development Plan Review Process. Attorney DeCrescenzo said that the applicant must present a site plan. Article Five, Section J of the Zoning Regulations applies to PAD. Before a building permit can be obtained, an applicant has to get a site plan approved and the site plan has to be consistent with the Master Development Plan in every respect.

Attorney DeCrescenzo said that another change that has been made was in the area of Amendments. He discussed Section Ten (Changes in Approved Plan). Changes that could be considered would be minor changes that are unforeseen topographic and geological features on the site that are discovered after a survey is done, and also minor rearrangement of lighting standards. This would be to adapt the approved plan to the actual on the ground conditions. Everything else is not a minor change, which would mean that the applicant would have to come back for a full public hearing process. Attorney DeCrescenzo said that also incorporated into this draft are the recommendations of the Planning Commission.

Attorney DeCrescenzo said that is their opinion that the substance of the draft regulation has not changed. It is a re-ordering, a clarification, and a re-formatting of the draft that has been on file in the Town Clerk's Office. He said that this is a resumption of the Public Hearing, which means that the public is entitled to discuss any part of the draft regulation whether it has already been discussed or not. Attorney DeCrescenzo said this is a regulation which allows another form of zone change from those forms of zone change that are currently in the regulation. Every site, lot and piece of land that the PAD applies to already has an underlying zone attached to it and that underlying zone is what the land owner can expect and rely upon. If they want to change the PAD, it is in the discretion of the Zoning Commission to allow it through a zone change to PAD. He said that as part of this application process the

applicant must come in and define all of the standards and metrics as part of their application. They must tell this Commission how and why they want to change, in the PAD application, from the metrics which apply in the underlying zone in the regulations. It is 100% up to the Commission on whether they find this to be consistent with the parameters of the PAD regulation. Attorney DeCrescenzo said that the metrics come in the form of the underlying zone in the form of the zoning regulations as they exist. If an applicant on the PAD wants to deviate from those, they have to propose it, have to show why it meets the standards and review factors within the PAD, and then it is up to the Zoning Commission to determine whether or not it is in the best interest of the Town.

Robert Sikowski, Attorney, said that this is not a change it is more of a reiteration. It does not end with the zone change as there is a whole site plan component to determine the consistency of detailed plans with the rules that were established in the PAD. This is where they get the multi-stage, multi-dimensional review of projects. They come under the site plan provisions so they would not be subject to a public hearing, but the entire front end is subject to a public hearing.

Commissioner Elliott said that Attorney DeCrescenzo did get to the heart of his chief concern in the beginning, as he described the document that is before them tonight as essentially a re-organization of a document that has been in place and available through the Town Clerk and through other sources for a long time. He said that he does not feel that it is substantially changed. It still leaves to the discretion of the Commission wide latitude to make decisions on factors that are well identified, but without, in his opinion, the needed criteria or scale to make decisions. Commissioner Elliott said that he looks at his colleagues and himself and their own training and experience, and he does not see how it is conceivable that they can consistently evaluate the proposals as to things like rhythm of buildings, mass, etc. The factors that are listed there are beyond the potential of this Commission to administer. Commissioner Elliott said, in his opinion, while it may not be shared by his colleagues on the Commission, this Commission has great difficulty in administering the existing regulations. He mentioned two proposals that were approved in the past few month's, Mr. Ritson's building on Rte 10 and an expansion at Drake Hill Mall. He said that his opinion is that both of those carried very significant conflicts with the existing regulations that were not identified by their process nor town staff. The applicants did not seem to be familiar with those conflicts. Commissioner Elliott said that he is anxious that when they go to something that is more complicated that the Commission needs to be more concerned that the regulation be actually administrable by this Commission. He does not feel that they have this here. This is his opinion at this point.

Chairman Gallagher opened up the public hearing to public comment. He asked everyone to keep their comments to around three (3) minutes and also not to keep repeating an item that someone else may have already brought up. After the public is heard, there will be discussion within the Commission. Chairman Gallagher said that they would finish the hearing tonight, discuss some of the changes that were (or were not) made, and vote on this the first meeting in May. He also said that if there are any questions for the Attorney's or Mr. Peck, please run them through the Chairman and he will run the questions through them.

