

From: Lois Laczko September 1, 2011 10:30:00 AM  
Subject: Zoning Commission Minutes 07/18/2011 ADOPTED  
To: SimsburyCT\_ZoningMin  
Cc:

ADOPTED  
ZONING COMMISSION MINUTES  
REGULAR MEETING  
JULY 18, 2011

I. CALL TO ORDER

The regular meeting for the Zoning Board was called to order at 7:00PM on Monday, July 18, 2011 in the Main Meeting Room of the Simsbury Town Offices. The following members and alternates were present: Edward Pabich, Bruce Elliott, Robert Pomeroy, Jr., Madeleine Gilkey, and David Ryan. Others in attendance included Howard Beach, Zoning Enforcement Officer/ Conservation Officer, Robert DeCrescenzo, Town Attorney, Hiram Peck, Director of Planning, Leslie Faraci, Clerk and other interested parties.

II. APPOINTMENT OF ALTERNATES

Commissioner Pabich appointed Commissioner Gilkey as the alternate for Commissioner Salls and Commissioner Ryan as the alternate for Commissioner Gallagher.

III. APPROVAL OF MINUTES - June 20, 2011

Commissioner Elliott moved to approve the minutes of June 20, 2011 as presented. The motion was seconded by Commissioner Pomeroy and passed unanimously.

IV. CONSENT AGENDA

Commissioner Elliott moved that the Commission approve the items listed on the July 18, 2011 Consent Agenda:

- a. Ethel Walker Barn modifications
- b. Powder Forest Homes, model home substitution
- c. Yunan Accents sign location at 552 Hopmeadow Street

The motion was seconded by Commissioner Pomeroy and passed unanimously.

V. PRESENTATIONS

SIMSBURY MIDDLE3

Richard Wagner, manager of Simsbury Middle3, LLC addressed the Commission. Mr. Wagner explained that Simsbury Middle3, LLC has a property located at 1276 Hopmeadow Street that they wish to sell and in order to do that, they need the release of an easement on the property. During a review in preparation of selling the property, they found an easement on another property, 1285 Hopmeadow Street, on the other side of Hopmeadow. Mr. Wagner sited that the easement has been abandoned and never used, so he would ask the Commission to affirm the release of said easement. Commissioner Pabich asked Mr. Wagner to clarify that while we will not be the ones to release the easement, they simply need the Commission to not object to that release. Mr. Wagner confirmed, yes, that is the case. Mr. Wagner then gave some background of the property. He said, during the 1980's, Mr. Wagner's father had tried to augment the parking on 1276 Hopmeadow Street, and to do that he proactively put an easement on the other side of the property to give it additional seven (7) parking spaces. This was in anticipation of the approval by the Zoning Commission of these additional parking spaces. Mr. Wagner continued noting that the Zoning Commission turned it down because it was considered a safety hazard for those walking across Hopmeadow Street and therefore, it was never used and abandoned.

Commissioner Pomeroy asked Mr. Wagner if Simsbury Middle3, LLC owns both parcels previously mentioned. Mr. Wagner clarified that no, they own 1276 Hopmeadow Street and the owner of record of 1285 Hopmeadow Street is Wagner Auto Sales. Commissioner Pomeroy then asked Mr. Wagner who is the grantor in this situation, which Mr. Wagner answered it is 1276 Hopmeadow Street. T.J. Donahue, attorney for Simsbury Middle3, LLC, then clarified the issue for Commissioner Pomeroy saying that Simsbury Middle3, LLC will grant the release to Wagner Auto Sales. Commissioner Pabich asked Attorney Donahue if he had originally drafted the easement, which he replied that he had not. Commissioner Pomeroy then said that he wanted to make sure that, if the Commission approves this easement release, the other property owner will not be harmed. Attorney Donahue replied that in essence, the benefited party is giving up its rights and the other party is in no way harmed. Commissioner Elliot then asked about the history of this easement and if it was ever actually approved by the Zoning Commission, which gives him cause to worry about the role of the Zoning Commission at this point. He expressed his concern about the fact that the Zoning Board of Appeals granted a variance, dated Jan 1990, for the building at 1276 Hopmeadow Street that recognizes the historical character of the building and allowed for, in lieu of the 7 spaces, the railroad right of way as sufficient parking area. He stated it seemed that the ZBA was extinguished due to the fact that the Rails to Trails was put over that railroad crossing and there are maybe only four (4) parking spaces if that easement is released. Mr. Wagner replied that the issue at stake is not whether the Zoning Commission approves or disapproves of the number of parking spaces, the perspective

