

From: Lois Laczko January 31, 2011 12:03:00 PM
Subject: Planning Commission Minutes 12/14/2010 ADOPTED
To: SimsburyCT_PlanMin
Cc:

ADOPTED

PLANNING COMMISSION MEETING
December 14, 2010
REGULAR MEETING

I. CALL TO ORDER (Secretary to be Acting Chairman)

Acting Chairman Paine called the regular meeting of the Planning Commission to order at 7:00 p.m. in the Main Meeting Room at the Simsbury Town Offices. The following members were present: Mark Drake, Ferg Jansen, Sean Askham, Chip Houlihan, Tina Hallenbeck and Alan Needham. Also in attendance were Howard Beach, Environmental Compliance Officer, as well as other interested parties.

II. SEATING OF ALTERNATES

Acting Chairman Paine appointed Commissioner Askham to serve in the absence of John Loomis.

III. APPROVAL OF MINUTES November 23, 2010

Several edits were made to the minutes. The minutes were tabled until the next regularly scheduled meeting in order for the Commission members to review the audio tape of the November 23, 2010 meeting.

IV. PUBLIC HEARING(s).

a. Amendment to Section III, Subsection 9 of the Town of Simsbury's Subdivision Regulations:

- Addition of Subsection d: (NEW) Fees in Lieu of Open Space
- Addition of Subsection e: (NEW) Procedure

Attorney DeCrescenzo stated that he did recommend changes to the 10/11 draft. On Page 2 under Documentation, he stated that there is no authority to establish a first priority lean; there is no authority to require a lean. He suggested the following substitute language: "As a

condition of acceptance of the applicant's fee proposal, the applicant shall agree to a consensual lean in the amount of the fee. Such lean shall be encumbered against each approved lot in the amount equal to the fee for such lot." He stated that it is up to this Commission if they would like to include this lean language in the regulation.

Commissioner Houlihan stated that if the Commission uses this suggested language, the Certificate of Occupancy is conditioned upon satisfaction of payment of the fee for the lot. The Commission has then locked up the property and no one can move in until the Town is paid for that lot. Attorney DeCrescenzo suggested having this as a Temporary Certificate of Occupancy.

Commissioner Jansen suggested having this language omitted from the regulation. Attorney DeCrescenzo suggested the following language: "As a condition of acceptance of the applicant's fee proposal, the applicant shall agree that the amount of such fee shall be paid prior to the issuance of a temporary or permanent Certificate of Occupancy for each subdivided lot. Such fee shall be paid pro rata for each subdivided lot."

Attorney DeCrescenzo stated that the Fee In Lieu of Regulation is allowed under the State Statutes. It is another tool that is available to the Commission when they feel it is advisable. He stated that the other change that has been made to this Regulation is a change that allows the subdivider an alternative method of determining the value or flat fee for each subdivided lot. Attorney DeCrescenzo stated that many Towns already have this type of regulation in place, which works well.

Commissioner Needham stated that using the Fee In Lieu of Regulation needs to be brought up by the developer; it cannot be initiated by the Town. He stated that this makes him more comfortable with this regulation. Acting Chairman Paine stated that the Commission would get a proposal from an applicant, which the Commission could accept or reject.

Acting Chairman Paine asked if there were any comments or questions from the public.

Mr. Rieger, 9 Stodmor Road, stated that he is in favor of this Regulation, although he would like it if the Commission could initiate this process with developers. He stated that the Town often gets open space that is not worth anything. He stated that he is in favor of this proposal and hopes that the Commission will be aggressive in using it.

Mr. Lane, 135 Old Farms Road, stated that he would agree with Mr. Rieger regarding the Town accepting land that is inaccessible or worthless in the form of open space. However, frequently the Simsbury Land Trust

does get land that would be inaccessible if it were not for some of this open space. He stated that it is not always evident what the land is used for.

Mr. Beach stated that the Chamber of Commerce sent a letter in support of this Regulation.

Commissioner Houlihan made a motion to close the public hearing. Commissioner Drake seconded the motion, which was unanimously approved.

Commissioner Drake stated that this Commission has been reviewing this Regulation for the past several months. He feels that this is another tool for the Commission only if they believe it is in the best interest of the Town to use it. He believes that they should move forward and pass this Regulation.

Commissioner Askham stated that he also feels this is a great tool for the Town. He is in support of the draft with the recommended changes.

Commissioner Hallenbeck stated that she supports this Regulation.

Commissioner Needham stated that he believes this is a good tool, which will help get quality open space for the Town.

Commissioner Houlihan stated that the Town owns a lot of pieces of open space that are not coordinated. He feels that this Regulation gives the Commission another option. There is a section regarding the alternative payment for smaller subdivisions, which is an option that the developer can pay a fixed fee. He stated that he has been struggling with the \$2,500 payment for each lot. He feels that this is on the low side, although he is unsure of what the number should be.

