TOWN OF SOUTH WINDSOR

PLANNING & ZONING COMMISSION

MEMBERS PRESENT: Gary Bazzano, Bart Pacekonis, Stephanie Dexter, Elizabeth Kuehnel, Frank Bonzani, Kevin Greer

ALTERNATES PRESENT: Bill Flagg, Mike LeBlanc, Teri Parrott

STAFF PRESENT: Michele Lipe, Director of Planning; Lauren Zarambo, Recording Secretary

SPECIAL MEETING / MADDEN ROOM

CALL TO ORDER: Chairman Bazzano called the Special Meeting to order at 7:00 p.m.

1. PZC Training with Attorney Kari Olson

Attorney Kari Olson with Murtha Cullina distributed a handout to the commissioners and gave a power point presentation on general powers and duties of both the planning and zoning commissions, subdivision and resubdivision applications, the variety of zones in South Windsor, special exceptions, application procedures, public hearings, conflicts, bias, and predetermination, rendering decisions, and appeals.

The powers of a Planning and Zoning Commission (PZC) are strictly defined through Title 8 of the General Statutes. Planning and Zoning Commissioners wear two hats and need to be aware when entertaining an application or rendering a decision of which hat, Planning or Zoning, is being worn.

The general powers of the Zoning Commission are to adopt and amend zoning regulations and to hear and decide applications for zoning permits, site plan approvals, and special permits/special exceptions. A special exception is the same as a special permit and governed by the same rules.

The general powers of the Planning Commission are to prepare and amend the Town Plan of Conservation and Development (POCD) every ten years. The POCD is the concept plan of where the town is going. The Planning Commission is also responsible to prepare and amend the subdivision regulations and also hears and decides applications for Subdivision and Resubdivision of land.

Subdivision includes resubdivision. A resubdivision is a change in a map of an approved subdivision plan if the change affects any street layout on the subdivision map, or any area reserved for public use like open space, or diminishes the size of a lot and creates an additional building lot. Attorney Olson counseled that whenever a subdivision map is modified so the lots are reconfigured or changed it is best for it to be treated as a resubdivision.

A public hearing is required when there is a resubdivision to offer the opportunity to be heard especially in cases where a lot line revision significantly alters a subdivision. If there is any question, the PZC has the jurisdiction to determine if a proposal is a subdivision or resubdivision. A public hearing not required for a subdivision but is required for a resubdivision. The Commission can require a public hearing for a subdivision if it is in the public interest. Attorney Olson advised when looking at subdivision/resubdivision applications that any bases for consideration of the criteria that is applied is rooted in the subdivision regulations.

In a subdivision application the Commission cannot require improvements outside of the property boundaries such as requiring a developer to install sidewalks along a main road outside of a subdivision.

Vice Chairman Pacekonis asked if a special exception would allow for such improvements. The attorney agreed special exceptions could be different. All bases for consideration must be contained in the subdivision regulations.

In subdivision applications bonding for public and private improvements is an issue for the Commission to be attentive. The only control over a subdivision over time is through the bonds. Applying bonding regulations will protect the Town should a developer default. Commissioner Pacekonis stated town staff sets the bonds and it is the Commission that enforces the bonds. Attorney Olson agreed the Commission technically imposes the bonds and it is usually town staff that presents the dollar figures that should be incorporated. It is very important for the Commission to take bonding seriously so not to release bonds prematurely or to reduce the bond so that there is not enough to cover the improvement that needs to be made or that the bond itself was not enough from the start. Always question whether the bond is sufficient. Since 2011 when the bonding regulations were modified municipalities can bond for the cost of the project, inclusive of RFPs, plus 10%. Director Lipe stated there is a 25 % contingency in South Windsor for subdivision bonds. Commissioner Dexter asked how long a bond can be kept open. The attorney replied a bond is kept generally for one year depending on the type of bond. A landscaping bond will go for a year to insure everything lives. Maintenance versus performance and site versus subdivision bonds were compared. Faulty residential foundations were briefly discussed as a private contract between the builder, whoever poured the foundation, and the home owner.

CT General Statutes 8-2 is the template for what the Commission can do regarding zoning issues. The purpose behind zoning regulations is uniformity and to avoid, at all costs, spot zoning. The reason for uniformity is to assure when someone buys into a zone that their use will be permitted and will not have to worry about something not similar being allowed. No one who buys a home wants to be concerned that an industrial plant will locate next to their home. It is Euclidian Zoning supported by the State of Connecticut and should be kept in mind when amending zoning regulations to permit particular uses. Statute 8-2 sets forth purposes of zoning to lessen street congestion, provide safety from floods and fires, promoting general welfare, preventing overcrowding, maintaining property values, facilitating provisions for transportation, water sewerage, schools, parks, and other public requirements.

There are many zones in South Windsor inclusive of overlay zones, flood, industrial, village district, large scale commercial, residential, and rural agriculture. Overlay zones can complicate reviewing. Many regulations apply for applications because of the number of zones involved in South Windsor.

