

From: Lois Laczko April 20, 2009 11:35:12 AM  
Subject: Planning Commission Minutes 03/24/2009 ADOPTED  
To: SimsburyCT\_PlanMin  
Cc:

ADOPTED

PLANNING COMMISSION MEETING  
March 24, 2009  
REGULAR MEETING

I. CALL TO ORDER

Chairman John Loomis called the regular meeting of the Planning Commission to order at 7:05 p.m. in the Main Meeting Room of the Simsbury Town Offices. The following members were present: Charles Houlihan, Gerry Post, Mark Drake, Julie Meyer, Carol Cole, Carl Eisenmann, 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

Chairman Loomis appointed Commissioner Cole to serve for Commissioner Post during Item III.

III. CONNECTICUT GENERAL STATUTES 8-24 REFERRAL ON THE PROPOSED CAPITAL PROJECTS FOR FISCAL YEAR '09-'10

Mr. Sawitzke discussed the capital projects for the upcoming year. He stated that there are two projects that require the Planning Commission's 8-24 referrals. He stated that these projects are a combined Parks & Recreation maintenance facility at Simsbury Farms and also the restoration of brownstone stairways and re-pointing of the brownstone at the historic Central School.

Regarding the proposal for Simsbury Farms, Mr. Sawitzke stated that this is to consolidate the parks, golf, recreation and maintenance facilities. He stated that this project was stated in the Simsbury Farms Complex master plan and also in policies and objectives in the POCD. He stated that they are also looking to improve safety and reduce energy costs. Mr. Sawitzke stated that this proposal is for \$550,000 to create 8,000 square feet of modern, code compliant, efficient space. He stated that it will also have future expandability.

Mr. Sawitzke stated that the Culture Parks and Recreation Department has many maintenance goals; they have 95 pieces of equipment to accomplish those goals. Currently, they have many different facilities throughout Town where they keep this equipment. They are now looking to get sufficient space that meets code to allow more expandable uses. This facility would also allow a fueling station with an above ground tank.

Regarding scheduling, Mr. Sawitzke stated that if approved, construction would start this summer. The building would be located in close proximity to the present golf maintenance building, which would not be visible from the adjacent property.

Commissioner Meyer questioned if there was a benefit to building this now regarding construction costs because of these economic times. Mr. Sawitzke stated that they expect excellent pricing.

Burke LeClair, Assistant Business Manager of Simsbury Schools, stated that the north and south stairway project at Central School is estimated at \$120,000. He stated that they have received several quotes and they look forward to maintaining this building.

Chairman Loomis questioned if the \$120,000 amount was adequate to do this project. Mr. LeClair stated that Mr. Holden was comfortable with this number.

Chairman Loomis stated that the Planning Commission ordinarily does not deal with maintenance. He questioned why they were looking at this project. Mr. Sawitzke stated that the 8-24 referral is required for any building work, park work, roads, sidewalks, etc. Central School is major capital work on a building.

Commissioner Bednarczyk introduced the following resolution, which was seconded by Commissioner Jansen.

RESOLVED: that the Planning Commission of the Town of Simsbury approves the following project pursuant to Section 8-24 of the General Statutes of Connecticut:

Design and construction of a new, combined parks and golf maintenance facility to be situated at the Simsbury Farms Recreation Complex.

The resolution was approved unanimously; 6 votes in favor and zero (0) votes opposed.

Commissioner Meyer introduced the following resolution, which was seconded by Commissioner Bednarczyk.

RESOLVED: that the Planning Commission of the Town of Simsbury approves the following project pursuant to Section 8-24 of the General Statutes of

Connecticut:

Re-building of the brownstone egress stairs on the north and south ends of the 1911 original Central School building and partial re-pointing of the brownstone/masonry on the building.

The resolution was approved unanimously; 6 votes in favor and zero (0) votes opposed.

Mr. Sawitzke discussed FY 2010/2011 capital projects with the Commission members. He stated the projects listed with an asterisk next to them mean that these projects were submitted to the Economic Stimulus Program. Any projects that are selected for this program will be moved to FY 2009/2010. Mr. Sawitzke also discussed TY 2011/2012 projects, including: Police dispatch console replacement; Route 10/Hoskins/Ely intersection, which is dependent on State funding; Hopmeadow underground power and fiber optics, which is dependent on the utility companies; energy conservation improvements, which are Town wide and consist of window replacement and automatic temperature monitoring; municipal lots and walks; WPCA projects, which would be funded through grants; Simsbury Farms Apple Barn renovations, which will become a full program center; and Memorial Park improvements. Regarding capital projects for 2012/2013, Mr. Sawitzke included: Ethel Walker, Phase 2A; Farmington River trail, which will connect the trail with Canton and Avon; Sewer extensions, which are replenished by requesting residents; mapping system upgrades, which is a regional project; Eno air conditioning and energy controls; which is a project already designed; paving management; West Mountain Road area sewers – interceptor sewer, which is for a major study to tie into the West Mountain Road area; and golf course improvements. Mr. Sawitzke stated that the projects for 2013/2014 are speculative.