Commissioner Jansen stated that he questions the number as Commissioner Houlihan does. Also, he questioned if the Regulation should be passive, no fields. He stated that he is unsure if the Town is allowed to use the fees from this Regulation to build recreational fields. He feels that the money should be used for open space. Commissioner Askham suggested using the language from the Subdivision Regulations regarding open space.

Attorney DeCrescenzo stated that the Commission could restrict the use of the funds so that they are only used for open space. The money could be protected for that purpose if the Commission puts a condition on that money.

Acting Chairman Paine also stated his concerns regarding the fee of

\$2,500 per lot. He feels this is on the low side, although the Commission can accept or not accept the offer. He also feels that the money that is collected from this Regulation should go to open space; the intention is not for recreation.

Regarding changing the \$2,500 fee, Acting Chairman Paine stated that this amount was based on research done by the Town Assessor and Town Planner. He stated that he is not in a position to decide on another figure. Commissioner Drake stated that the intent of this figure was for smaller subdivisions, which he feels is adequate.

Acting Chairman Paine stated that he is less concerned about requiring the land for passive recreation as he is for the maintenance of the land. Attorney DeCrescenzo stated that he does not believe the money could be used for maintenance, only for acquisition.

Commissioner Houlihan made a motion to delete the word "recreational" in Paragraph five of the Fee in Lieu of Regulation so that the fund accumulated would be used for the purpose of preserving open space, acquire any additional land for open space or for agricultural purposes. Commissioner Jansen seconded the motion.

Commissioner Askham stated that he feels that the word "recreational" should be left in to be used as a tool, understanding that when a proposal comes before this Commission, they have the influence to steer the applicant toward the open space or agricultural provision and away from the recreational provision.

Commissioner Houlihan stated that recreation includes much more than fields.

Mr. Beach stated that adding the word "passive" before the word "recreational" would eliminate fields.

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

Commissioner Houlihan made a motion to add the word "passive" in front of the word "recreational" in Paragraph five of the Fee in Lieu of Regulation. Commissioner Jansen seconded the motion, which was approved. Commissioner Askham voted in opposition to the motion. The motion passed 5-1.

Commissioner Drake made a motion to approve the draft resolution with the following changes: the word "passive" be inserted in front of the word "recreation" in Paragraph Five; and the additional wording be inserted

on Page 2 under Documentation, "As a condition of acceptance of the applicant's fee proposal, the applicant shall agree that the amount of such fee shall be paid prior to the issuance of a temporary or permanent Certificate of Occupancy for each subdivided lot. Such fee shall be paid pro rata for each subdivided lot." Commissioner Jansen seconded the motion.

Commissioner Houlihan stated that he is still concerned with the \$2,500, which seems low to him. Commissioner Drake stated that this is a starting point. He feels that this number is acceptable because the experts have said that this number is reasonable.

The motion was unanimously approved.

V. CGS 8-24 REFERRAL FROM THE BOARD OF SELECTMEN ON PROPOSED MEADOWOOD LAND RESTRICTIONS (tabled at 11/23/2010 meeting)

Commissioner Jansen recused himself from this discussion. Acting Chairman Paine appointed Commissioner Needham to serve in the absence of Commissioner Jansen.

Attorney DeCrescenzo stated that this referral is before the Commission under General Statute 8-24, which requires the Planning Commission to review this application and report back to the Board of Selectmen regarding if this acquisition of land is consistent or inconsistent with the POCD.

Attorney DeCrescenzo stated that this Commission asked, at their last meeting, for information from the DEP regarding the affect of these additional restrictions on the Town's current use of the land. He stated that Griffin Land is willing to work with the Town and DEP to resolve the issue, whether or not these restrictions are inconsistent with the current agricultural use of the land and if they are inconsistent, whether those restriction can be modified to allow the current agricultural use to continue for at least the term of the existing lease. He stated that the Planning Commission could issue a report to the Board of Selectmen recommending additional restrictions placed on this parcel not be such that the existing agriculture uses of the land would not be allowed to continue because of the restrictions. Attorney DeCrescenzo stated that the Planning Commission is under a deadline to report back to the Board of Selectmen.

Commissioner Needham stated that the Plan of Conservation of Development promotes and protects existing farms and agriculture. The new restrictions should not interfere with this.

Commissioner Drake questioned why Meadowood does not put restrictions on property that they own. Attorney DeCrescenzo stated that the property that Meadowood sold to the Town would be very suitable for a grassland bird habitat. They are now requesting that the Town accept these additional restrictions. The Town is under no obligation to accept these additional restrictions.