John Schaefer, 16 Lostbrook Road, said that he is a Professional Landscape Architect and a long time resident of Simsbury. Mr. Schaefer felt that this draft Pad regulation dated March 30, 2010 is greatly improved from the earlier one, but could use more punctuation and formatting changes to make it clearer. Mr. Schaefer said that this still includes as an underlying zone the Simsbury Center Zone and feels that as we will have a new form-based zoning code, we should not create a conflicting code. He feels that this document is still ambiguous and arbitrary. Mr. Schaefer also said that this document does not predict the outcome of applications made under it, does not include any measurements of what we are trying to achieve, does not account for different levels of project complexity, does not require development which is appropriate for each of the different districts in town and does not provide a clear guideline for those trying to use it. He feels that the document needs specific standards to create boundaries to guide developers and Zoning Commission members. Mr. Schaefer asked the Commission to vote against this document and then use the PAD subcommittee minority report for a reference to create a professionally written missed-use regulation.

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Janet Miller, 45 Blue Ridge Drive, said that she is opposed to the new draft PAD. She said that she did not see any changes in the new draft PAD reflecting her views and the view of other dissenters at the last public hearing. Mrs. Miller asked why the Minority Dissenting Report of July 27, 2009 was not included in the discussion of the revisions. She said that it appears that throughout the process of writing the draft PAD, the PAD Subcommittee was split in half on the fundamental language and the fundamental purpose of the PAD. The draft PAD passed by only one vote and the four dissenting members wrote a four page Minority Dissenting Report that contained specific ideas to improve the PAD. She feels that the new draft PAD falls short of what is needed for a new zoning regulation in Simsbury as this is still a zone-free zone, which is written to give developers carte blanche in what they want to build for Simsbury instead of Simsbury telling the developers what we see as our vision for Simsbury. The

new draft PAD needs standards and metrics and specific regulations which reflect the vision of our Plan of Conservation and Development. Mrs. Miller feels that this draft PAD is a bad idea for Simsbury.

Marvin Negrin, 7 Shaw Drive, said that he did not come away from Hiram Peck's presentation with a very warm feeling. At the recent public hearing of the proposed PAD Mr. Negrin asked the Zoning Commission why they are pushing so hard for this ill-prepared and ill thought out PAD. He also asked why the Zoning Commission is still ignoring some of points in the POCD. Mr. Negrin said that he also mentioned, which he repeated, that the POCD when it was written was criticized by some because it did not contain metrics and boundaries. He said that they were told by those who objected to the inclusion of metrics that they should never be in a POCD, and that rather that is something that only the Zoning Commission should be doing. Now we are discussing a redraft of the PAD by the Zoning Commission, which still does not say anything about size, metrics, setbacks, etc. Mr. Negrin said that underlying zoning does not mean much to him. He said that he is an engineer who has been in the jet engine business for fifty years and that they do not have any underlying specification. A specification clearly defines what goes into a jet engine. Mr. Negrin asked that the Zoning Commission do the same thing with a PAD. Mr. Negrin asked the Zoning Commission if in this rush to passage is there some hidden agenda by the Zoning Commission, something being kept from the residents. Mr. Negrin said that he does not feel assured that this PAD and the Zoning Commission actions are squeaky clean. He also asked why this PAD cannot wait until the final Charrette report is completed and submitted to the Town. The results should have been used by the Zoning Commission as a reference for this PAD. Mr. Negrin said that he does not feel that the current revision of the PAD has changed the substance of the PAD from what it was several weeks ago. He asked the Zoning Commission to re-look at this PAD, which is not in the best interest of the residents and favors developments, developers and land owners and can make Simsbury look like all of the other poorly planned towns in Connecticut and nationwide. Mr. Negrin said do not pass this PAD, which is totally inadequate if we are to maintain our special character.

Bruce Cagenello, 81 Stratton Forest Way, said that he has lived in Simsbury since 1962 and is a Real Estate Broker. Mr. Cagenello said that the integrity of the people voted into office should not be questioned. There are no ulterior motives. The Commission is looking to develop this town as it has been developed. Mr. Cagenello felt that the questions had been answered very clearly. This zone will allow flexibility without losing control. He feels that this board should adopt this PAD and also feels that it dovetails beautifully with the Charrette.

Julie Meyer, 3 East View Drive, first read a summary of something that someone else had written (who would not be reading it this evening). It

stated that in summary this draft PAD aspires to something meaningful, but falls short because the language enables a potentially desirable type of development to reach the authority, but neglects to set specific boundaries for decision making by favoring discretionary flexibility at the expense of predictability. It sets a tone to encourage broad objectives and good practices rather than to offer specific guidance through detail standards. It speaks to macro issues and silent on context oriented micro issues. It provides a blunt instrument for playing the community rather than a tightly crafted precision tool and it opens the door to unintended results rather than regulate for intentional ones.