Commissioner Post commented that he does not understand why the Town is renovating schools but is not putting in air conditioning at the same time. He stated that schools now have many uses, such as community centers and shelters.

#### IV. 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 3/10/2009)

Mr. Mallin stated that since the last meeting, he has prepared a revised map that shows that overall site. He was responsive to the discussions at the last meeting and has shown a 100' buffer running the length of Hopmeadow Street. Mr. Mallin distributed the landscape easement, which addressed what the uses in this area may be. He stated that the primary difference between a conservation easement and a landscape easement is that a conservation easement is intended to keep property in its natural state;

a landscape easement is intended to preserve the land without any building, although its use would be appropriate landscaping, a manicured lawn, etc. Mr. Mallin stated that they have put some other provision in the easement because there is no proposal for the property; they have reserved the ability to come across the landscape easement with appropriate access points. Mr. Mallin stated that the conservation easement that was discussed had one change with respect to the timing of recording the easement, that it be tied to the issuance of a certificate of occupancy.

Commissioner Meyer questioned if the conservation easement would allow public access. Mr. Mallin stated that it would not. It is intended to preserve the land in its open character.

Commissioner Jansen questioned if the 100' setback would start at the State right of way. Mr. Mallin stated that it would start at the property line; the State highway is beyond the property.

Commissioner Meyer questioned if the conservation easement was being placed over the sewer easement. Mr. Mallin stated that part of it is, although most of it is not.

Mr. Mallin stated that the total of new Lot 1, after division, would be 99 acres. Of this, 43.89 acres is wetlands. In addition to that, there is another 8.5 acres, which is not wetlands, although it is within the floodplain zone, which has essentially the same restriction as a wetland. This is a total of approximately 52 acres. He stated that the existing coverage on the property is in excess of 10 acres.

Regarding proposed Lot 3, Mr. Mallin stated that this is intended to be 40 acres; the wetland area is 3.07 acres. The easements proposed by HARCO is approximately 9 acres.

Mr. Mallin stated that the subdivision they are proposing, proposes no activities for development. This is simply a subdivision to allow the sale of the property as allowed by the Connecticut General Statutes. Although the Regulations speak to a 20% open space, but, the law requires that to avoid these requirements from being confiscatory, both the Regulations have to be reasonable and the application of the Regulations have to be reasonable and impartial. The fact that the Regulations state 20% does not mean that they can be applied at 20% without consideration of the reasonableness of the extraction taken.

Commissioner Meyer stated that there was a WPCA report that indicated that a potential buyer had the capacity for the sewage. The potential buyer stated that they had "x" number of a certain size housing and "x" number of apartments, etc. She questioned if there truly is activity proposed for this property. Mr. Peck stated that the WPCA report does not have any

relevance to this subdivision. That does not guarantee that a purchaser will purchase the property.

Mr. Mallin stated that the POCD shows this area was considered to be a special area. On the Open Space Plan for 2007, there is no showing of a requirement for open space in this area. In reviewing the POCD, the Plan clearly recognizes the authority of the Zoning Commission as to these parcels within the I-1 Zone. He stated that this goes to the issue of the Commission considering the reasonableness of what is being proposed; the POCD is this Commission's guide.

Mr. Mallin stated that new Lot 1 is not showing any new development. This area was approved by the Zoning Commission; it has an approved site plan. He stated that he feels that 20% open space requirement is neither applicable to nor required to be applied with respect to new Lot 1. Under the Zoning Regulations, which are applicable to this property, the coverage ratio creates the open space.

Chairman Loomis questioned what the process was with respect to new Lot 1. Mr. Peck stated that the Commission needs to look at what land is developable on the property and the constraints on the lot. Then the Commission can assess whether the lot can be developed or not. Based upon how the parcels are cut up by the easements, it would be difficult to develop it with anything of substantial size.

Commissioner Bednarczyk stated that she would like to make a motion to conduct a public hearing on this application. Attorney DeCrescenzo stated that the general rule in Robert's Rules is that a motion for reconsideration needs to be made by someone on the prevailing side. If the Commission were to find, however, that something presented to the Commission tonight was substantially and materially different than what was considered at the previous meeting, then it can be decided that the new aspect would need to be subject to a public hearing. He stated that he does not believe that an adjustment of the map rises to that level and would be appropriate for reconsideration.

Commissioner Meyer stated that she does feel that the revised map submitted by the application is substantially different in that it now fully delineates the wetlands. She does not feel that the application was a complete application when submitted and that it does not comply with the Regulations. Commissioner Meyer also felt that many of the alternates who weighed in on the first public hearing stated that they thought this placement of the easement would come back around to this Commission in the future.

