

TOWN OF SOUTH WINDSOR
PLANNING & ZONING COMMISSION

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JULY 19, 2022

MEMBERS PRESENT: Robert Vetere, Bart Pacekonis, Stephanie Dexter, Steve Wagner, Alan Cavagnaro, Kevin Foley

ALTERNATES PRESENT: Atif Quraishi and Paul Bernstein

STAFF PRESENT: Michele Lipe, Director of Planning; Michael Lehmann, IT Support; Caitlin O'Neil, Recording Secretary; Richard Carella, Town Attorney

PLEDGE OF ALLEGIANCE

CALL TO ORDER:

SPECIAL MEETING:

1. Town Attorney Richard Carella to provide training on functions of PZC.

Chairman Pacekonis questioned if this would count towards their required training. Director of Planning Michele Lipe confirmed it would.

Attorney Richard Carella introduced himself and reviewed his background. He commented that he has represented both municipalities and developers over the years and is very familiar with the processes and procedures for the Planning and Zoning Commission. Attorney Carella distributed a training packet to review. He added that this packet focused on site plan, zone change and special exception type of applications and the standards and procedures for these applications.

Attorney Carella started with the basic definitions of the three types of applications that would be reviewed. Attorney Carella explained that when discussing a zone change application, the Commission would be acting in a legislative capacity. Which means they would not look to the regulations to see if the change would be allowed, instead the Commission would be looking at the totality of zoning for the town and if the change would be appropriate for the town. Attorney Carella explained that when acting on a zone change the court cannot substitute a judgement for that decision since the Planning and Zoning Commission has the best sense of what's appropriate for the town.

Commissioner Dexter commented on Evergreen Walk and questioned if a general plan change for Evergreen Walk would be considered similar to a zone change. Michele Lipe commented that Evergreen Walk is technically in the Buckland Gate zone and the general plan is a conceptual tool for this development. With that said, since the development is in a specific zone and has to abide by the regulations of that zone, a general plan modification would not be considered a zone change. Chairman Pacekonis questioned the difference of a text amendment versus changes to the general plan. Michele Lipe commented that text amendment proceeds changes to the general plan. Additionally, the general plan proceeds the site plan process. Attorney Carella clarified that when dealing with the general plan or a master plan change, the Commission would not be acting in a legislative capacity. Ms. Lipe commented that the Commission does have a process for a zone change and general plan change that was done for the Sullivan Avenue Plaza application, this created an overlay regulation that does do a zone change tied to a general plan. Commissioner Bernstein commented that per this conversation regarding zone change applications, the Commission has significant authority and questioned what should happen if the Commission was to deny a zone change application and they get sued by a developer and lost the lawsuit. Commissioner Wagner added that this example was specific to an Evergreen Walk application that was initially denied but has since been approved by the Commission. Chairman Pacekonis commented that this was a text amendment application. Michele Lipe interjected and explained that a zone change and text amendment application both fall in the same category, she added that the Evergreen Walk example was a not the best example to use. Ms. Lipe commented that a better example of denying a zone change application would be a zone change being submitted and the Plan of Conservation and Development not supporting this type of zone change and the Commission also not feeling that this change is appropriate,

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then the Commission would have solid grounds for a denial. Attorney Carella agreed with Michele Lipe and commented that on a zone change or text amendment application, the Commission looks to follow guidelines set forth by the comprehensive plan or Plan of Conservation and Development and a court cannot substitute its opinion.

Michele Lipe confirmed that a comprehensive plan is different than a Plan of Conservation and Development. Attorney Carella commented that this was correct, a comprehensive plan is the zoning map and zoning regulations. The Plan of Conservation and Development is a future guide that is updated every ten years, which looks at many different aspects such as school enrollment and the economy. Attorney Carella added that as a Planning and Zoning agency they need to focus on the comprehensive plan, zoning maps, regulations and ultimately what is in the best interest of the town when looking at zone change and text amendment applications.

