

From: Lois Laczko January 19, 2010 10:36:57 AM  
Subject: Zoning Commission Minutes 12/21/2009 ADOPTED  
To: SimsburyCT\_ZoningMin  
Cc:

ADOPTED

ZONING COMMISSION MINUTES  
DECEMBER 21, 2009  
REGULAR MEETING

I. CALL TO ORDER

Chairman Gallagher called the Regular Meeting of the Zoning Commission to order at 7:00 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 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 Mr. Pomeroy and Mr. Ryan to serve in the absence of Commissioners Vaughn and Barnett.

III. APPROVAL OF MINUTES of December 14, 2009

The December 14, 2009 minutes were tabled until the next regularly scheduled meeting.

IV. DISCUSSION of Wagner property at 153 Great Pond Road regarding zone determination in accordance with Article Two, Section B. 1. f.

Mr. Wagner, 152 Old Farms Road, stated that 153 Great Pond Road is owned by his mother. His parents bought the land in 2001; they live next to this property. The property is zoned R-80. He stated that his father purchased this land with the option as keeping it open space for 10 years; after that, he had the option to develop the property. This agreement was that this property could be preserved as open space or it could be developed; there is a ten year option period in which to do this. Mr. Wagner stated that the ten years is up on May 17, 2010. He stated that his family has not yet decided to keep the land as open space or to develop it, although they need to have the understanding of whether the land is zoned R-40 or

R-80. The value of the property is important either way.

Mr. Wagner stated that he feels a map mistake was made in 1996. Before 1964, the Zoning map shows this property as A-40, which is equivalent to R-40. In 1963, the Planning Commission minutes show an approval of a subdivision for this property. He stated that, in 1964, many zones were changed in this area of Town from R-40 to R-80. From 1964 to May 1996, the property was zoned R-40; the properties all around this property is zoned R-80.

Mr. Wagner showed an appraisal to the Commission members that was done when his father purchased the property. At that time, his father needed to know what the property was zoned. The Planning Department, at that time, stated that it was zoned R-40; it was taxed as R-40.

Mr. Wagner stated that, in May 1996, he believes someone made an error and brought the boundary line down on the map. He stated that he was told in the past that this was a mylar mistake. Another mistake was made to the Hop Brook area, which was corrected. The map was never corrected for 153 Great Pond Road. He stated that Town staff did look through all of the zoning changes and could not find evidence that the zoning changes were made to reflect an R-80 status.

Ms. Gilkey questioned if this property has been taxed as R-40 or R-80. Mr. Wagner stated that the tax records show that this property is considered as R-40. He stated that they have been taxed as a "special" for the last 8-9 years.

Mr. Pomeroy questioned when the Hopbrook area of Town was developed. Mr. Elliott stated that the area was already developed prior to 1964. Regarding the excerpt from the minutes of the Zoning Board, Mr. Pomeroy stated that the 1964 minutes state that the subdivisions are granted a three year privilege under the State statutes. He questioned if it was possible that, in the actual language that talked about changing this area from A-40 to R-80 and if the subdivision was approved in the allotted timeframe, that it would remain R-40, but if not, it would revert to the R-80 designation. Mr. Wagner stated that this does not directly apply to this situation; his legal counsel stated that this question would not be relevant to this situation.

Mr. Pomeroy questioned if there were any other properties in this area in 1964 that were either approved or in the process of being approved that would have switched from A-40 to R-40. He questioned if this research has been done. Mr. Peck stated that Town staff only focused on this particular property. In the 1960's, there were a series of zone changes in this area of Town.

Attorney DeCrescenzo suggested that no action be taken tonight regarding this issue. He stated that if after reviewing everything, the Commission believes this property should be zoned R-80, nothing needs to be done although he suggests that the map be readopted because there is not a clear adoption. This would require a public hearing. After reviewing this issue, if the Commission feels that the property was mistakenly designate R-80, they would need to follow the same process. A map correction would need to be made and a public hearing would need to be held. He stated that the Commission would need to determine whether or not there was a valid change in zone from A-40 to R-80 for this particular parcel.