Julie Meyer, 3 East View Drive, said that what she found problematic about this regulation is the subjectivity that is going to be a part of this Commission's deliberations as well as the Planning Commissions if this were to pass. She spoke of some of her experiences as a former Planning Commissioner referring to a commercial subdivision that came into Simsbury last year. The regulation requires 20% open space with a subdivision, which could be waived if the applicant had requested it. The applicant did not. She spoke of her concerns and questions that she had going back and forth between herself and town staff. She wanted to have this property be protected in the front portion so they could protect the view shed and still give anyone who purchased this property in the future the ability to build. Mrs. Meyer also spoke of a conversation she had with Mr. Peck and one with Attorney DeCrescenzo. She feels that there is a lot of subjectivity when you put forward this PAD regulation as it is right now. She believes that there will be political pressure, and she is not comfortable with opening themselves up to that kind of political pressure. This regulation, in her opinion, does not have what it takes. There is a lot of good, but potential for bad. Mrs. Meyer asked Chairman Gallagher to ask a question to Attorney Sikowski – at the PAD Subcommittee meeting she asked Attorney Sikowski would this regulation ensure smart growth in Simsbury if it were passed as it is. She said that he said that it would be up to the Zoning Commission to determine whether smart growth principles were enveloped in their approval using this regulation. Now that the PAD has been revised does Attorney Sikowski still take the same stance. Is he going to rely on this Commission, as a group of six people who are voting, to ensure as a resident that she will get smart growth building and development in this community or has it been improved enough that you can assure her as a resident that these people will give her that with this regulation. Attorney Sikowski said that it was a little disarming to ask him to make an assurance on applications that have not been made as to how a group of people who are supposed to take a look at an application are going to vote on it. Mrs. Meyer said that was not her question. Attorney Sikowski said that was what she was asking. Chairman Gallagher said that there is no way of telling when there is nothing in front of them. He does not know who is going to vote on any particular project. She said that she

feels that he has not answered her question. Basically it is determined by their vote and their subjectivity whether or not it is smart growth. Mrs. Meyer said that if they had a regulation that had standards and specificity, she might be comfortable thinking that the regulation itself would guarantee her certain outcomes as a resident.

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Sue Bednarczyk, 119 East Weatogue Street, said that she has with her this evening the 2007 Plan of Conservation and Development. She feels that the Town has kind of let land use planning go. Ms. Bednarczyk discussed a Smart Growth Seminar she went to a couple of weeks ago saying that there had been a discussion about how to make your Plan of Conservation work for the Town. This has not happened in Simsbury. Ms. Bednarczyk said that when the Planning Commission looked at the zone they added various language into the zone about the Plan of Conservation and Development, but they neglected to talk about the fact that by state statute when the PAD zone change happens the Zoning Commission and the Planning Commission need to consider the Plan of Conservation and Development, and they need to have a discussion about it as to why the PAD would be good for the Town. The Planning Commission has not done this. Ms. Bednarczyk told the Zoning Commission that, by state statute, they are required to have this conservation in front of the people and are also required to look at the Plan of Conservation and Development. She feels that they have to apply it to whether or not a PAD is good for the Town or not.

Kathy Martin Loomis, Firetown Road, said that she has comments about two sections. One is Section 6.b.5 and 6.b.6. With regard to 6.b.5 the subcommittee that the Zoning Commission has the authority to establish. Can the members of that subcommittee be non-Zoning Commission members? Would those members be required to come from the Zoning Commission or can they be appointed from the community at large? Attorney DeCrescenzo said that as it is a subcommittee of the Zoning Commission it is limited to Zoning Commission members. Mrs. Loomis also asked about page 9 (section 6 at the top) the Zoning Commission may within its discretion if it considers those changes substantial require a submission of the new preliminary development plan. She said that her concern under the current case and statutory law they already know that by using those guidelines as to what constitutes substantial and therefore requires a new application. Her concern is to what benefit they will receive by not continuing to follow that standard that is currently followed and allowing sole discretion within the Zoning Commission to determine whether something is a substantial change or not sufficient to require a new application. Mrs. Loomis said that she is very concerned about the subjective aspect of that particular provision. What is the thinking behind giving the Zoning Commission sole discretion to make that determination. Attorney DeCrescenzo said that the section that she is