Attorney Carella discussed floating zones and overlay zones. Attorney Carella questioned the floating zones in South Windsor. Michele Lipe commented that DA15 was a floating but no longer in the regulations, however, there is a multifamily zone that is still a floating zone. Attorney Carella commented that a floating zone changes the underlying zone. An overlay zone is more of an administrative function that is designed to cover items such as flood plain regulations, the underlying zone does not change in an overlay zone. Commissioner Wagner commented that Sullivan Avenue has an overlay zone which allows developers to meet certain perimeters. Applications and uses are treated more like a special permit as long as overlay zone is approved. Michele Lipe commented that they affixed an overlay zone for town center on zoning map. This allows for someone to can develop under restricted commercial zoning, which is the underlying zone for this area or they can take advantage of the overlay zone, town center zoning. Ms. Lipe commented that the overlay zone for Sullivan Avenue is a slightly different process. Ms. Lipe added that the best example of a floating zone is the multifamily zone. Attorney Carella commented that the important take away is for the Commission to understand that when acting on an overlay zone, the Commission is not acting in legislative capacity, they are acting in an administrative capacity.

Attorney Carella began to discuss special permits and exception applications, which are primarily designed to protect general public safety and health. South Windsor's zoning regulations have a broad and general set of standards that an applicant has to meet such as minimal environmental impact, no traffic or other hazards to be created, no adverse impact to surrounding property values. Attorney Carella commented that in the Commission's regulations most commercial uses require a special exception and other uses such as elderly housing, earth filling, farm stands, duplexes also require a special exception. Commissioner Wagner commented that one issue that has come up recently is noise produced on or from sites. The town's noise ordinance excludes moving vehicles, it only becomes effective once a vehicle is parking. The noise concern has created issues specifically with tractor trailer trucks. Commissioner Wagner questioned if there can be a tighter standard for noise generated in a parking lot, specifically noises produced from trucks. Attorney Carella explained that special exception application can impose more conditions on an applicant, as long as these concerns are highlighted somewhere in the regulations. Michele Lipe commented that there used to be a noise ordinance in the regulations, however, this was removed when the town established noise ordinance and the police now handle the enforcement. Ms. Lipe questioned if they should put a noise standard in the regulations. Attorney Carella commented that if there is a town ordinance you can have a condition of approval that states you have to comply with town noise ordinance. Commissioner Foley questioned if the Planning and Zoning Commission could take back the control of the noise ordinance. Ms. Lipe explained that the difficulty becomes enforcement as there is no staff available for complaints at night. Attorney Carella commented that the Commission

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could regulate other items such as hours of operations, trucks entering and exiting the site per day and they could also require a buffer and sound barrier.

Commissioner Wagner commented that his concern is with trucks moving around in a parking lot and how they can be exempt from the noise ordinance since they are moving around the site. Attorney Carella commented that perhaps the noise ordinance needs to be adjusted. He added that under a special exception, the Commission does have control over the use and activity in the parking lot. Commissioner Foley questioned if they could set a decibel level. Attorney Carella commented that he was unsure if the Commission could make this an approval condition. He added that they could have a condition that referenced decibel levels are that set in the noise ordinance and if these are exceeded then the applicant would have to supply additional buffers. Michele Lipe questioned if they could require an applicant to supply a noise study. Attorney Carella commented that they could, all trucks and mechanicals have a decibel rating and they could have a sound engineer review the various decibel levels. Ms. Lipe commented that this would be something to consider adding to the regulations. Commissioner Wagner confirmed that this would be allowed in the regulations.

Michele Lipe questioned if something similar could be done in regards to air pollution. Attorney Carella commented that pollution is harder to quantify but yes. He added that this could be seen with regulating stormwater runoff. Ms. Lipe clarified that she meant air pollution. Attorney Carella reiterated that this would be difficult to quantify. Ms. Lipe commented that she was thinking along the lines of limiting the amount of trucks per day. Attorney Carella commented that vehicles are tough since they move, however, he has seen things done with regards to smoke stacks. He added that a condition could be imposed that requires the applicant to comply with DEEP air quality standards.