Mr. Mallin stated that the Commission does not determine if an application

is complete; this is determined by the applicant. Commissioner Meyer disagreed with Mr. Mallin and referenced the Viking Construction case as support for her statement.

Commissioner Bednarczyk made a motion to have a public hearing on this application.

Commissioner Houlihan called the motion in question. He stated that the motion was made by someone without ordinary standing to make the motion. The only exception is that if there is something that is materially different than what they have been looking at. He stated that the motion to reconsider is out of order. Chairman Loomis agreed that this motion is out of order.

Regarding proposed Lot 3, Mr. Mallin stated that the applicant feels that the open space requirement is unnecessary because this land is in the I-1 Zone and subject to the same coverage requirements under Zoning. He stated that the applicant is willing to provide, in addition to the conservation easement, a landscape buffer of 100 feet, as shown on the map. There would be a total of a 100' setback from Hopmeadow Street. This generates approximately another 3 acres of open space on the property.

Mr. Mallin stated that the Planning Commission acts in a purely administrative capacity; it must determine if the plan complies with the overall requirements of the Regulation. If it does, then the Commission has no discretion and must approve the plan. In doing so, the Commission must act reasonably and cannot impose any unreasonable requirements on the applicant. Also, the Commission must judge the application as it has been presented by the applicant. Mr. Mallin stated that their plan complies both with the Zoning Regulations and the Regulations of the Planning Commission.

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: 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, 9 acres buffer, bermed and landscaped conservation easement shall be placed along the frontage of Hopmeadow Street on the new 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. A parking easement shall be placed over the most easterly 100' of the conservation easement to allow the applicant to have impervious surface up to that point. In addition, a 100' wide, 2 acre conservation easement shall be placed along the northerly border of newly created Lot #3 to protect the abutters. This easement

shall be buffered, bermed and landscaped and will be determined at the time a site plan is submitted to Planning and Zoning. Additionally, a 191 foot easement along the Farmington River frontage of both remaining Lot #1 and newly created Lot #3 will comprise the remaining 17 acres of open space requirement. In addition, the Planning Commission shall waive the strict application of dry land to wet land ratio in the conservation easement as required in the Simsbury Subdivision Regulations, Section 3, General Provisions 9c. Also, the Planning Commission shall consider a modification to the conservation easement should an applicant wish to request one at the time of the site plan that the site plan is filed with the Town of Simsbury. Commissioner Bednarczyk seconded the motion.

Commissioner Houlihan stated that the Commission does not know what the impact of this easement will be.

Attorney DeCrescenzo stated several technical changes to Commissioner Meyer's motion, including:

1. Regarding the 100 foot parking easement, characterize it as follows: construction of parking lots and impervious surfaces shall be permitted activity beyond 200 feet of the street line.
2. That the easement areas shall be shown on the final easement map prior to recording.
3. That the easement documents be reviewed by the Town Attorney and the Planning Commission prior to recording.

Mr. Peck also stated several technical changes, including:

1. This motion contains another motion internally to include the waiver of open space.
2. There was a portion of the motion, which stated that the conservation easement modification could be proposed in the future. This would involve more than this Commission. He does not believe that this Commission could state that it can tell what other Boards will do or not do.
3. The establishment of building lines, other than what the Zoning Regulations establish, is the jurisdiction of the Zoning Commission.
4. The parking location is also a site plan issue and is the jurisdiction of the Zoning Commission.
5. The berm and landscaping requirement is a site plan issue and is the jurisdiction of the Zoning Commission.

Attorney DeCrescenzo stated that he would also add to the motion the following: that the Planning Commission has determined that the conservation easement as depicted in the motion is proper and reasonable to meet the open space requirement found in Article 3, Section 9a of the Simsbury Subdivision Regulations.

Commissioner Meyer amended her motion to include all of Attorney

DeCrescenzo's technical changes, as well as Mr. Peck's Item #2. Commissioner Bednarczyk seconded the amended motion.

Commissioner Jansen stated that he could not vote in favor of this motion without a site walk and seeing the stakes. Commissioner Houlihan stated that he does not see the benefit of placing a conservation easement over what is already there. He does not feel that it is good public policy to place restrictions on this property so the new owners have to come back before this Commission. Commissioner Cole stated that the way this motion is worded regarding the parking, it allows the first thing to be seen from the road is that parking. She does not agree with this. Commissioner Post stated that he cannot vote in favor of this motion. Commissioner Drake stated that considering the history on the southern gateway, the POCD considers that the ridgeline should be maintained. Since there is no formal application for development, it seems prudent to put a setback on the property, which can be modified in the future. Commissioner Eisenmann stated that he supports Commissioner Meyer's motion. Commissioner Meyer stated that she feels this Commission should be hearing from the neighbors. Also, because the Commission does not know what will be developed on this property, it will make the future owners come back before this Commission. Commissioner Bednarczyk stated that she agrees with this motion and feels that it is land use planning. By this motion, they will be taking care of the neighbors, the scenic vista, the open space requirement and also making this a buildable lot. Chairman Loomis stated that he cannot support this motion. The setbacks in the POCD are applicable to the CL&P property; the language is particular to that parcel. The 100 foot line is within the Regulations because the parcel fronts on an arterial road.