referring to is in the preliminary development plan stage of the process. There is, at this stage, not yet an application for a zone change and the standard that Mrs. Loomis is referring to comes out of public hearings and applications for zone changes. Under preliminary development review the idea expressed in the regulation specifically says public meeting and it is still in the stage between the applicant and the Commission so the discretion given to the Commission is not the same as the discretion the Commission may have when they have in front of them a zone change application subject to a public hearing requirement. Attorney DeCrescenzo said that after the Preliminary Development Plan stage is complete, then the applicant makes the decision whether or not to go forward with Section C, which is Master Development Plan of the zone change stage of the process. At that time, and only that time, is an application for a zone change in front of the Commission.

Chairman Gallagher said that someone had asked earlier if this PAD conflicts with the Charrette. Hiram Peck, Director of Planning, responded saying that the PAD currently includes the Town Center Zone. There was a lot of discussion on whether that should be taken out and whether the Town Center Zone should stand on its own. The PAD is specifically designed to be flexible. There are a number of things that we do not know right now about the Town Center and the Town Center Code has not even been produced yet. There are a number of new streets and roads produced as part of the Town Center Charrette. How those properties are going to be developed in the future may be exactly like the illustrated plan for the Town Center Charrette showed or may be slightly different. Some of those roads may be built by the Town rather than a developer. He said that there may be need to subdivide some of those properties that are not currently subdivided to create the roads and the pass-ways through them. There are a number of different things that could happen even in the Town Center where the PAD regulation might be a benefit to the development that would still be along the same lines that the Town Center Code showed as part of the illustrated plan. The PAD would be a valuable tool to get to the same goal. He said that the specific standards will come to the Commission and the public before they ever get approved. It is a timing issue not a matter of not knowing what you are going to get. Before anything does get approved it will have to be put together in specific language, specific maps and plans, and specific standards.

Chairman Gallagher said that another item that brought up was the Minority Report. Hiram Peck said that he has a stack of them in his office. Anybody that wants one can have one.

Hiram Peck, Director of Planning, discussed underlying zoning. He said that there is more to the underlying zoning characteristics than just simply the height of the setback of the buildings. He tried to reference, in his brief

presentation at the beginning of this meeting, specific performance standards with regard to things like environmental considerations and traffic considerations. It is really important to understand that the Wetlands Commission (Conservation Commission) for example has specific environmental criteria that they are going to be looking at with regard to any development plan that comes forward. Mr. Peck addressed Ms. Meyer's open space calculation. He said that this PAD specifically requires the applicant show what those calculations are. That is the existing and what is proposed, the building sizes, and the coverage's. All that is required to be shown as part of the PAD regulation. If it is not there and does not meet the checklist then the application is not complete. He said that there was another question about smart growth principles. This was specifically added to the PAD regulation, but the legislature left out of their legislation that they passed the definition of smart growth. It was never codified. He said that they specifically referenced the public act as part of the PAD because that does include the smart growth definitions.

Julie Meyer asked if the aim in this regulation is to craft a regulation that assures smart growth principles in any development and any redevelopment of properties in town embodies those within this regulation. Mr. Peck said that this is on page 2, number 6 specifically sites it. Ms. Meyer asked what tools are in this regulation that will assure that they will meet what is referenced for smart growth. Attorney Sikowski said that the assurance issue goes to when an application is presented. Because of the flexibility, the assurance does not come out of the specific provisions of the regulations. It comes in the application of the regulations to a specific property. The assurance is different than a specific area plan. However, the more or less continuous certainly multiple references to the 2007 POCD are probably your strongest tool because it is directly related to your

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comprehensive plan (POCD). He said that he would disagree with the proposition someone made that the plan was ignored or not referenced or that the PAD would not be consistent with it. The Planning Commission of this Town made a consistency determination that was on the record at the last public hearing. It was determined that to be consistent with that document (the document that is being referenced throughout this regulation).

Sue Bednarczyk said that the Zoning Commission, according to state law, has to refer and look at the Plan of Conservation and Development and has to consider it. She said that that has never happened and asked when this would be discussed. Attorney DeCrescenzo said when the Commission closes its public hearing they will deliberate on what action they chose to take on the proposed regulation. Within that deliberation they will consider the

testimony they heard, the documents received, the report from the Planning Commission and at that time during their deliberation on the regulation they will consider whether or not they agree with the Planning Commission report that found it consistent with the POCD. This is not done during the public hearing because it is not the Zoning Commission's function during the public hearing.

