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Cc:

ADOPTED

ZONING COMMISSION MINUTES
JANUARY 4, 2010
REGULAR MEETING

I. CALL TO ORDER

Chairman Gallagher called the Regular Meeting of the Zoning Commission to order at 7:38 p.m. in the Main Meeting Room at the Simsbury Town Offices. The following members were present: Ed Pabich, Bruce Elliott, Dave Ryan, Amy Salls, Madeleine Gilkey, John Vaughn and Robert Pomeroy, Jr. Also in attendance were Director of Planning Hiram Peck, Town Attorney Robert DeCrescenzo, Commission Clerk Alison Sturgeon and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Gallagher appointed Ms. Gilkey to serve in the absence of Mr. Barnett.

III. APPROVAL OF MINUTES of December 14, 2009 and December 21, 2009

Several edits were made to both sets of minutes.

Mr. Elliott made a motion to approve the December 14, 2009 minutes as amended. Mr. Pabich seconded the motion, which was unanimously approved.

Mr. Pabich made a motion to approve the December 21, 2009 minutes as amended. Mr. Elliott seconded the motion, which was unanimously approved.

IV. PUBLIC HEARING(s)

a. Application of the Town of Simsbury for a Text Amendment to the Town of Simsbury's Zoning Regulations, pursuant to Article Ten, Special Regulations, Section H, Regulations Governing Uses Which Sell Alcoholic Beverages for a proposal to amend the wording of the existing zoning

regulation. (continued from meeting of 12/14/2009)

Mr. Ryan recused himself from the Commission for this discussion.

Mr. Peck stated that he spoke with Mary Glassman regarding this issue. The Board of Selectmen will be looking into a possible change to the Ordinance that addresses the issues that this Commission had considered were important to the BYOB policy and formalizing this particular policy.

Mr. Peck stated that, at this time, there are no changes to the Regulation. He stated that it is his understanding that the Board of Selectmen will be addressing this matter. Anything that comes in under the current Regulations with regard to alcohol would still come to this Commission.

Mr. Peck stated that his recommendation would be to close the public hearing and not take any action.

Mr. Elliott stated his concerns with the other part of this issue. He stated that this Commission was proposing to change the Regulation in order to limit the retail liquor store owner's opportunity to relocate within 1,000 feet. He is not objecting to the reasons for this; his concern are the potential implications for the unintended consequences. He stated that if the regulation is adjusted so the liquor store owner cannot relocate and take the business with him, he feels that this Commission would be giving the liquor store owner's landlord substantial leverage in negotiating the rents. Mr. Elliott stated that he is raising this concern now because he does not believe that this Commission has discussed this change in the regulation.

Mr. Peck stated that the permit goes with the address. The language change to this regulation would limit it to one location unless the Commission decides that the second location is acceptable. This change in the regulation would not allow the establishment of 8 or 9 different liquor stores within 1,000 feet of the original store.

Attorney DeCrescenzo stated that there are two permits. One permit is for the Liquor Control Commission, which is subject to the Special Permit under the Zoning Regulations. The language change will state that the business owner can move their liquor permit if the new location gets a Special Permit, although once this is done, the Special Permit in the old location goes out of existence.

Attorney DeCrescenzo stated that if the Commission decides to close the public hearing tonight, they can still deliberate and make small changes. If major changes are wanted, the public hearing will need to be re-opened. He stated that the timeframes do not apply.

Chairman Gallagher questioned if there were any comments for questions from the public. There were none.

Ms. Gilkey made a motion to close the public hearing. Ms. Salls seconded the motion, which was unanimously approved.

Mr. Ryan returned to the Commission.

V. DISCUSSION of Wagner property at 153 Great Pond Road regarding zone determination in accordance with Article Two, Section B. 1. f. and set possible public hearing date. (continued from meeting of 12/21/2009)

Mr. Peck stated that, because of the holiday, there was not sufficient time to do the additional research since the last meeting. He stated that there is no new information to report. Attorney DeCrescenzo stated that the title search that was done did not address the zoning of the parcel.

Ms. Gilkey made a motion to continue this determination until the next regularly scheduled meeting. Mr. Pabich seconded the motion, which was unanimously approved.

VI. DISCUSSION of Revised Draft of the Public Gathering Permit & Process

Mr. Peck stated that at the last meeting, there were questions regarding whether the Town would pass a Regulation that would require the applicant to sign particular documents and if the applicant would incur any additional liability. He stated that he is continuing to look into this. He stated that there was also concern regarding the permit application and wanting it to be more user friendly.

Attorney DeCrescenzo stated that he looked at the Statute for penalty for false statements, which has been ruled constitutional. He stated other types of instances where this Statute has been used to establish a Class A Misdemeanor. He stated that it is up to this Commission whether this permitting process is in the same class as these other types of activities. They should also consider that if they were a member of a non-profit organization, would they sign this application. Attorney DeCrescenzo stated that there is other language that could be inserted into the permit application that would create a disincentive in making an intentional untrue statement.

Mr. Pomeroy stated that he would not have a problem with the applicant having to state that, to the best of their knowledge, all of the facts in the application are true. He stated that he does have a problem with the

declaration that states if the Town finds something in the application that is not true, the applicant may go to jail. He finds this offensive.

Ms. Salls stated that she feels it is important that this is not a long process. It is also important that the applicant meet with Town staff to understand the process. She stated that she agrees with Mr. Pomeroy regarding having the applicant sign off on a statement of the facts being true rather than the declaration.

