

PLANNING & ZONING
COMMISSION
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

WILTON PLANNING & ZONING COMMISSION MINUTES FEBRUARY 22, 2016 REGULAR MEETING

PRESENT: Chairwoman Sally Poundstone, Vice Chairman Fiteni, Commissioners Scott Lawrence, Andrea Preston, Keith Rodgerson, Peter Shiue, Rick Tomasetti, and Franklin Wong

ABSENT: Secretary Doris Knapp (notified absence)

ALSO

PRESENT: Robert Nerney, Town Planner; Daphne White, Assistant Town Planner; members of the press; and interested residents.

PUBLIC HEARINGS

REGULAR MEETING

A. Ms. Poundstone called the Regular Meeting to order at 7:15 P.M., seated members Fiteni, Lawrence, Poundstone, Preston, Rodgerson, Shiue, Tomasetti, and Wong, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. January 25, 2016 – Regular Meeting

MOTION was made by Mr. Fiteni, seconded by Mr. Shiue, and carried (6-0-2) to approve the minutes of January 25, 2016 as drafted. Commissioners Wong and Preston abstained.

2. February 12, 2016 – Special Meeting

Ms. Preston noted a correction. She stated she was listed as a former member of the Water Pollution Control Authority when she is a current member.

MOTION was made by Mr. Lawrence, seconded by Mr. Tomasetti, and carried (6-2) to approve the minutes of February 12, 2016 as amended. Commissioners Wong and Preston abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

E. PENDING APPLICATIONS

1. SUB#915, 183 Ridgefield Road, LLC, 183 Ridgefield Road, 4-lot subdivision

Ms. Poundstone stated the Commission had worked long and hard on this application with lots of input and testimony. She asked if any Commissioners had questions.

Ms. Poundstone asked Mr. Nerney if there was anything he would like to comment on about the resolution. Mr. Nerney called the Commission's attention to conditions 19, 20, and 21, which were conditions that had evolved. Ms. Poundstone pointed out that item 20 had been a particular concern of Mr. Fiteni's and asked Mr. Fiteni if his concern regarding the drainage was dealt with. He stated he was currently reading it.

Mr. Shiue asked if there was any way to hit a certain level of improvement and Ms. Poundstone said that while they couldn't put it in numbers, they could add "shall raise." Mr. Fiteni suggested "shall increase." She asked Mr. Shiue if that helped and he replied it wouldn't hurt.

Ms. Poundstone said she was very glad the Commission had heard testimony in relation to item 19 and she liked the way it was worded.

A Commissioner stated the plan called for widening the driveway to 22 feet for a distance of 100 feet beginning at the Ridgefield Road intersection and extending southerly to a point just beyond the planned fire cistern. Mr. Fiteni stated the distance appears to be closer to 110 feet from the intersection. He clarified that it would be 22 feet beginning at the road for a distance of 110 feet in from the road. The Commissioner understood after the clarification and reaffirmed that it would taper down at a point just beyond the fire cistern on the back side. Mr. Fiteni said there was a full 22 feet where they could stop and park and take turns turning around. They agreed that 110 feet addressed safety concerns.

Commissioner Wong said he had a couple of things he was trying to reconcile after he read some of the subdivision paragraphs, particularly with regard to the open space. Conversation ensued

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on the open space and how the ownership of it would be handled; was ownership going to the town or the adjacent landowners. A Commissioner said he saw a draft of the agreement and in the Grant of Conservation Restriction, the Town of Wilton was the grantee. Mr. Fiteni stated that was to grant an easement but not the ownership of the land. Ms. Poundstone asked whose draft document it was and was told it was put together by the applicant's counsel. Ms. Poundstone asked if the town had reviewed that document.

Mr. Nerney asked Ms. White if it had been sent to Town Counsel. Ms. White replied she wasn't 100% sure but she pointed out #23 said it needed to be reviewed by the Town Counsel. Mr. Nerney said they're typically recorded concurrently with the filing of the map and then they have to be executed and would be subject to final counsel review.

