

**PLANNING AND ZONING COMMISSION
REGULAR MEETING – MINUTES
MARCH 27, 2013 – 7:00 PM
NEW HARTFORD TOWN HALL- 530 MAIN STREET**

PRESENT: Chairman James Steadman, David Krimmel, Daniel LaPlante, Gil Pratt, Ted Stoutenberg; Alternates Robert Moore, Martin Post; Land Use staff Certified Zoning Enforcement Officer Rista Malanca and Recording Secretary Stacey Sefcik.

ABSENT: Alternate Peter Ventre.

Chairman James Steadman called the meeting to order at 7:03PM. All regular members present were seated for the evening. Alternate Martin Post was seated for Gil Pratt until his arrival at 7:07PM. The proceedings were recorded digitally and copies are available in the Land Use Office.

1. APPROVAL OF MINUTES:

A. February 13, 2013 regular meeting.

MOTION Mr. Krimmel, second Mr. Stoutenberg, to approve the minutes of the February 13, 2013 regular meeting as written; unanimously approved.

B. February 27, 2013 regular meeting.

MOTION Mr. Stoutenberg, second Mr. Post, to approve the minutes of the February 27, 2013 regular meeting with correction of the date listed on the header from "February 13, 2013" to "February 27, 2013"; unanimously approved.

2. OLD BUSINESS:

A. Discussion with Commission's legal counsel regarding Proposed Zone Change for MDC and RRDD#1 properties to the Public Service/Utility District.

Ms. Malanca explained that work had been done preparing for the public hearing on this matter, to be held on Wednesday, May 8, 2013. She noted that each of the 25 parcels owned by the Metropolitan District Commission (MDC) and 2 properties owned by the Regional Refuse Disposal District #1 (RRDD #1) had to be individually listed in the legal noticing, which meant that the legal notice in the newspaper would be long and costly. Members of the Commission questioned whether abutting property owners would also have to be noticed. Mr. Branse explained that Connecticut General Statutes stated that abutter noticing was not required for Commission-initiated zone changes. Because of the costs involved and since Mr. Branse was going to be present at the meeting anyway, Ms. Malanca thought it best to have Mr. Branse address any remaining concerns the Commission might have regarding Public Service/Utility Districts (PS/UD).

Mr. Steadman agreed that while the cost of the legal noticing would likely be high, it was nonetheless worthwhile to proceed with the planned public hearing. Mr. Stoutenberg concurred, noting that the PS/UD language was included in the Zoning Regulations adopted in 2012; therefore, the Commission should follow through on what it started and conduct public hearings on moving appropriate properties into this zone. Mr. Steadman asked Ms. Malanca whether she had spoken with the Town's Assessor, Beth Paul, regarding this issue. Ms. Malanca stated that Ms. Paul had tried unsuccessfully to connect with assessors in other towns that use a similar zone; however, Ms. Paul's initial research appeared to show that there would not be a negative tax implication to this zone change.

For the benefit of newer Commission members who were not present at the initial discussions of the PS/UD, Mr. Branse then reviewed with the Commission the reasons why he recommended the inclusion of a Public Service/Utility District in the new Zoning Regulations adopted in January 2012. Mr. Post then asked what would happen in the event that a public utility like MDC went out of business. Mr. Branse explained that the property would still be zoned PS/UD, and any new owner that wished to use the property in a manner not compatible with the PS/UD zone would first have to apply for and obtain a zone change before they would be able to develop it. Noting that the PS/UD regulations allow by special exception for a utility to use their land in accordance with the purposes set forth in their charter, Mr. Post then questioned specifically what was detailed in the MDC's charter. Mr. Moore noted that he had a copy of the MDC charter, which he agreed to forward to Ms. Malanca so that the part describing the MDC's

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powers could be distributed via email to all Commission members. Mr. Moore questioned whether the burden would be on the utility to prove that their desired use of their property was in fact listed within their charter; Mr. Branse responded affirmatively.

Mr. Krimmel questioned whether the MDC had been informed of this possible zone change, and if so, had they stated any objection. Ms. Malanca explained that she had sent three letters to MDC about this issue recently and also during the Commission's regulation rewrite deliberations; she had also spoken with Carol Youell in the MDC's Barkhamsted office, who had in turn forwarded information to MDC headquarters. Ms. Malanca stated that she had to date received no response from MDC. The Commission then discussed with Mr. Branse the zone change public hearing process and the legal implications of changing the zone for these properties. Mr. Moore then questioned whether this PS/UD could also be used for Town-owned land. Mr. Branse responded affirmatively, noting that Town-owned land and State-owned land in Town could also be included in this district. He stated that the Commission could proceed with placing applicable properties into this zone in small steps if they so chose. Mr. Krimmel questioned whether it would be beneficial to only change the zones of the larger parcels, while leaving the smaller parcels in their current zone designation. Mr. Branse advised against this, stating his opinion that all properties owned by a utility should be in the same zone designation.