Commissioner Foley commented that there is a large problem when it comes to hooking and unhooking of tractor trailers at night. He questioned if something can be added to the regulations that requires no hooking or unhooking after certain hours. Chairman Pacekonis commented that they could add this but the issue becomes how do they enforce it. Attorney Carella commented that this does become an enforcement issue, zoning enforcement officer and continuous neighbor input is what would need to be documented to help hold an applicant accountable. Attorney Carella commented that the Commission has a large amount of say in a special exception application as it relates to the public health and safety.

Commissioner Bernstein questioned the issue of property values, if a trend of property values going down begins because of a certain type of use nearby, would they have authority to change this. Attorney Carella commented that a realtor would need to come and make a case of declining property values. He commented that they could not make this a condition of approval because there are other factors of property values. Commissioner Bernstein commented that from the points being discussed in this conversation, if something is not currently in the regulations they should consider adding it so they can relate it to approval conditions in special exception applications. Attorney Carella commented that they can also make approval conditions that require the application to comply it with other state, local or federal laws.

Commissioner Wagner questioned in regards to noise, would it be possible to go beyond the ordinance. Attorney Carella responded that if the Commission wants a condition that is more stringent than the noise ordinance it would need to be reflected in the regulations. Commissioner Bernstein commented that they should also be able to limit operations that propose running 24/7. Chairman Pacekonis commented that on a special exception application they can limit hours but an as of right use in the industrial zone cannot be limited per the regulations. Chairman Pacekonis questioned if they could allow for 24/7 hours for activities inside the building but have stricter hours of operations for activities outside the facility.

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Attorney Carella responded that this could be an option. Michele Lipe commented that the Commission should consider putting distance requirements from a residential area, as you get closer to residential area certain adjustments would need to be required. She would not like to negatively affect the Route 5 corridor. Commissioner Wagner and Attorney Carella discussed property lines distances versus distance from a residence. Commissioner Vetere questioned that if an applicant is in compliance but neighbors are complaining about noise level, they still cannot impose restrictions since they are complying. Attorney Carella confirmed that if an applicant or business is in compliance then they cannot enforce a higher standard, even after neighbor complaints. Michele Lipe commented that something to consider would be making all uses in the industrial zone a special exception to allow for more control.

Attorney Carella commented that South Windsor's zoning regulations require a site plan for a special exception permit, which allows the ability for the Commission to see what's happening on the property. He added that if an applicant requires approval from other agencies such as Inland/Wetland, the applicant must receive approval from that agency prior to Planning and zoning approval. A Planning and Zoning board cannot override a decision made by another agency. Commissioner Wagner commented on a recent example of an issue the Commission had with application in terms of snow shelf and snow storage, which the applicant showed to have it piled near a detention basin and therefore melting into this basin. Chairman Pacekonis added that from his understanding snow storage is not supposed to be near a detention basin. Commissioner Wagner questioned in an instance like this, can the Commission go beyond the Inland/Wetland approval recommendations. Attorney Carella commented that they do have grounds to expand on issues such as stormwater and snow removal and storage.

Attorney Carella commented that with a special application, the Commission does have discretion if an applicant has met the regulations. Attorney Carella commented that in the regulations there are some areas where the Commission allows waivers for conditions, he added that the Commission may want to proceed with some caution with this. Should the Commission start waiving regulations too often it takes away the power of the Zoning Board of Appeals. Commissioner Wagner commented that an example that they often hear is a lighting pole waiver request. Attorney Carella commented that this a common waiver.