Commissioner Elliott said that he would like to make a couple of points and also ask a question at the end. The Minority Report was read into the record at the July 27, 2009 Zoning Commission meeting and the minutes from that meeting were approved at the September, 2009 Zoning Commission meeting. He said that the Minority Report was specifically appended to the minutes of the July 27th meeting so they would become available on the Town website to anyone who wanted to look at them. The Minority Report has never been added to the minutes on the Town website. Also, they voted to append the majority view of the PAD and they are still looking at that. Commissioner Elliott said that the overriding concern is that they have in front of them a draft regulation that embodies some presumptions that he does not agree with, but they are there. As long as these are fundamentally in the document he is worried that they are never going to get to the level of precision that he would like to see in some standards. Commissioner Elliott said that the underlying presumption that he sees is that the PAD will apply to all zones in Simsbury that are not residential. One PAD and one set of regulations on all lot sizes. The single set of regulations will not distinguish between the contexts. There are no requirements for specific ratio of mixes. He said that what is happening in the drafting of this document is that it feels like at every opportunity there has been a sort of search for equivocating language rather than precision language that would aid nine Commissioners in trying to administer it in the future. Commissioner Elliott said that not anyone sitting on this board has written one word in this document. Attorney's DeCrescenzo and Sikowski and Hiram Peck have written this document although there were comments introduced by some members of the PAD Subcommittee last summer. Commissioner Elliott is anxious, as some of the speakers have already suggested, that there does not seem to be any real embodiment of the concerns expressed at the March 15th hearing, or that he has raised on a number of occasions over the past months. He asked the Attorney's if they have received any instruction at all to try to produce something more precise, or could you. Did they receive any instructions and decide that it did not fit, or is it possible to develop a more specific language? He spoke of page 6, section 7, Master Plan Design Standards, the words "building to building relationship". Each proposed building, as well as its constituent parts, shall be in a balanced relationship with each other and existing or proposed buildings. He said that he does not know how he or the other Commission members would come to some definition as to what that means so that they could apply it consistently. His question is were they given some instruction that this is

sufficient precision and could they develop more specific language that would assist the members in relying on that dimension (building to building relationship). Commissioner Elliott said that he is not suggesting that it is not workable or not helpful, but his concern is how do they interpret it and apply it consistently from one application to another.

Attorney DeCrescenzo replied to the specifics to Section 7 as he authored that section for the draft. Attorney DeCrescenzo said that their role is to offer drafts to the Commission and they will accept any direction that they are given to change them according to the Commission's desires. He said that at meeting they sit, listen, take notes and try to reflect what they believe to be legitimate concerns and changes to the draft as they hear them. Attorney DeCrescenzo said that he drafted Section 7 as they heard a lot of comment that before they put this in the draft PAD there was nothing in there that laid out these types of standards for the architecture. It is always been the understanding in the way that this draft is written that the Commission would rely on the various report that are required to be submitted under Section C of that section (there are 26 different documents that need to be submitted). The 26th says that the Commission may request a report or recommendation from any other staff person, agency, or consultant as provided by ordinance when it deems such a report to be necessary for deliberations. He said that regarding Section 7 specifically, paragraph 22 says that a report from the Design Review Board on the proposed buildings, plantings and landscape plans and PAD implementations as outlined in the application as the application relates to the adopted Guidelines for Community Design. In terms of process the application would be referred to the Design Review Board and others for a report and the report specifically would address the Master Plan Design Standards as outlined in Section 7. Attorney DeCrescenzo said that they tried to take the consensus of comments they heard from the various public hearings and also from has been said by this Commission, the Planning Commission and others who had input and incorporate them into a draft. It is entirely up to the Commission as to what they do next on the Commission's behalf.