A Commissioner pointed out that there had also been a question posed about regulations regarding ridgelines and scenic views. Mr. Nerney asked if this was from the Plan of Conservation or the state statutes. The Commissioner clarified that in the town's regulations he recalled seeing a paragraph that scenic views and/or ridgelines were to somehow be preserved. Ms. Poundstone said she did think she had a piece of paper in regard to the historic district and the scenic highway designation. The Commissioners agreed that it was a state scenic highway. The Commissioner said the reason he raised this was because 29-5.C.8.e.(6) on page 99 of the Town's Regulations says, "The Commission may prohibit or limit associated site improvements that are contrary to the historic origins of the property under consideration."

Discussion then ensued with regard to whether the house was considered an historic house or part of the application and whether site improvements should be prohibited or limited because of the historic origin of the property under paragraph 29-5.C.8.e.(6). The house was placed on the 1989 Historic Survey but that didn't mean it was given any protections. Mr. Nerney said the regulation was written a couple of years ago and was written to enable the construction of additions to nonconforming historic buildings. Discussion continued regarding the scenic road and ridgelines and if there was some obligation to protect the outcome of what the houses in the subdivision would look like. Mr. Fiteni stated the regulations allow the Commission to protect the topography, which was being done and he didn't believe it went beyond that. Ms. White pointed out that within the Plan of Conservation and Development on page 51 was the Scenic Resource Plan, which identified areas within the Plan as significant ridgelines. She said this area was not included in that list.

Commissioner Rodgeron stated that he had commented at the last regular meeting about the charge that the subdivision regulations give the Commission the sense that subdivisions and re-subdivisions shall be planned and designated in general conformity with the Wilton Plan of Conservation and Development, particularly with regard to preservation of land for open space and conservation. He said he had difficulty looking at the development and coming to the conclusion that it conforms to their Plan. He continued that older buildings and structures in Wilton that are not designated as historic resources still play an important in the town's historic character and that the Commission is charged to preserve features that contribute to Wilton's

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character and in particular to preserve Wilton's scenic roads and scenic views. He said Ridgefield Road is a state-designated scenic road. He said he'd like to make an argument that the road is a very important historic resource, that the historic spine of the town that starts with the Old Town Hall and the Wilton Congregational Church and goes up to Hillside Cemetery, which the property has bounded for 200 years. He said that forms an important part of the town's historical assets and that the Plan of Conservation and Development exists for the Commission to try to implement what the people rightly voted and invested in with regard to the Plan. He said that this type of development runs counter to the housing goals that are laid out in the Plan.

He continued that there's language in the Plan that references how the Commission is dependent on taxes to pay for town services and how they really need to encourage tax-positive development. He said that he thinks this development will take away more from the tax coffers than it will provide. Ms. Poundstone said she thought that was hypothetical and that's not where they are in the application.

The Commissioner stated they were commenting on a subdivision and the subdivision regulations state it needs to conform to the Plan. He said the Commission is charged with protecting the character of the neighborhoods and ensuring that future residential development does not detract from character. He said he has not seen a proposed development that does this so egregiously as the development they're considering. He said there's language with regard to watershed impacts. He said it states the town should ensure that redevelopment improves conditions by reducing storm water runoff and that redevelopment reduces runoff from current conditions. He further stated the development doesn't do that either. He said it was his opinion that the development was going to reduce the value of adjacent homes.