The Commission then agreed that they wished to proceed with the public hearing on this issue as planned for the May 8, 2013 regular meeting.

3. NEW BUSINESS:

A. Discussion with Commission's legal counsel regarding proposed amendments to the Zoning Regulations pertaining to Floor Area Ratio.

Ms. Malanca explained to the Commission that she has recently had several owners of nonconforming lots around West Hill Pond come in with plans to tear down their smaller cottages to replace them with larger year-round houses. She stated that the proposed increases in the size of the houses did not appear unreasonable, with proposed increases to approximately 2000 square feet. However, due to the Floor Area Ratio (FAR) requirements adopted for the R-4 Zone, these property owners would not be able to increase their homes to this size without first obtaining a variance. Ms. Malanca noted that the FAR requirements for the R-4 Zone stated that the combined area of all buildings on a lot could not total more than 5% of the area of the lot. However, Ms. Malanca stated that she had done some research and found that the average lot size in the R-4 Zone was in fact 0.8 acres, which would mean the FAR requirements would limit property owners to a total of 1785 square feet for all floors of their residence including basements, as well as attached garages and sheds. She noted that there was also some confusion in the regulations, in that the definition of FAR in Section 2 states all buildings count toward FAR; however, the chart in Section 3.4E specifically exempts detached garages. Ms. Malanca questioned whether it was the Commission's intent to have attached garages count toward FAR, while detached garages did not. She explained that the Town's planning consultant, Martin Connor, had drafted proposed amendments to the floor area ratio language, as well as amendments to clarify that detached garages were included in the FAR calculation.

Because of these concerns, Ms. Malanca questioned whether the Commission might wish to amend their FAR regulations in order to clarify the attached/detached garage issue and also to make the FAR requirements less restrictive for nonconforming lots in the R-4 Zone. She suggested the Commission could amend the regulations to allow for a Special Exception process whereby property owners could request additional floor area; this type of application could be processed by the Zoning Board of Appeals since they already handled special exception applications for increases in bulk of nonconforming structures where the increase did not increase yard setback or height nonconformities. Ms. Malanca noted that affected properties would often require both of these special exceptions, and it made sense to have one board reviewing the entire proposal. Further, allowing increases to floor area ratio by special exception also gave the opportunity for the board to consider whether the applicant was also willing to make stormwater quality and drainage improvements; this would not be possible during a variance application.

The Commission then reviewed the research prepared by Ms. Malanca and discussed how a set FAR ratio varied in outcome for lots of different sizes within the same zone. Ms. Malanca noted that only 68 of 177 properties in the R-4 Zone are greater than ½ acre in size. She stated that, under the current FAR

ratio, only 28 properties would be permitted to expand and only 12 were currently conforming. Mr. Branse noted that FAR regulations deal with the mass of structures on a lot, not total building coverage; the rationale was to prevent houses that are out of scale compared to other houses in the neighborhood.

Attorney Tom Beecher then addressed the Commission. Mr. Beecher explained that he owned the property at 142 Camp Workcoeman Road, and he was also legal counsel for Steve Florio of 136 Camp Workcoeman Road; Mr. Florio is one of the property owners referenced by Ms. Malanca who is trying to tear down and rebuild on his lot but is limited by the current FAR. Mr. Beecher explained that the FAR for Mr. Florio's 0.7-acre lot limits him to 1144 square feet of gross floor area; he noted that 0.7 acres was a larger sized lot for the West Hill Pond area. However, under the Commission's definition of what is included in FAR calculations, Mr. Florio's proposed new single story house with walkout basement and 2-car garage would total 4000 square feet of gross floor area and would therefore far exceed the current FAR requirements. Mr. Beecher noted that Mr. Florio's proposal conformed to Zoning Regulations in every way except for FAR. He then explained that his own lot was $\frac{3}{4}$ -acre and he would be limited to 1500 square feet of gross floor area under the current definition; however, his existing house was 1600 square feet. This meant he was already nonconforming and would never be able to expand. Mr. Beecher noted that the Commission already had language in the regulations pertaining to building coverage and impervious coverage which helped limit the size of houses. He therefore suggested raising the permitted as-of-right FAR ratio to 10%, with any additional floor area up to 15% permitted by special exception. He noted that under this suggestion, Mr. Florio's permitted floor area would then increase to 3100 square feet. Mr. Beecher explained that he was also legal counsel to the Planning and Zoning Commission in the Town of Ridgefield, and he submitted a copy of the Ridgefield FAR regulations for the Commission's review.