Attorney Carella questioned if the Commission practiced stating reasons for decisions when denying applications. Michele Lipe responded that the current practice was to not give a specific reason. Attorney Carella commented that this would be his suggested practice, if the Commission does not state a formal reason for denial then the court has to search the record. Commissioner Cavagnaro questioned why the Commission should not deny an application with specific reasoning. Attorney Carella commented that the Commission should always put an application to vote in the affirmative, then you can deny the application. Meaning the Commission should always make a motion to approve an application even if the application is set to be denied. Attorney Carella explained that this causes the court to search the record and then forces applicant to produce evidence that the denial was arbitrary. Commissioner Foley questioned if the Commission has the right to ask questions of the applicant that is beyond the purview of the Commission, such as school enrollments and the grand list. Attorney Carella commented that the Commission has a right to ask these types of questions, just do not make follow up comments or opinions.

Attorney Carella discussed offsite improvements. He commented that the Commission can impose a condition of approval for offsite improvements for special exception applications as long as its tied to public safety and welfare. Michele Lipe questioned if sidewalks could be mandated on a state road/frontage. She went on to explain that there is a large amount of pressure from the community to

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build sidewalks as development occurs in town. Attorney Carella responded that for a site plan application, unless mandatory sidewalks are in the regulations, they cannot require this to be built. Ms. Lipe confirmed then if sidewalks were required and included in the regulations then could they mandate them. Chairman Pacekonis and Commissioner Wagner commented that the need for more sidewalks should also be addressed when updating the Plan of Conservation and Development.

Attorney Carella explained that a site plan can only be modified if the requirements are in the regulations. Commissioner Bernstein confirmed when acting on site plan applications the Commission is acting in an administrative capacity not legislative. Attorney Carella commented that any requests for a site plan must be a modification and not a condition. Commissioner Bernstein questioned if the Commission could tie in a modification that reflects a town ordinance on a site plan. Attorney Carella commented that they could not, a site plan is an as of right use. Chairman Pacekonis commented that the Commission can ask an applicant if they are willing to make certain changes or adjustments to a site plan, however, you cannot base a denial on an applicant is unwilling to make these adjustments. Attorney Carella reviewed the time line for a site plan, if an application is not acted on within 65 days of submission then it is automatically approved. Additionally, the Commission can call a public hearing for a site plan, however, a public hearing is not mandatory. Chairman Pacekonis questioned if they need something in the regulations that discusses how the Commission determines the necessity of the public hearing. Attorney Carella responded that this was not necessary. Michele Lipe commented that they typically call a public hearing for large facilities. Commissioner Wagner commented that a common occurrence are applicants dumping documents on the Commission up until the last minute. He questioned at what point can the Commission request more time for review for documents submitted at the last minute. Attorney Carella commented the Commission could ask for the applicant for an extension to properly review materials submitted. He added that you could explain to the applicant that there are materials submitted at the last minute and the Commission needs time to consider it, we will ask you to either extend, withdraw the application and resubmit with all material or the Commission would deny without prejudice.

Attorney Carella commented on the appeal process in a special exception application. He commented that if an applicant changes during the appeal process then there would be a basis for denying an appeal. Commissioner Wagner discussed a recent appeal case where the Commission had to overturn their decision. Attorney Carella reviewed some similar case law.

Commissioner Vetere confirmed that the Commission cannot deny an application due to an increase of truck traffic on public roads for a site plan application. Commissioner Wagner questioned if this was the same for traffic entering and exiting a site's driveway. Attorney Carella commented that if it is on the site then the traffic is fair game. Commissioner Wagner elaborated on this example and questioned that if the Commission felt a driveway was not the correct location could they request a change. Attorney Carella commented that the job of a site plan application is for the Commission to determine if an application meets the regulations criteria.

Attorney Carella indicated that he looked forward to working with the PZC on upcoming matters.

ADJOURNMENT:

Commissioner Foley motioned to adjourn.

Commissioner Vetere seconded the motion.

Meeting adjourned at 8:26pm.

Respectfully Submitted,

Caitlin O'Neil, Recording Secretary