Commissioner Elliott asked Attorney DeCrescenzo if what he was suggesting is that it was not your intention to produce standards that necessarily were understandable to the Commission members because they could simply rely on experts to develop reports in the future, and they could make a judgment based on those reports. They would leave it to others to evaluate on these sets of dimensions that are suggested here as it is not intended that the Commission understand them. Attorney DeCrescenzo said no, that is not it at all. When the Zoning Commission receives an application and the application is deemed to be complete the Zoning Commission reviews the application with staff. The regulation, the way it is drafted, requires a report from the Design Review Board. Attorney DeCrescenzo said that he does not ever mean to suggest that the Zoning Commission could not make its own

determination regarding the compliance or the consistency with Section 7. He said that there will be other required inputs under the regulation. There may be a very simple application where it is readily apparent whether or not the factors outlined in Section 7 have been met and the Zoning Commission, in its sole discretion, as a legislative act, will make that determination. It either is or is not, approve it or deny it, or the Commission may say that there is not enough information and needs to be referred

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to a licensed architect to tell them whether it complies. This draft regulation is intended to give the Zoning Commission the discretion to require additional information. If the applicant willingly submits itself to this process, they would be hard pressed to complain that they need to produce more information for you. Attorney DeCrescenzo said that there is no obligation that the applicant submit itself to the PAD process, but if they do these regulations apply to that application. It gives the Zoning Commission the maximum amount of discretion to request additional information.

Commissioner Elliott asked if more effort could produce more specific language on these standards. Attorney DeCrescenzo said yes, but there is a balance in a regulation like this. The more specific you get, the more prescriptive you get. You may, in that process, lose the flexibility to invite applications that do not meet that prescriptive flexibility. This regulation is intended to leave it up to the property owner and the applicant to propose something with the factors and standards outlined in the regulation. He said that if you go too far in the area of prescription you can easily over prescribe and not allow applications that would otherwise be beneficial for the Town and beneficial for a site. That is a policy decision that the Zoning Commission only can make.

Attorney DeCrescenzo said that he wants to make it clear that they took the document that was introduced at the March 15th hearing and the changes that were made to it, in their opinion, reflect the comments of the people who spoke on March 15th, and the concerns that many had about adding more clear specific standards that would produce more predictability. A more consistent application. Attorney DeCrescenzo said that all three of them took notes, met and went over the notes. They made process type changes. They did not presume to make policy type changes. Commissioner Elliott said that as a Commission they need to give more thought to the direction that the regulation needs to take to be responsive to many of the people who have spoken and also his own views that are not there.

Commissioner Pomeroy said that as the Commission has not actually discussed the PAD amendments to the draft as a Commission as they are still in public

hearing. The Commission will have an opportunity to discuss them. Attorney DeCrescenzo responded by saying yes, that is true and if they are told to change the draft in a substantive way, he (as Town Attorney) will tell you if the change needs to be resubmitted to public hearing.

John Loomis, Planning Commission Chairman, said that there are sections of the subdivision that have specific references to the large buildings as described, and ratios are also expressed. He said that the maximum permitted square footage associated to a large building format two stories in the southern gateway will be on the order of 49,600+- square feet (maximum recommended).

He said that in the northern gateway the square footage, at a max of around 50,000 to around 62,000 square feet (two story building).

Commissioner Vaughn said that words like adequate, substantial get the Commission into more trouble than provide flexibility. If they can get some kind of specificity like what is outlined in the Plan of Conservation and Development, this is the direction that they would like to go. Another point is that this board is what it is right now, and is not the same board as it was several months ago. This board will turn over again on an ongoing basis. Without that specificity what is adequate to one person is different as to what is adequate to someone else on the Commission. They now have floating guidelines, and that is what they cannot have.

Commissioner Ryan said that the mixed use idea came up several years ago. They have regulations in place today that prevents the development of some of the Town's iconic structures. He said that today they could not create the Heublin Tower. There has to be some way to get creativity in the process without destroying the fabric of this community. Everyone loves the rural character of Simsbury. Now it seems to be going off into the new urbanism instead of focusing on the rural character. This document is a clever way of implementing the ability of a developer to come in and make a very creative proposal which the Zoning Commission, through the public hearing process, can accept or reject without any consequences. It is a very creative and effective tool.

Andy Difatta, Clifton Drive, also President Ensign-Bickford Realty. He said that the PAD zone gives the Zoning Commission more subjective discretion. If you see something and you like it this goes onto the next step. If you see something that you do not like you can say to the applicant go back and change it and then come back. This gives you more power than you have right now, which is a plus. He said that to try and put into the PAD subjective metrics will blow the PAD. The idea is to be creative. The Zoning Commission will have discretionary power with a PAD zone that you will not have if you stay with the underlying zoning. He hopes they vote in favor of the PAD.