Discussion then ensued regarding the Plan of Conservation and Development and whether it superseded town zoning and subdivision regulations. Mr. Fiteni agreed the Plan guides but stated the Plan does not have any enforcement power or any regulatory authority. He said the regulatory authority lies within the subdivision regulations. Mr. Fiteni stated the regulatory authority to the developer or anybody coming before the Commission is the book and that is what the Commission has to judge by. Commissioner Tomasetti agreed and stated the Plan lays out a lot of broad strokes regarding historic resources, water resources, etc., but nowhere in there are any items that are specifically regulatory; in nature for example you must or you shall do A, B, and C as part of any action or improvements. He continued that at a later time they could debate the current subdivision regulations or the current zoning regulations as they maybe don't correctly or adequately reflect what's happening in the Plan but he agreed with Mr. Fiteni, that they have to go by the regulations. Otherwise, they have nothing to go by in order to make the recommendations and approvals. Another Commissioner disagreed and said it says very specifically where new housing should be placed and what the nature of that housing should be and there's a lot of very specific language with regard to historic preservation, character. He said this is the cornerstone of the town.

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Ms. Poundstone interrupted and stated the Commission had to return to the fact that in front of them was a draft of a document. She wondered if there were any additional comments from those who had not had an opportunity to speak. Then she asked if anyone was ready to move approval of the draft.

Mr. Fiteni said he'd like to change the language in #20 and add in order to avoid potential icing and to ensure that drainage/runoff reaches the catch basins to reach the underground retention structure.

Ms. Poundstone asked if there were any other possible changes. Ms. White pointed out since the previous meeting was canceled, the dates would change on the heading on the first page and the effective date would change to February 25.

Discussion then ensued regarding the open space and requirements for maintenance of the property. Commissioner Wong raised a point that the Grant of Conservation Restriction defines some of the duties that are supposed to take place. He said he didn't know the condition of the particular open space but he asked if they could include that there is an obligation of removal of invasive plants in order to maintain that property. He said as far as dead trees and removal of materials they should also be tending to the environmental aspects of that open space. Ms. Poundstone stated if they have to remove the invasives because the quantity of invasives in the wetland area, that they might have to replant. Ms. White said the Inland Wetland Commission might require that native plants be planted as replacements. A Commissioner asked if they worded it to the effect that cutting trees or plants, spraying with pesticides or insecticides, or disturbance or change in the natural habitat in any manner, with the exception that dead trees and unsightly dead materials and invasive species may be removed from the open space area subject to Inland Wetland Agency review if deemed necessary. They stated it is not obligated but it's authorized. It was deemed that if something does happen within the regulated area then that becomes an enforcement matter for the Environmental Affairs Department.

Mr. Fiteni asked Mr. Nerney if there was some manner in which you could obligate somebody to improve something rather than just maintain it. Mr. Nerney said he felt uncomfortable with that because it becomes a perpetual condition that runs with the property. Mr. Nerney said conservations easements have allowance for property maintenance, such as clearing dead trees and this could be extended to include invasive species; however, stated that such activity could be subject to review of the Town's inland wetland agency. The concept is to authorize land maintenance, but not necessarily obligate a property owner. Mr. Fiteni said if they wanted to remove invasive species they could. Mr. Nerney said they could enable them to have that right but thought a compulsory obligation changes the complexion of it. Mr. Fiteni agreed.

Ms. Poundstone said they had discussed the resolution at length and asked if she had a motion to approve as amended.

A Commissioner asked what the sum of the amendments were that they just discussed with

regard to the open space. Mr. Nerney stated a condition would be added to the resolution to the effect that the applicant shall amend the open space easement to contain the discussed language. Ms. Poundstone pointed out that they had also made changes in item 20 as well to ensure that the runoff goes where it's supposed to.

Mr. Wong wondered if the applicant wasn't required to obtain further permits if they could just build and the house layout could be moved. He was told the current plan was hypothetical. Mr. Nerney stated that the applicant would need a zoning permit with the exact housing layout and grading. Mr. Wong was told if the applicant came in with a plan that exceeded the site disturbance, they had limitations. Mr. Wong was told the applicant would go into the planning office and they'd review it for compliance like any other request. Ms. White said that's why they had added conditions #17 and 18 because if there are differences from the site plan than what was submitted to the Commission then they would need to submit additional information to address the changes.