Owner will deal with that as an issue. Commissioner Elliot asked if the building is currently occupied, and Mr. Wagner answered no, except for storage use. Commissioner Elliot wanted to make sure that if the Commission approved the easement release, it would not create an immediate non-conforming use. Attorney Donahue said the existing parking is not an issue in this case. Commissioner Elliot again stated that he wants to make sure that they are not creating a non-conforming use by their actions by approving the release. Attorney Donahue said he sees no legal basis for that theory. He explained that the language in the easement was solely put there for a Zoning Application, which was ultimately denied, so the easement released immediately, but was not. Commissioner Gilkey asked if the easement was filed prematurely and Attorney Donahue confirmed that yes that was the case. Commissioner Elliot asked Robert DeCrescenzo, Town Attorney, to give his feedback on this case.

Attorney DeCrescenzo stated that from what he has seen, the cart got before the horse in this case. Attorney DeCrescenzo said he did think it was appropriate for the Commission to authorize the release of this easement and he stated that he thinks it should have been done 20 years ago because it was a prematurely filed easement as a condition of a site plan that was ultimately denied.

Commissioner Ryan then moved that the Commission amend the agenda in order to vote on this issue this evening. Commissioner Pomeroy seconded the motion, which was unanimously passed.

Commissioner Pomeroy moved; whereas the Commission has reviewed the submitted material including the easement document Volume 343 Page 550 and 551; and whereas the Commission understands that paragraph number 5 on page 551 of that document requires the agreement of the Zoning Commission in order for the applicant to release said easement; and therefore the Commission hereby agrees to the release of said easement as requested by the current owner in order to facilitate the sale of the property at 1276 Hopmeadow Street and authorize the Chairman to execute the release agreement. Commissioner Gilkey seconded the motion which was unanimously passed.

#### SAND HILL LOT 13A

Glenn E. Knierim, Jr., of Moran, Shuster, Carignan & Knierim, LLP, representing Sand Hill Simsbury, LLC addressed the Commission. Attorney Knierim stated, that he was here to have the Commission make a clarification of the zone on his client's lot, Lot 13A. Attorney Knierim put up a survey of the entire property and he then outlined the portion in question. Attorney Knierim stated that his client purchased the entire parcel in early 2010 and then discovered that there was an error in the

zoning map with regards to that small portion of Lot 13A. He then outlined the exhibits in order for the Commission to follow along. He then offered photographs for the Commission to view. Attorney Knierim said that originally the entire parcel was zoned Industrial (now called I-3). He said that over the years, there has never been any legislative action by the Zoning Commission to change any of that parcel to anything but I-3, but at some point during the process of map making, the boundary of the property, which is adjacent to property zoned R-40, and then the small section of the said parcel, was changed to R-40 (now called R-400S). Attorney Knierim does not believe it would have ever made sense to call it R-400S, as it does not even qualify, by its dimensions, to be zoned R-40. Attorney Knierim first showed the Commission a zoning map from 1954, which showed the entire parcel in tact and all zoned Industrial. He then stated that in 1957, the portion of the property was cut off and sold to Electric Light, and they asked for a variance for the property in 1957, so they could put an electrical substation on the property (the variance was approved). In the end, the power company did not build the substation. In 1964, Attorney Knierim said, there was a revision of the Zoning Map, and it was still as one parcel and zoned Industrial. Attorney Knierim then asked Mr. Beach to comment on his findings after reviewing the history of the property, specifically with regards to any previous legislative action by the Zoning Commission to change the zoning of this property.

Mr. Beach said he researched the Zoning Commission meeting minutes and in all his research he never found a zone change or request for zone change with regards to this property. As of 1951, there was a statute which required any zone change needed to be approved by the Planning Commission, so Mr. Beach went through Planning Meeting minutes as well. Mr. Beach said he did not find anything with regards to a zone change on these parcels in the Planning minutes either.