Chip Houlihan, said that the issue that keeps getting discussed here is what separates the minority report from the majority report. He said that he had been a member of the PAD Subcommittee. You cannot design every possibility that there could be that might come into town. Developers bring some creativity that we, as lay persons, serving on the Commissions do not have. He said that we want to see what they have to bring to us so choices can be made. If we do not see these items they will go elsewhere. The idea of this proposal, in this form, is to be inclusive. This is an opportunity to bring in things so that the Zoning Commission can decide if they want to hear more or shut it down now. He said smart growth principles and new urbanism, but sometimes those ideas conflict with extensive open space. We want to give developers the opportunity to make those decisions. Mr. Houlihan said that either they set standards as this is done and ask the Zoning Commission to exercise their judgment, or we become mini developers and decide unilaterally what every piece of property is going to look like if they go that way. He said that we rely on the judgment of the Zoning Commission to be responsible, to be responsive to what the public wants, and to be able to deal with the issues that may be before them. This proposal gives them a great deal more flexibility and more authority. He suggests that the Town wants the Commission to have that ability to make decisions.

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Sue Bednarczyk, 119 East Weatogue Street, mentioned the northern and southern gateway portion in the Plan of Conservation and Development. She said that the Zoning Commission is required to look at it as a Commission under state statute. Ms. Bednarczyk said that she does not feel that this is an unreasonable request for the amount of detail that is there.

John Loomis, Firetown Road, Planning Commissioner, referred to pages 53 through 57 in the Plan of Conservation and Development. He also referred to page 97 (southern gateway) and encouraged the Zoning Commission to look at them.

Shelley Houlihan, 2 Somerset Lane, said that people need to just stop being disingenuous and listen to what people have to say. She said that this Commission needs to find time to be able to vote. Everybody else needs to back off. She said that everybody needs to speak for themselves and not believe that they are speaking for everyone in the Town.

Jacques Gilbert, 29 Redstone Drive, said that he heard a lot on the debate tonight between the flexibility and having standards and this is a difficult issue for the Commission to have to grapple with. He said that in

terms of flexibility he sees in the long term if you do not try to incorporate as many standards as possible, these decisions will come before this Commission. They will become precedent. If you allow one site leniency and then another comes before you and you make a different decision, you could end up in court with the applicant arguing that you are being arbitrary and capricious. Mr. Gilbert said that they need to set standards to prevent this from happening. Commissioner Gilkey asked Attorney DeCrescenzo if he could address this notion that vagueness will create precedence by a decision that might be made on one application. Attorney DeCrescenzo said that the approval or denial of a PAD is a legislative act. The standard of review in Connecticut courts for review of legislative acts is courts will not overturn a determination by the Zoning Commission on a legislative act unless it is found to be unjust, confiscatory, or unconstitutional, and the reason for such change are unusual and compelling. The highest standard of a Zoning Commission is when it acts in a legislative capacity. For a court to find an action by the Commission in a denial of a PAD zone change to be unjust, confiscatory, or unconstitutional is a very high bar.

Judy Schaefer, 16 Lostbrook Road, said that she felt that they were coming to an understanding in that they had the Charrette. It is a consensus that everyone loves how the town looks and that they want the town to still look historic, but want some progressive and creative ideas here and there. She said that she appreciates all of the comments. She does not envy the Commission on having to be under this tremendous pressure, but she feels that they have hit upon something. She feels that John Loomis's comments on metrics and standards will help the Commission. The Commission knows what the public wants the town to look like and by putting the two ideas together (metrics and standards) and nail them down, when the board changes members the town will not change when the developers come in. There will be a recognized way that the town should look. This should take a lot of pressure off the Commission while making decisions. Mrs. Schaefer said that even though this meeting might have contentious at time, she felt that they got somewhere. Commissioner Gilkey asked Mrs. Schaefer if she understood that the Charrette is downtown. Mrs. Schaefer responded yes.

Marvin Negrin, asked if it does not make some sense to this Zoning Commission to take the POCD as it is written, put some dimensions to some of the inferred specifics in the POCD, somewhere between that and the comparison he had previously made to a jet engine specification there is some compromise to make this thing happen. He said to have the flexibility yet to protect some of the vistas along Route 10. The POCD took years of effort of the Planning Commission to put forward. Put some dimensions on it that make some sense without losing the flexibility that the PAD represents. This will be more work for the Zoning Commission and the Attorney's, but there has to be somewhere in between those two extremes.