Mr. Peck stated that this is a complex issue because the zoning maps from the 1970's have a phrase at the bottom of them stating that it is correct as of a certain date. He stated that it is unclear how that determination was made. The other issue is that the map, dated October 30, 1958, shows A-40 for the entire Town; A-40 is not directly transferable to R-40. He stated that he will continue to research the Commission member's questions.

Mr. Ryan questioned if there was any reason why this property should be zoned R-80. Mr. Wagner stated that the drainage is atypical in this area; the area has good drainage.

Ms. Gilkey questioned if perk tests would be taken into consideration when re-designating property. Mr. Peck stated that they probably took into consideration the extent of the sewer system although probably not the perk tests. He stated that the Commission needs to rely only on the records that can be found.

Attorney DeCrescenzo stated that there should be a clear set of minutes regarding the adoption of the map, although they have not found them as of yet.

Regarding the Zoning Board minutes from 1964, Mr. Pomeroy feels that their intent was to make this area of Simsbury a 2 acre minimum, although he feels that they were willing to protect the people who had already purchased the land and developing it as A-40. The question is if this would become a permanent right by virtue of having just applied for the subdivision, but never developed it.

In response to a question from Ms. Gilkey, Mr. Wagner stated that there are two right-of-ways on the 153 Great Pond Road property; one to Whitman Pond and one to Linda Lane. He stated that they also have access to Great Pond Road.

Mr. Wagner stated that if they do nothing by May 17, 2010, his family will

owe a significant sum of money to the Boehm properties and Peter Stitch, according to this agreement. If the property is conserved, it becomes open space and they will not owe this amount of money. Mr. Elliott stated that the decision does not have to do with whether the property is R-40 or R-80, it is whether the property is conserved or not. Mr. Wagner stated that this is correct; although the zone would determine the property's value.

Attorney DeCrescenzo suggested that the Commission schedule a public hearing to adopt a map, whether it be the current map without changes or a map with changes. He stated that he and Town staff will continue to research the Commission's questions.

Ms. Gilkey questioned if the number of years that this property was zoned A-40 would take precedence. Attorney DeCrescenzo stated that the documentation of the change of zone would take precedence. He stated that in 1964, they start to lose the trail of documentation.

Attorney DeCrescenzo stated that if the Commission feels that this property is correctly designated as R-80, but they would like to change it to R-40, this would be a different process.

Chairman Gallagher questioned if Town staff would have time to research this issue further prior to the next meeting on January 4th in order to schedule the public hearing to adopt the zone map. Attorney DeCrescenzo suggested that the Commission schedule a public hearing to adopt or re-adopt a zone map at their next meeting.

Ms. Gilkey questioned if there was a timeline to resolving this issue. Mr. Wagner stated that the May 2010 date is important. Ms. Gilkey questioned what the title search showed and what the closing documents state. Mr. Wagner stated that he has not ordered a title search; he will get the closing documents for the Town Attorney's review.

V. DISCUSSION of PAD Regulation status and set possible hearing date

Mr. Peck asked how the Commission would like to proceed regarding the PAD Regulation.

Mr. Pabich suggested having a workshop in order to update the new Commission members.

Mr. Elliott stated that the PAD Subcommittee met for a total of 8 weeks at which they attended many meetings. In his opinion, many things were rushed through because of the timeframe and the need to move ahead. He stated that there were no resources for additional expert guidance regarding some of the important issues. He stated that there is huge complexity in this

regulation.

Mr. Peck stated that he would send the new members background information from other Town's PAD Regulation and the draft regulation prior to the workshop.

Mr. Ryan stated that there are at least three different documents progressing along the path to becoming Zoning Regulations that are aimed at mixed use development. He questioned how many attempts in doing the same thing is the Town engaged in at the same time. Chairman Gallagher stated that several developers came in for mixed-use development. Several things got started because of different projects.

Mr. Elliott stated that the Board of Selectmen committed a great deal of money to Code Studio to produce a form based code for the Center of Town. The Town will be receiving that code shortly. He feels that the Commission should wait until that code is reviewed. Mr. Pabich stated that the issue is mixed-use, not form base code.