Attorney Knierim then mentioned that none of the maps he has are "official". He said in 1968/69, it was proposed that lot lines were added to the Zoning Maps, which is when it seems, the two (2) different zones appeared. Attorney Knierim then referenced Zoning Commission minutes from November 25, 1968, regarding adding property lines to the zoning maps. Attorney Knierim then referenced Zoning Commission minutes from January 27, 1969, when they did adopt the map with property lines included. Attorney Knierim did explain where he had obtained his maps and did state that they are not official maps, but as close as he could come. Attorney Knierim then explained that the R- 40 zoned property that wraps around the back of his client's property, did get developed and was developed as Stillbrook, but that it in no way is part of his client's property. Attorney Knierim then referenced a letter, written by Attorney DeCrescenzo, which stated that Attorney DeCrescenzo assumes there to be no unclarity about the boundaries of the property. Attorney Knierim disputes this assumption,

stating, by virtue of the way the mapmaker made the map, it is unclear. Attorney Knierim presented minutes from a previous case in which the Zoning Commission did address a similar situation, (September 13, 2010) 67 West Street. Attorney Knierim then stated that the second premise of Attorney DeCrescenzo's letter is that the filing of a map, adopted by the Zoning Commission, would change the zone. While he doesn't doubt the legal theory behind it, he says it just did not happen in this case. Attorney Knierim says the purpose of coming forward with this now is, his client purchased the property as part of the construction yard, which they own, the neighbors have indicated a desire for that to change. In exploring alternatives, they have considered whether or not a PAD site would be appropriate to this property. Unfortunately, Attorney Knierim said, with this current zoning confusion, the R-40 is not amenable to a PAD and would hurt the efforts to explore this possibility. In conclusion, Attorney Knierim wanted to address the fact that while the map was changed, the Zoning Commission never had a resolution to make that change from Industrial to R-40. Attorney Knierim also states that the Validating Act, as referenced up in Attorney DeCrescenzo's letter, are irrelevant here since there was no action of the Zoning Commission to change the zone. Attorney Knierim's request is first, for the Commission to consider there is a need for clarification, and second, that the Commission does clarify it and to determine what it was originally, and then to determine whether there is any resolution that would have changed it in the first place.

Ms. Gilkey then asked Attorney Knierim how the parcel was divided in the first place and asked if it was part of the HELCO situation. Attorney Knierim confirmed that yes, the power company owned that parcel and then sold back to the Garrity Family, never having built the substation. Attorney Knierim then outlined the chain of ownership and explained that title is now whole again and both lots are both owned by his client.

Commissioner Pabich then stated that he would like to hear from Attorney DeCrescenzo regarding the memo he wrote to the Commission and also from Mr. Beach, if he has anything to add.

Commissioner Gilkey then asked Mr. Peck who makes these maps. Mr. Peck said today we have a mapping system that is much more accurate, but at that time, it was done by Brown, Donald & Donald. Mr. Peck did say that years ago, there were "work maps" done, but are not designated official maps. Commissioner Gilkey then stated that in her mind, it seems like it was a mistake for this parcel to be designated R-40, since it does not even qualify in terms of square footage.

Attorney DeCrescenzo then addressed the Commission stating he does not think there is uncertainty of the zone designation for Lot 13A. He said he thinks it is clear that Lot 13A is designated R-40 on every map that has been drawn up, distributed, and made available to the public for the last

42 years. Attorney DeCrescenzo said he disagrees with Attorney Knierim when he says that there was no legislative action to establish the zone boundary on Lot 13A. He said he has identified three (3) legislative acts that would have accomplish that; occurring in 1969, 1977 at most importantly in 1990. Attorney DeCrescenzo then referenced the Red Book Regulations (Article 2B) stating that "the boundary of the Zone are established as shown on the Zoning Map entitled Zoning Map of the Town of Simsbury filed in the office of the Town Clerk". Attorney DeCrescenzo did go to the Town Clerk and found a Zoning map from 1979, which has been on file in the Town Clerk's office since 1979. So if there was no other map more recent than 1979, that 1979 map was on file and therefore it becomes the default map. Attorney DeCrescenzo says there is not a single map that has showed that lot as anything other than R-40. Attorney DeCrescenzo said he invokes the Validating Act because, to overcome what is obvious on the zoning map, you need to show there was some error. Attorney DeCrescenzo also noted that there have been four (4) different property owners over the time they are talking about and no one, until this current owner, has brought up this issue. Attorney DeCrescenzo then said that he thinks the bigger issue is, that the public is entitled to depend on the validity of the zoning maps and the Zoning Commission should apply the zones reflected in said maps. Attorney DeCrescenzo understands the reason the Owners think it should not be R-40, but that is irrelevant here. In order to change the zoning, they should raise it as a zone change, hold a public hearing and go through the appropriate steps to do so. Attorney DeCrescenzo reiterated that the map shows that parcel at R-40, it is an official map and those are the facts we have.