MOTION was made by Mr. Fiteni, seconded by Mr. Lawrence and carried (6-1-1) to adopt as amended Resolution SUB#915, 183 Ridgefield Road, LLC, 183 Ridgefield Road, 4-lot subdivision, effective February 25, 2016. Ms. Preston abstained and Mr. Rodgeron opposed.

2. REG#15351, J. Casey Healy, To Amend Section 29-8.B.5.b.(9) of Zoning Regulations to modify parking requirements for commercial kennels

Ms. Poundstone asked if anyone had any points they wished to raise. Mr. Wong wondered how they're going to assign certain attributes to one part of the operation and then the another. He asked how is a kennel versus a veterinary operation determined. Mr. Nerney said the worst case scenario is they would bring it to the Commission if in doubt. Mr. Wong said he didn't think the Commission would be in a position to determine the amount of space which was a kennel versus vet. He was told in a hypothetical situation they could look to an architectural floor plan. If there were 4,000 square feet of kennel runs and the like behind the building, they would have to make that determination at that point. The current idea was addressing veterinary practices and really not kennels. Mr. Rodgeron said his suggestion was to break it out into two separate.

Some punctuation changes were made to line three.

A Commissioner asked if the underlying application that gave rise to all of this was withdrawn. Mr. Nerney stated that the business was still interested in Wilton and was reportedly pursuing other sites. Discussion was held that even though this was brought forward for a site-specific location, the Commissioners felt it would be good as a town-wide requirement. Ms. Poundstone said they did look very carefully at statistics on other comparable facilities both in and out of Wilton. A Commissioner stated each site would stand on its own merits and would need to meet the special permit test.

MOTION was made by Mr. Rodgerson, seconded by Mr. Lawrence, and carried (7-0-1) to adopt as drafted REG#15351, J. Casey Healy, To Amend Section 29-8.B.5.b (9) of Zoning Regulations to modify parking requirements for commercial kennels effective February 25, 2016. Ms. Preston abstained.

F. COMMUNICATIONS

1. Carlo Coppola, SUB#908, 54 Warncke Road, Request to waive bond requirement as per condition #14 of Resolution #0113-1S, due to State regulation change

Mr. Nerney read the letter submitted by Carlo Coppola. Mr. Nerney then explained that this was a two-lot subdivision that was approved subject to the posting of a bond, which typically requires everything from soil erosion, drainage, etc. He continued that there had been some changes at the state level that now allow the town to only bond for erosion control or if there are features that would be turned over to the town like a town drainage system or a public road.

Mr. Nerney explained that Mr. Coppola was asking that condition #14 be stricken in its entirety, noting that because there are wetlands on the property, a bond would be supplied to the Inland Wetlands Commission. He continued that other improvements calculated in the original bond can no longer be bonded. Mr. Nerney said the request was not an unreasonable request as there would still be a posted bond but it would be held by the inland wetlands agency and limited to erosion controls. He said the concept of requiring two bonds for the same purpose didn't seem like an equitable approach.

Mr. Fiteni asked if Wetlands was requiring the same soil and erosion control that the Commission would require, saying it might only cover one piece of the site that pertained to the wetlands and not the entire site. Mr. Nerney replied that Wetlands would be looking at the entire site and that their requirements were fairly comprehensive.

A Commissioner asked when the statute changed and Mr. Nerney answered probably a couple of years ago. The Commissioner asked if it had changed prior to this approval. Mr. Nerney explained that there had been a change at the state level that he was unaware of for several months, so technically it may have been in place around the time that the approval happened. Mr. Nerney said the bottom line was that today the Commission can not require it outside of public improvements and erosion control.

Mr. Nerney explained it was a two-lot subdivision and said normally they would be more concerned when it's a larger subdivision involving a town road, which he said the Commission could and should still retain bonds for. He said when they get into public improvements that the town has a direct interest as they want to make sure it's built properly.