Mr. Ryan stated that the revisions to the Zoning Regulation are not implemented in the book nor are they on line on the Town's website. He feels that these updates need to be included on the Town's website.

Mr. Peck distributed the draft Zoning Regulations to the Commission members. He stated that the Commission has been working on these revisions during workshops over the last year. These changes are going into the draft, which will pertain to the whole Town. He stated that the Charrette pertains to the Town Center. He stated that the code for the Town Center will plug into the Simsbury Center Zone portion of the Zoning Regulation. The PAD Regulation will be a similar plug-in. Mr. Peck stated that the IHZ will be an overlay zone that would apply only to the 6-7 sites that were studied. He stated that they are working on several things at the same time. He is hopeful that in February or March of 2010, they can complete the set of regulations for the Commission's consideration and adoption.

Mr. Ryan stated that he feels that the changes that have already been made to the Zoning Regulations should be put on the Town's website.

Ms. Salls suggested having a workshop on the draft regulations first prior to discussing the PAD Regulation. Attorney DeCrescenzo suggested that the first workshop could be a discussion on the status of the Zoning Regulations, the PAD Regulation, the Charrette and the IHZ. The Commission can then decide what to tackle first. The Commission members agreed.

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

Mr. Peck stated that he would like the Commission members to review this so they can get this firmed up at the next meeting. This document will then be forwarded to the Board of Selectmen.

Ms. Salls stated that she feels this revised document is very long. She questioned what the amount of time was that someone would need in order to go through this process. Mr. Peck stated that the application needs to go through the different departments; this process takes only a few days. He stated that the difference between this revised permit and the current one is that it requires a meeting with the applicant to make sure Town staff gets everything they need. The other difference is the Declaration within the permit. This is to make sure everything is accurate and true.

Mr. Pomeroy stated that although he feels this revised permit is appropriate for some events, he does not feel it is appropriate for all events. He stated that the Town now runs the risk of offending people that might otherwise do great things for Simsbury.

Ms. Salls stated that she does not want irresponsible public gatherings. She feels that the permit looks more overwhelming than it may be. She suggested making it more user-friendly.

Mr. Ryan recused himself from the Commission during the rest of this discussion.

Chairman Gallagher stated that he met with Ms. Glassman regarding the alcohol portion of this permit. He suggested to her to make this issue an Ordinance. Ms. Glassman will bring this suggestion in front of the Board of Selectmen to hopefully put that in place. When there is BYOB, the Town is held responsible. If the applicant wants to sell alcohol, they need to come to the Town and they will be held responsible.

Attorney DeCrescenzo stated that there is currently an Ordinance for Town buildings. If alcohol is being sold, served, provided, etc. at an event, the applicant has to go through the Ordinance process. When this Ordinance was originally adopted, there was a conscious decision made not to extend it to Town property. He stated that Chairman Gallagher is talking about tackling this problem through this Ordinance and not through the Zoning Regulations.

Mr. Ryan returned to the Commission.

## VII. DISCUSSION of Incentive Housing Draft Zoning Regulation

Mr. Peck stated that the Design Review Board is working on the design guidelines that will go into the IHZ Regulation. The study has been

completed; the regulation has been drafted. He stated that this regulation can be applied to one or more of the seven sites in Town that were studied. He stated that the report gives an overview of the number of housing units that could be provided in Town if all of the sites are used; it is approximately 600-900 housing units. He stated that this is probably too many. They will need to pick certain sites that can go forward.

Mr. Ryan questioned if there was an implication in the wording of this regulation that there is an as-of-right component. Mr. Peck stated that there is no public hearing; this would be as-of-right.

Mr. Pabich stated that some of the owners of the seven sites may not have interest in doing this. He questioned if there was a mechanism in place to have substitute sites if they become available. Mr. Peck stated that all of the owners that volunteered for this study are still interested.

#### VIII. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

There were none.

#### IX. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

There were none.

#### X. ADJOURNMENT

Mr. Elliott made a motion to adjourn the meeting at 8:45 p.m. Mr. Ryan seconded the motion, which was unanimously approved.

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Ed Pabich, Secretary