Mr. Branse observed that 10% permitted as-of-right FAR on lots in the R-4 Zone that actually were 4 acres or more would mean they were permitted to have 17,000 square feet of gross floor area. He told the Commission that the Town of Stonington also had FAR regulations which allowed nonconforming lots to use the FAR ratio of the zone which the lot's size most closely resembled. The Commission then discussed possible ways to modify the FAR regulations. Mr. Stoutenberg noted that, under the current regulations, a 4-acre lot in the R-4 Zone was permitted 5% FAR; that same lot in the R-2 Zone was permitted 10% FAR. He questioned why there was a disparity. Mr. Steadman asked Ms. Malanca if she had spoken with Skip Sly of the West Hill Pond Association regarding this matter. Ms. Malanca stated that she had spoken with him briefly, and while a maximum FAR was not discussed, he had agreed that 5% was too restrictive. She stated that he wanted to be fair and reasonable, and he had stated he was comfortable with 10%. Ms. Malanca stated that she too would be comfortable with 10% as of right for this zone. She noted that even with a 15% FAR ratio, approximately 80 lots in R-4 still would be nonconforming. Mr. Branse suggested that the Commission could amend their regulations to have floor area ratios determined by lot size rather than by zone. Members of the Commission noted that the floor area ratio was highest for the R-15 Zone. Ms. Malanca stated that she believed this was because the R-15 Zone had access to the sewer line.

The Commission then discussed whether to amend the FAR regulations to determine FAR based on lot size or zone. Mr. Pratt suggested a site visit to different size lots to get a better understanding of the potential impact of this regulation amendment. Mr. Branse agreed to take Mr. Connor's draft language and revise such that FAR would be based on lot size, not zone. He noted that the Commission would have to determine what they wished the permitted ratio to be, and what limits if any they wanted to set for increasing that amount by special exception. Mr. Branse stated that the Commission would also have to determine whether they wanted the special exception provision to apply to all lots or only to nonconforming lots. The Commission discussed setting the permitted as-of-right FAR to 10%, with up to 15% permitted by special exception for all lots. Mr. Branse agreed to have the draft revised and available to the Commission prior to their April 10th regular meeting.

4. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

A. Discussion of the 2005 Town of New Hartford Plan of Conservation and Development, with emphasis on review of Chapter 4 (if time permits.)

The Commission agreed to table this matter to the April 24, 2013 regular meeting.

B. Discussion with Beth Paul, Town of New Hartford Assessor, regarding the impact of PS/UD amendment on Assessed Value of MDC land and assessments on open space land.

Noting Ms. Paul was present in the audience, Mr. Steadman asked Ms. Paul how MDC property was currently assessed. Ms. Paul explained that it was valued as water company property, similar in value to farmland, regardless of zone. Therefore, from this standpoint, changing the zone from residential to PS/UD would not impact its assessed value. However, she expressed the concern that the MDC might respond to this zone change by attempting to argue that the PS/UD designation decreased the market value of their land, and therefore request a decrease in the land's assessed value.

Ms. Paul then explained that she also wished to speak with the Commission regarding work currently being done by herself, Ms. Malanca, and the Town Clerk regarding PA 490. She explained that the definition of open space in the Plan of Conservation and Development had an impact on the assessed value of open space land. Ms. Paul stated that many parcels that are not even developable are applying for and receiving tax breaks by designating their land as open space; however, since the land is not developable to begin with, the result is that the Town is losing out on tax revenue and not actually curbing development. Ms. Paul cited as an example rear lots that could not be developed under current zoning regulations that were currently receiving open space tax discounts. Ms. Malanca explained that the total acreage in Town receiving the open space tax break, not including farmland and State land, was 16%, and most of those were lots under 8 acres. She concurred with Ms. Paul that the current arrangement lowered the Town's tax base while providing no real benefit to the Town. Ms. Malanca explained that they were currently considering setting a minimum amount of acreage to be designated as open space in order to access the tax break. Ms. Paul agreed, noting that there was currently a 1-1/2 acre parcel on Holcomb Hill Road designated as open space and receiving the tax break; she expressed concern that the Town was deriving no real open space benefit from this arrangement, yet was still providing a tax break to the property owner.

The Commission briefly discussed how possible changes to the open space language in the POCD would impact assessed value of land and therefore tax revenue. The Commission agreed to discuss this matter further with Ms. Paul at their next planning meeting.

MOTION Mr. Stoutenberg, second Mr. Pratt, to adjourn at 9:17PM; unanimously approved.

**Respectfully submitted,
Stacey M. Sefcik**