There should be a compromise.

Julie Meyer, said that when she was on the PAD Subcommittee, she contacted Marc Pelligrini, Manchester Director of Planning and Economic Development. He cautioned her on a regulation that would be too onerous for developers. Chairman Gallagher asked if they have a PAD in Manchester. She said that they have a Mixed Use Zone.

Attorney DeCrescenzo told Chairman Gallagher that before he closes the public hearing if the Commission desires to give staff additional direction on what to do next, they need to do this while the public hearing is open. He said that they can leave it open, close it, give them direction, and it is his responsibility to tell the Commission when those changes pass a certain threshold and the public hearing needs to re-open. This meeting also can be left opened for the limited purpose of giving them direction.

Commissioner Vaughn made a motion to have this Commission give the Attorney's the direction that kind of gets them to the middle ground, somewhere from where they are to incorporate some of the great language that John indicated in terms of just ratios. He would like to keep the meeting open until they incorporate some of those changes. Attorney DeCrescenzo said that the proper motion is to leave the public hearing open and then they can have whatever discussion they want, but it has to be done in the context of the public hearing. If they are going to give them direction as to how to change the draft that is substantially different than the draft that was filed in the Town Clerk's Office. Attorney DeCrescenzo explained how they incorporated the POCD into this draft. It is referred to as "Guidance to the Zoning Commission". If they want to turn those concepts into part of this regulation, they need to draft it into the regulation. It can be done, but they need to do that otherwise it is not part of the regulation. It guides you into interpreting your regulation.

Commissioner Gilkey said that she feels that they need to go back to basics and decide if they are going to leave it as it is with its flexibility or change the basis of the PAD and insert metrics. That has to be decided first as a Commission.

Attorney DeCrescenzo said that right now this regulation applies to the same way in all eligible zones. This can be changed. You can say for this eligible zone write a sub-regulation. He is not suggesting that they do this, but stating that they can do it. There is not a rule that says that the floating zone has to apply to every zone in the exact same way. In fact many of them do not.

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Commissioner Vaughn said that this is a good direction in terms that the

POCD does differentiate as John Loomis indicated. The parameters for the north gate are different from the parameters of the southern gate. A blanket for parameters may not be sufficient. The Commission should break it up. Chairman Gallagher said that one problem, that was mentioned, is that this could be confusing. If someone down the south end wants to be like the north end, it will be confusing. If you want them to do something along that line, it should be one for all.

Commissioner Elliot said that he feels that they should continue this hearing with the intent to try to integrate some of the language provisions of the POCD into the standards so that they have something that will more likely lead to consistent applications and predictability for residents and developers alike. He also thought that having a working session in front of the public would be a great idea. He mentioned having John Loomis and Emil Dahlquist at that meeting. We could have Attorney's DeCrescenzo and Sikowski work on some language that would integrate those provisions. It would add another meeting or two to the issue.

Andy Difatta, 3 Clifton Drive, said that this Commission has not heard from the whole community just people who were at the last meeting and came back to this one. They want specifications. There are eighteen letters, the Economic Development Commission and other Commissions are in favor of this. You have worked on this for years. Make this happen.

Commissioner Vaughn made a motion that the public hearing be kept open and goes to an open public workshop session and integrate John Loomis and Emil Dahlquist into this process. The motion was seconded by Commissioner Elliott and passed with a 4 to 2 vote.

Chairman Gallagher said that the resumption of the public hearing will be on Monday, May 3rd for the purpose of hearing in a workshop format from those people that they recommend come to that workshop. The public can speak at the workshop meeting.

There will be a Commission workshop and they can possibly vote on it that night. Attorney DeCrescenzo recommended that they have a public hearing and just as they had a presentation from Hiram and the Attorneys tonight, you would have a presentation from whoever you want to hear from. He suggested giving guidance to staff as who that would be and what you want to say. You would then open it up to the public. After that it is up to the Commission on what you do next. He said that the key thing is that it is continued to May 3rd, and is a public hearing. First you will hear from those chosen experts on how to incorporate more metrics into this draft. After that you will allow the public to comment on what was heard and then the Commission has to decide the next step.

IV. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

NONE MADE

V. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

NONE

VI. ADJOURNMENT

Commissioner Salls moved to adjourn the meeting at 9:40 p.m. The motion was seconded by Commissioner Gilkey and passed unanimously.

Amy M. Salls, Secretary