Attorney DeCrescenzo stated that the Commission could make all licenses for the Performing Arts Center contingent on this permit; if anything proves to be untrue or mistaken, then the license can be revoked.

Mr. Elliott stated that rather than having a declaration it should state on the application that the penalty of false or misleading information is revocation of the permit. The Commission members agreed.

Attorney DeCrescenzo and Mr. Peck stated that they will draft softer language for the Commission's review.

Ms. Salls questioned if the six week timeframe for the permit is too long. Mr. Peck stated that if a public hearing is needed, a minimum of four weeks is required. Before the application gets to the Commission, there are other agencies that the permit needs to go through; this is the additional two weeks.

VII. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

There were none.

VIII. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Mr. Peck stated that Code Studio will be back in Simsbury in January with the draft regulation. He stated that the Town is working hard to make sure funding is in place to have the consultant come back to Town two more times.

Regarding the February 1st workshop, Mr. Elliott questioned what would be covered during this time. Chairman Gallagher stated that the PAD Regulation would be discussed. Mr. Elliott stated that other issues also need to be given attention, which the Town has invested in.

Mr. Vaughn stated that people can still apply under the existing regulations that are currently in place. Mr. Peck stated that the current regulations do not fit the type of development that people are looking to bring in. He stated that he gets several calls per week from people who

are looking to bring in an application for a mixed use development. Mr. Peck stated that there is no way to encourage anyone to submit an application without a regulation in place.

Ms. Gilkey stated that it would be helpful if the Commission could get a definite understanding of what a PAD Regulation is supposed to do and what the Commission is trying to make that PAD Regulation do. She stated that if it is dependent on any other entity, it should be put aside; if it is not and it is an overlay zone, the Commission should deal with it as a separate entity and it should not be incorporating the Zoning Regulations or the Center Zone or form base zoning. Attorney DeCrescenzo stated that the PAD Regulation will become another chapter in the Zoning Regulations. Mr. Peck stated that this is an intermediate step between a use based regulation, which the Town currently has, and a form based code.

Ms. Salls stated that she does not want this Commission to be thought of as people who are not doing anything or doing the wrong thing. She feels that they are in a tough situation. She would like to have the workshop in order to get the knowledge she needs prior to moving forward.

Mr. Pomeroy suggested outlining a desirable timeframe to get things done. He stated that he is ready to do the work; he feels that the Commission needs to move forward. He stated that it seems reasonable if several workshops are needed, that the Commission should be ready to make decisions or have a public hearing on the PAD Regulation by February or March. He stated that the Commission needs to make deadlines and stick to them. Mr. Pomeroy stated that the Commission should get the Public Gathering Permit issue off of the agenda by the next meeting.

Mr. Pabich stated that these issues need to move forward. He suggested assigning a priority to what can be accomplished next, which he feels should be the PAD Regulation.

Ms. Gilkey stated that the Zoning Commission is getting a bad reputation for not taking action. She stated that this Commission's job is to set the precedents and to make the decisions and to vote on them.

Mr. Elliott stated that he feels this Commission should take up the PAD Regulation after being educated by Code Studio. To fill in the interim weeks, he feels this Commission should discuss the Zoning Regulations.

Attorney DeCrescenzo suggested having one meeting each month for applications and one meeting each month for workshops.

Mr. Ryan stated that the Town has the Zoning Regulation updates that were done by a consultant and was given to the Town approximately one year ago; this is the basis of the new Zoning Regulations, although they have not

been approved. He questioned if this was an issue that was important to move forward. Mr. Peck stated that there have been many discussions regarding the Regulations and there are questions that still need to be discussed by this Commission; they are not ready for public hearing.

Mr. Pabich stated that this Commission needs to listen to the Town staff and their recommendations. He stated that it has been clear that Mr. Peck and Attorney DeCrescenzo, who have been charged with developing a mixed use regulation, recommend that the Commission move forward with workshops regarding the PAD Regulation.

Mr. Elliott stated that he feels this Commission has an obligation to the residents that voted for the members to act in what is perceived to be in their best interest. He stated that he does take into consideration what the professionals say, although he is making his own decision about what the priorities for the work of this Commission are.

Mr. Pabich made a motion that the PAD Regulation be the first priority for the Zoning Commission. Ms. Gilkey seconded the motion.

Ms. Salls asked for clarification. She stated that it is her understanding that the Zoning Regulations are needed in order to move forward; the PAD Regulation is an add-on, but a necessary one for many reasons. Mr. Peck stated that the PAD Regulation is a part of the Zoning Regulation.

Mr. Pabich, Mr. Gallagher and Ms. Gilkey voted in favor of the motion. Mr. Elliott, Mr. Vaughn and Ms. Salls voted in opposition of the motion.

Ms. Salls stated that she would like to work on both the PAD Regulation and the Zoning Regulations at the next workshop.

Ms. Salls made a motion that the February 1, 2010 meeting become a Special Workshop and dedicate the first half of the meeting to the PAD Regulation and the second half of the meeting to the Zoning Regulations. Mr. Elliott seconded the motion.

Mr. Pabich stated that Ms. Sall's motion is addressing the next meeting, although the Commission is not assigning a priority to the issues. He stated that his motion was a motion addressing priority. The Commission agreed to have a discussion regarding priority at the next meeting.

The motion was unanimously approved.

IX. ADJOURNMENT

Mr. Pabich made a motion to adjourn the workshop at 8:43 p.m. Mr. Elliott

seconded the motion, which was unanimously approved.

Ed Pabich, Secretary