MOTION was made by Mr. Shiue, seconded by Mr. Fiteni, and carried (7-0-1) to approve request to waive bond requirement as per condition #14 of Resolution #0113-1S, due to State regulation change. Ms. Preston abstained.

2. Seshan, 153 Cannon Road, Request to waive subdivision improvement

Mr. Nerney gave the background regarding this request. He explained the Seshans were in the audience in regard to their 153 Cannon Road property that is part of a two-lot subdivision. He said the property was divided into two lots and a house was built on one property. The other lot is still vacant. As part of the subdivision approval, there was a requirement that a fire cistern be placed on the property and be operational before the certificate of zoning compliance was issued for the first house. The house that was built never received a zoning compliance certificate. The entire subdivision was taken over by the bank in a foreclosure. The property with the house was recently purchased. The office cannot issue a zoning compliance without fulfillment of the operational fire cistern. The letter is asking that the cost be shared by whoever might buy the additional lot.

Mr. Nerney explained that back when the subdivision was approved, the subdivision application was sent out to the various reviewing agencies, including the Fire Department, who felt there was a need for fire protection in this area. He said typically the Fire Department will suggest either a fire cistern or in lieu of that some sort of internal fire suppression for instance a sprinkler system or a chemical system.

A Commissioner asked if the request had been reviewed by the Fire Department. Mr. Nerney said he'd had a discussion with the Fire Department and it's a different Fire Marshal than when it was approved. Mr. Nerney said the current Fire Marshal did not feel comfortable overriding an earlier recommendation. He said if the Commission wanted to reach out for a formal correspondence, which Ms. Poundstone said she thought would be important, he could do so. Mr. Fiteni said the question they should put to the Marshal is not to override it but to postpone it, which was what's being requested. Would the Marshal allow occupancy of the one house?

Mr. Nerney said to keep in mind that the requirement was a Commission requirement. What came from the Fire Department was a recommendation, to which Mr. Fiteni responded that they'd like the current Marshal's recommendation.

A Commissioner asked if this requirement was something that would be put forth if this was just one lot being built on and Mr. Nerney replied that, no, it was a subdivision requirement but the provision does not apply to existing lots. The Commissioner asked if somehow not having the cistern in place created additional peril for the existing house. Mr. Nerney said he thought that probably formed the basis for the original response from the Fire Marshal.

Ms. Poundstone said she would want to be more informed than she is currently about what has

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changed. Is there a new fire hydrant? Has the old fire pond dried up, etc., things that she simply doesn't know at this point and she would like to be more knowledgeable about it because she does think that this is a safety issue.

Mr. Nerney said the Commission could formally reach out to the Marshal but he felt this was something the Marshal didn't want to get into or set a precedent.

Mr. Shri Seshan of 6 Pine Ridge Road stood and spoke. He stated he had bought the property. He said the home immediately adjoins Cannon Road and is essentially 50 to 70 feet from the main road. Right now, the second property is in foreclosure. He has tried numerous times to contact the bank but the bank hasn't responded. They are not interested in investing anything or sharing in installing the fire sprinkler. He stated if there was any other home or single lot adjoining the main road, he could apply for zoning approval and he didn't think the Commission would require a fire cistern. This was required because of the subdivision of the back lot and that's what prompted it. He said he would have happily done it but the challenge is he's already paid \$98,000 in back taxes since 2011 because the home was not sold. So to go through the process of installing the cistern without anybody sharing has created very unusual circumstances.

A Commissioner stated he's very concerned about the Commission and Staff becoming involved with a third party. He said if they're going to require the cistern, he would feel more comfortable if Mr. Seshan went back to the bank and said you are the owner of the second parcel, both of the parcels are required to have a fire cistern, and it's incumbent upon them to work together to complete the improvement so they could sell their property and be done with it. He didn't want the town to become the holder of an escrow bond or something to that effect.