Attorney DeCrescenzo stated that if the Planning Commission issues a negative report to the Board of Selectmen, under the Statute, the Board of Selectmen would have to approve the restrictions from Meadowood with the 2/3 vote. In Simsbury, a 2/3 vote on the Board of Selectmen and a majority vote is the same.

Commissioner Houlihan stated that the DEP has never identified what it is that they want to see done; they have never stated the problem, which makes it hard for this Commission to evaluate this issue.

Mr. Lescalleet, Griffin Land, stated that this is being asked of the Town because the land was initially part of the subdivision application. He stated that the land was sold to the Town at the Town's request on an accelerated basis in advance of their receiving the State approvals. He stated that Griffin Land agreed, provided that the Town cooperate in their obtaining the State approvals that were required. The basis for their requests for additional restrictions on this property lies solely with the fact that it was part of the project and the fact that they are trying to provide the DEP mitigation within the project. He stated that it was determined that there might be a way to provide a solution within the project itself; this is the proposal that they came up with for the DEP to consider. Mr. Lescalleet stated that because they are asking for additional restrictions this does not mean that there are not alternatives. He stated that they own a great deal of other land in the State.

Commissioner Houlihan stated that, at the last meeting, he had a clear understanding that this proposal was engineered by the DEP. He stated that it now seems that this proposal is being offered by Griffin Land to the DEP. Mr. Lescalleet stated the proposal before the Town is the result of discussions with the DEP that resulted in a proposal to restrict the property. This was one discussion with the DEP regarding how mitigation could be provided within the project. It was also discussed that something could be done with the triangle property, although they negotiated with the DEP not to include the Triangle as well as other areas.

In response to Commissioner Houlihan's concern regarding what the problem that the DEP is trying to solve, Mr. Lescalleet stated that the Town has volumes of information regarding this project, including site

investigations regarding wildlife species. All of this information is of record and on file with the Town. He stated that the DEP issues its concerns and asks the applicant to provide a solution. Commissioner Houlihan stated that the Commission has not received that list of concerns.

Acting Chairman Paine stated that the key is to be sure the farmers that have a long-term agreement with the Town be able to continue to farm the land.

Commissioner Drake stated that because the Commission is up against a time clock, he believes the only option is to recommend to the Board of Selectmen that they get together with the DEP to make a decision. He stated that the Board of Selectmen is not up against a clock. Acting Chairman Paine stated that the Planning Commission has several options, including taking no action on this referral, which is deemed by the Board of Selectmen as a positive referral. He stated that the Commission could also make a conditional approval or denial based on certain conditions or they could approve this referral.

Commissioner Houlihan stated that he believes the Planning Commission should not give a positive referral to the Board of Selectmen. He stated that when additional information is received, the Commission can deal with this referral again in a more responsible manner.

Attorney DeCrescenzo stated that another option that this Commission has is to state the facts and issue a report to the Board of Selectmen indicating what the POCD states; the interests that this Commission is wanting the Board of Selectmen to protect; the issues that the Commission is concerned with; and that this Commission strongly recommends that the Board of Selectmen resolve these identified issues prior to proceeding with final action. He stated that this would be neither a positive or negative referral. Attorney DeCrescenzo stated that there has been somewhat of a partnership between the Town and Griffin Land that has developed over the years and in his opinion it is important that the Town makes good on the Town side of that partnership and work with Meadowood to try to work through this if it can be done. Also, the existing leases with the farmers need to be respected.

Mr. Lane, representing Hall Farm, stated that he was asked to put together a list of farming practices that could be affected by the bird habitat. He stated that there are 8-9 things on this list. The number one issue is the issue of pesticides, which are restricted by the DEP's language. The other issues would be the method of tillage and the use of row covers, cloaks and high tunnels.

Mr. Lane stated that he would like to make sure there can be a resolution that does not restrict organic farming. He urged the Commission

to approve a conditional resolution so their farming can continue or to not approve it at all.

Commissioner Drake questioned if the Town was able to make some kind of arrangement where the Town could accommodate both Griffin Land and the farmers, would he be willing to substitute land that the farmers are currently farming to taking some of the Triangle as agricultural space. Mr. Lane stated that the ground that they are currently using has laid fallow for ten years. Although this is a solution, he is not certain that the people who live across from the Triangle would feel this was a good solution.

Mr. Lescalleet stated that in order for them to proceed, they need something affirmative, although not necessarily closed. He stated that coming up with some sort of agreement in principle to collaborate to come to a resolution may be enough to satisfy the DEP.

Commissioner Houlihan questioned if there are standards for best practices for organic farming. Mr. Lane stated that he submitted a 15 page organic practice guide, which is referenced in the lease the farmers have with the Town. He stated that organic farming practices are geared to soil and water conservation, which have to be matched up with what the DEP wants.