Commissioner Gilkey then asked Attorney DeCrescenzo if the map is the reigning document over minutes from the Zoning Commission. Attorney DeCrescenzo confirmed, yes, if the map is the adopted and filed in the Town Clerk's office, as long as procedure was filed, that zone boundary is a valid zone boundary. Attorney DeCrescenzo also said that minutes from 1969, or any others referenced today, is not a transcript, so the map is what we need to use. Again, he said the zone on that parcel can be changed, but it has to be through the proper zone change process. Commissioner Gilkey and Attorney DeCrescenzo then discussed how they could get the zone changed and allow the public to comment on the legislative act. Commissioner Pabich then asked the Commission if they should vote or do they need time to think about the information provided. Commissioner Elliot said he does not see how it would help to postpone the vote, as the map says the parcel is R-40 and the Commission has a responsibility to stand behind the map. Commissioner Elliot reiterated that he sees no uncertainty and the applicant can still submit a request for zone change, but again, the proper steps need to be followed to accomplish that change. Commissioner Pomeroy concurred with Commissioner Elliot in his opinion that further details or time will not change his opinion.

Attorney Knierim then asked to the Commission that they provide clarification on the zoning either way, so his client is able to proceed to the next step of the process.

Commissioner Pomeroy moved; whereas the Commission has reviewed all the material submitted in regard to the request for the determination of the uncertain boundary and finds the zoning designation of lot 13A to be R-40; and Whereas any proposal to rezone the property would require an application and a public hearing. Therefore the Commission finds and approves the property zone boundary for lot 13A is R-40. The motion was seconded by Commissioner Elliott and passed unanimously.

#### VI. OTHER MATTERS AS MAY COME BEFORE THE COMMISSION

Mr. Peck addressed the Commission regarding West Street Storage and stated that they came in with a proposal regarding adding solar panels on the roof of their property. Mr. Peck presented the Commission with a photo showing what the solar panels would look like when finished. Mr. Peck said they are applying for a green-energy rebate within a tight time frame. Mr. Peck said that if it is ok with the Commission, he would process it and put it on the agenda for the next meeting. Mr. Peck said it was made sure that there would not effect any surrounding properties and/or motorists. Commissioner Pabich said he had to recuse himself, as an abutting property owner. Commissioner Gilkey then asked if the Owner had to come to the Commission with something like this, but Mr. Peck said that while in this case the energy source is very unobtrusive, the next thing that came in the door could be a windmill on a roof, so he wants to be fair in the process. Commissioner Pabich then said that since time of the essence, the Commission would not be meeting until September. Commissioner Elliot stated that he thinks there is a point that something on the outside of the property should not be handled by the Zoning Commission. Commissioner Pomeroy stated that he thinks they should be encouraging the installation of green energy sources, not making it more difficult. The Commission discussed whether or not the Commission should have to vote on it or not. It was agreed the case would be put on the Consent Agenda for the next meeting.

#### VII. DRAFT REPORT - ROUTE 10

Mr. Peck announced to the Commission that draft report for Route 10 is online through the Town's website, linked to the CROG website. Mr. Peck said it was expensive to commercially print them, so there are copies at the Library and the Town Clerk's office for people to see. Mr. Peck said there was going to be a joint land use board meeting in the first part of August as the next step. Commissioner Elliot asked what the role of the

Zoning Commission is in that process. Mr. Peck said that as the options and alternatives come forward in the future, the Zoning Commission will look at different things that can happen as a result of these alternatives.

#### VIII. TOWN CENTER DRAINAGE STUDY

Mr. Peck said he has been working with John Ford, of Morris Beacon Design, and said they have to have the report complete and back by the end of September, so there will be a presentation in August prior to the final presentation in September. Mr. Peck said it is coming together nicely and as soon as he gets a draft, he will have it back to everyone.

#### IX. TOWN CENTER DESIGN GUIDELINE WORK

Mr. Peck said he is trying to put the contract together with Winter Associates to do the design guidelines. He said they have found enough money in the budget, with contributions from Main Street Partnership, in order to go ahead. Mr. Peck said it is very important to have the owners involved in the process, but the contract is not complete yet.

#### X. ADJOURNMENT

Commissioner Gilkey made a motion to adjourn the meeting at 9:35 a.m. This motion was seconded by Commissioner Pomeroy and was passed unanimously.

Respectfully submitted,

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Edward J. Pabich, Secretary