Mr. Tomasetti said this property was created by a subdivision and there were requirements in that subdivision. He said Mr. Seshan purchased a property that had other things that needed to be done and Mr. Seshan was aware of it and it was a condition of the approval. He said Mr. Seshan might have recourse with the bank but he bought a property that wasn't completed and didn't have all the approvals in place and that was Mr. Seshan's risk. Mr. Tomasetti said they could talk to the Fire Marshal about it but his sense was they couldn't say no to it.

Mr. Lawrence said he was pretty sure they had the power to amend a prior subdivision or the conditions of a prior subdivision. He said he was very concerned about the Commission doing something that reverses the prior subdivision application and also affects another party. Anything that the Commission does that changes the direct requirements of what was already agreed to and already established in agreements between the land and everything else, the Commission is changing property rights. Mr. Lawrence said he was very reluctant to do that regardless of what the Fire Marshal says because the bank has a legal claim if they don't like what the Commission has done. He said it might not be true but that was his concern. He asked if the bank had any obligations to complete this now that Mr. Seshan is in the shoes of the developer and he wondered if the bank was in violation of something and maybe could be cited. He was told it was Mr. Seshan's recourse to go back to the bank. Mr. Lawrence asked if there

were any proactive requirements for the bank to complete things by a certain time or in a certain way that have not been met. Mr. Nerney said he could talk to Town Counsel about that. He said there are statutory requirements that public facilities be completed within a five-year time period not a subdivision and there have been extensions that they pursue but this really isn't a public facility. He said Mr. Lawrence asked if the Commission had the discretion to waive and he said they do. He said maybe a clever way to get around that would be if the bank were to write a letter if the Commission was amenable to it.

Mr. Fiteni said the typical subdivision requirement has required fire cisterns. He said the Fire Department was asking for it for a reason.

A Commissioner asked if there was any way to get the current Fire Marshal to examine it as if it were a new subdivision application and would he recommend putting a cistern in. Mr. Nerney said he didn't really pose it that way but if the Commission was amenable he certainly could.

A Commissioner pointed out the bank still owns the lot known as 159 Cannon Road and that it has a right to a 50% contribution to a fire cistern that services its property and all of a sudden the Commission is pulling it out. He said he doesn't know what that does and might be putting the Commission in the middle of a potential change in the property attributes or value that the Commission doesn't necessarily want to be in. He said they should get in contact with the bank.

Ms. Poundstone said her sense is that the Commission is not prepared to approve the communication they have in front of them on paper. She said she thinks they're all aware that there's a missing party, the bank, and they have no responsibility to deal with the bank side of it. Mr. Poundstone said she would suggest they take no action on it and that the correspondent is perfectly able to come back again next meeting or later if the situation changes. She said she thought the Commission would like to be certain of the Fire Department's opinion on the matter. The Commission members agreed.

Ms. Poundstone suggested the Commission take no action.

G. REPORT FROM CHAIRMAN

1. Reports from Committee Chairmen

H. REPORT FROM PLANNER

1. Discussion concerning potential zoning amendments.

Mr. Nerney said he'd like to come in with some minor zoning amendment changes in two areas; bonding and zoning administration. He said there are bonding limitations and he would like to edit the sections they currently have to comport with the Connecticut Statutes. Then he said under zoning regulations administration, it empowers the ZEO to issue zoning permits and ensure compliance. He said he would like it to read "and/or designee" because he said it's not clear when the ZEO goes on vacation and he would like it spelled out. He said if the Commission recommended Mr. Nerney move forward with an application on their behalf he would.

A Commissioner noted he doesn't know what zoning enforcement violations are ongoing or have been corrected and wondered if there was a list. Mr. Nerney said they had created a statistical breakdown list of what the Planning and Zoning Department does for the budget presentation and they could provide that handout. Ms. Poundstone said that was a good idea and told him to proceed.

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Mr. Rodgerson, seconded by Mr. Shiue, and carried unanimously (8-0) to adjourn at 8:45 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary

/dd