Mr. Rieger stated that regarding ground nesting birds, he made the suggestion that parcel D-2 be given over to these birds; he stated that there is a great need for this.

Commissioner Askham stated that he does not understand why Griffin Land did not get a ruling from the DEP regarding the current usage of the land. He does not believe it is the responsibility of the Planning Commission to try and answer these questions. He stated that he cannot give a positive referral to the Board of Selectmen regarding this issue.

Commissioner Drake stated that he believes the only option that the Planning Commission has is to send a recommendation to the Board of Selectmen stating the Planning Commission cannot make a positive or negative recommendation at this time because of the lack of information and that it is up to that Board to modify the lease with the farmers after input from DEP is received to see if the farmer's needs can be taken care of and if not, modify the agreement.

Attorney DeCrescenzo stated that the Planning Commission can issue a report to the Board of Selectmen after considering the matter of additional restrictions on Parcel D2, that without additional information, the Planning Commission cannot give a positive referral. However, the

Planning Commission can inform the Board of Selectmen of its deliberations of the additional restrictions on Parcel D2 and that the Board should strongly consider the following goals and objectives: the preservation of agriculture on the land consistent with the original deed; and honoring the contractual obligations of the lessees because these leases are consistent with the POCD.

The Commission members stated that the report to the Board of Selectmen also needs to include: pesticide use, farming practices; and the current lease and usage of the land and the premise under which the Town purchased the property. Commissioner Needham stated that the DEP also needs to agree that current practices can be maintained during the life of the lease or beyond. Acting Chairman Paine stated that this report to the Board of Selectmen would be a neutral report because the Planning Commission still has questions that need to be answered. The Commission discussed having a special meeting to discuss the report that would be drafted by Town staff.

Commissioner Drake made a motion to table the CGS 8-24 Referral from the Board of Selectmen on Proposed Meadowood Land Restrictions to a Special Meeting to be held on December 21, 2010 at 7:00 p.m. Commissioner Houlihan seconded the motion, which was unanimously approved.

Commissioner Jansen returned to the Commission.

VI. FIRST NOTICE AND POSSIBLE ELECTION OF PLANNING COMMISSION CHAIRMAN IN ACCORDANCE WITH ADOPTED PLANNING COMMISSION RULES AND PROCEDURES TO FILL POSITION VACATED BY JOHN LOOMIS.

Acting Chairman Paine stated that today is the first notice for election of a Planning Commission Chairman. The second notice will be on the January 11, 2011 agenda.

VII. STAFF REPORT(s)

There were none.

VIII. COMMUNICATIONS AND ADMINISTRATIVE BUSINESS

Acting Chairman Paine stated that there will be an 8-24 referral to the Planning Commission because it is an improvement to Town property. He stated that the Town applied for a \$150,000 grant for the Performing Arts Center. The Planning Commission is being asked to approve this so the Board of Selectmen can approve the agreement to get this money. They will be using this money for the Bandshell curtain system.

Commissioner Jansen made a motion to recommend the approval of the improvements to the Performing Arts Center. Commissioner Askham seconded the motion, which was unanimously approved.

Acting Chairman Paine stated that a Proclamation was given to John Loomis last week, which he read into the record.

TOWN OF SIMSBURY PROCLAMATION

WHEREAS, John Loomis was first elected to the Planning Commission in 2001, and served as Chairman from 2002 to 2010; and

WHEREAS, John has lived in Simsbury for over forty years and has experienced its beauty from “both sides” of the Farmington River; and

WHEREAS, John has volunteered significant time to foster preservation of Simsbury’s unique beauty as a member of the Open Space Committee; and

WHEREAS, John took the leadership role in creating language in the 2007 Plan of Conservation & Development to insure that generations to come would value and protect our scenic vistas; and

WHEREAS, John spent countless hours shepherding the Plan through countless drafts and re-drafts, joint meetings with other commissions (even on Saturdays!), public meetings until it’s final passage; and

WHEREAS, John took a leadership role in spearheading the Charrette in 2009 and passage of the PAD regulations in 2010; and

NOW, THEREFORE, Be it Resolved that I, Mary A. Glassman, First Selectman of the Town of Simsbury, do hereby proclaim Sunday, December 12, 2010 as

JOHN LOOMIS DAY

IN WITNESS THEREOF, I set my hand and cause the seal of the great Town of Simsbury to be affixed hereto on this 12th day of December, Two-Thousand and Ten.

Acting Chairman Paine asked that the Commission members to be ready to discuss their budget at the next meeting.

IX. ADJOURNMENT

Commissioner Jansen made a motion to adjourn the meeting at 10:08 p.m. Commissioner Askham seconded the motion, which was unanimously approved.