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

Attorney DeCrescenzo stated that Article 3, Section 9b is requiring a supermajority to approve a proposed dedication of open space, which is less than 20% of the area of the subdivision. He stated that if the Commission reserves to itself, the discretion to determine something less than the threshold amount of the open space, then the exercise of that discretion is not a statutory waiver.

Commissioner Houlihan made a motion that the Planning Commission approve the application, as amended, with the landscape easement and the conservation easement as proposed. The Commission finds that those easements are proper and reasonable within the meaning of Subdivision Regulations 9.a and with the recommendation in the event a development is proposed for the property, that the Zoning Commission give due regard to creating sufficient and adequate buffer along the northern boundary to



protect the residents adjacent to that line. Secondly, to give due regard to the preservation, to the extent feasible, the view of Talcott Mountain ridge. Commissioner Jansen seconded the motion.

Attorney DeCrescenzo stated several technical conditions in addition to the motion, which included:

1. That the final Subdivision plan show the conservation easement and landscape easement as shown on the revised application map of March 24, 2009.
2. That the conservation easement and landscape easement as shown on the final Subdivision map be recorded prior to the issuance of any certificate of occupancy or temporary certificate of occupancy for any structure built on Lot #3.
3. That all other conditions of the Simsbury Subdivision Regulations not shown on the final Subdivision plan be complied with prior to the issuance of any certificate of occupancy or temporary certificate of occupancy for any structure on Lot #3.
4. That the form of the conservation easement and landscape easement shall be reviewed and approved by the Town Attorney and the Planning Commission prior to recordation by the owner.

Commissioner Houlihan accepted #1, #2 and #4 amendments to his motion. Commissioner Jansen seconded the amendment. Commissioners Houlihan, Jansen, Post and Loomis voted in favor of this motion. Commissioners Meyer and Bednarczyk voted in opposition.

#### V. POSSIBLE APPROVAL OF MINUTES from March 10, 2009 Regular Meeting and March 10, 2009 Joint Meeting

Several edits were made to the March 10, 2009 regular and joint meeting minutes.

Commissioner Post made a motion to approve the March 10, 2009 regular meeting and March 10, 2009 joint meeting minutes as amended. Commissioner Houlihan seconded the motion, which was unanimously approved.

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

Chairman Loomis asked the Commission members to consider whether they would like to make a statement regarding the proposed PAD regulation. He stated that if they were to have a timely impact as a Commission, they need to do this soon.

Mr. Peck stated that he has received several comments from individuals. He stated that they would like to get the next version of the draft regulation finished within the next few weeks so that it can go to a public meeting in

April with a public hearing in May. Mr. Peck stated that although he would like to hear from all Boards and Commissions, individual comments, as soon as possible, are best because of the timeline.

#### VII. STATUS OF CONSULTANTS' PROPOSALS FOR A TOWN CENTER CHARRETTE

Mr. Peck stated that the revised proposals were sent back to the consultants. Two of the consultants have already agreed to revise their proposals. There is currently \$52,300 available for the Town Center Charrette. Mr. Peck stated that the consultants' revised proposals will come back to the Town reflecting a level of service that is based upon a level of money that is available. He stated that all of the consultants have expressed that they are frustrated with the process.

#### VIII. STAFF REPORT(S)

Regarding the Incentive Housing Zone, Mr. Peck stated that a meeting was held on March 18th, where a presentation was given by Concord Square Planning and Development. He stated that property owners who have expressed interest in this study attended the meeting. This is a proposal to try to add some increased density in residential housing, 80% of which would be market rate and 20% would be for workforce housing. Mr. Peck stated that they will be trimming the sites down to 6 sites. He stated that the Design Review Board stated that they would be willing to participate in creating the Design Guidelines for this regulation.

Mr. Peck stated that the Town now has the ability to fine someone \$150 per day for each zoning violation, should the Town decide to impose this. He stated that this is approximately the fourth step in this process. He stated that this is a good tool, although he hopes that it does not have to be used.

#### IX. COMMUNICATIONS AND ADMINISTRATIVE BUSINESS

There were none.

#### X. ADJOURNMENT

Commissioner Bednarczyk made a motion to adjourn the meeting at 10:23 p.m. Commissioner Jansen seconded the motion, which was unanimously approved.

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Gerry Post, Secretary