Zoning uses ask whether a use is permitted. There are permitted uses as of right such as owning a household pet. Site plan approval requires a site plan to be reviewed by commission or staff review to insure compliance with setbacks and lot coverage. The regulations set out the requirements for each zone.

A special exception is a use allowed in a zone but has magnitude or type of character where there is the right to impose other conditions or obligations to insure the use stays in harmony with the other uses around it. It can often be seen in commercial and industrial zones where traffic needs to be accounted for. Under a special exception traffic studies can be required or appraisals required if there is thought to be a reduction in property values. Regulations should have special criteria to manage special exceptions such as traffic, storm water management, parking, and building height. Regulations always give more discretion for a special exception where both a public hearing and commission review are required.

Chairman Bazzano asked about requesting appraisals. Attorney Olson stated the regulations give the Commission the discretion to ask for additional information if it is deemed necessary for determination. One criterion for open space subdivisions is the effect on surrounding property values which allows the Commission the right to request additional information in response to concerns raised by neighboring property owners or if it appears it may affect property values. Neighboring property owners or real estate professionals can also give expert opinions. Standards that apply have to be rooted in regulations. Any conditions of a special exception have to relate to public health, safety, convenience, and property values. Conditions can not be imposed that do not relate to the Zoning Commission's jurisdiction.

Application procedures apply to any application that comes before the Commission. The clock start running on an application at date of official receipt (the date of the next regularly scheduled meeting) or 30 days from the actual filing whichever is earlier.

The deadline to act when no public hearing is required for site plans, subdivisions, or wetland applications is 65 days from the date of receipt. A public hearing, when required, must be set by 65 days from the date of receipt. There is then 35 days to close the public hearing. Then there is 65 days to render a decision after the public hearing is closed. There is also the option for extensions which give another 65 days total to spread out over all the deadlines. There cannot be more than 65 days total in extensions of any and all deadlines. The applicant does not have to agree to a continuance. Vice Chairman Pacekonis noted at that point the Commission could vote to reject or deny the application based on inadequate information to make an educated decision. Attorney Olson stated that is why continuances are usually granted given the alternatives but one cannot assume it can be continued. If the Commission does not render a decision in 65 days and there is not a continuance the application is deemed approved. Director Lipe keeps a close record on deadlines to act. Commissioner Flagg asked if new information is introduced will the clock start again. The attorney stated it does not start again but rather the applicant could withdrawn their application and resubmit. The applicant gets to have the last word since it is their application. If they modify what was originally submitted to a significant degree the Commission may require a new application.

Vice Chairman Pacekonis asked whether in a public hearing those opposed to an application can question people directly who have testified. The attorney stated they have a right to cross examine and should go through the chairman to ask the questions. The Vice Chair asked if the questions are then not asked by a commissioner could it be grounds for a reversal. Attorney Olson stated if someone were to object and say they have a right to cross examine the commission should give them free reign. It is the obligation of the person asking the question to be sure their questions are answered.

Public hearing notice is required by sign in South Windsor and by legal advertisement published twice in a newspaper of substantial circulation within the town. If a legal notice is not published in time it can be grounds for an appeal.

Roberts Rules of Order have been adopted when conducting a hearing. The record for any public hearing is public for full disclosure. Any material received as a commission member with a pending application should go into the record including any email. Emails should not be responded to but given to the Director of Planning to get into the record. The premise is due process. Errors can be corrected if the applicant is given the opportunity to respond. A single email can be considered Ex Parte Communication until it is

placed into the public record so that the public and applicants can be aware of the correspondence. All reports, information, and communications received should be part of the record.

If a commissioner has a particular expertise (as a lawyer, engineer, traffic engineer, landscape contractor, architect, etc.) which will be applied to an application that expertise needs to disclosed up front to let the applicant know your qualifications and by even offering a resume. A commissioner's expertise must be disclosed up front.

No Ex Parte Communications. The point of public record and public hearings is that everything being considered should be in the public domain. Avoid Ex Parte Communications at all costs. A letter or email received needs to be put into the record. Commissioner Dexter asked if it applies to a conversation had while standing in line at the grocery store. The attorney confirmed once an application is pending a commissioner should not discuss the application with anyone anywhere and does include a conversation in the grocery store. She suggested letting the person know there is an application pending which prevents going forward with the conversation and just shut it down. Director Lipe stated comments are often received after a public hearing has closed so she lets the sender know the information will be retained in the file but will not be shared with the applicant or commission because the public hearing has been closed.

Once the public hearing is closed no new information can be received except from staff on a limited basis on something already in the record and is not new material. Mr. Robert Dickinson asked if there is no public hearing required what are the rules as far as the public making comment. Attorney Olson stated the public has a right to be heard. It is a public forum. Fundamental fairness is the whole notion so that the applicant has an opportunity to hear any comment and to respond to it so that there is no appearance of impropriety. If a comment is public the applicant has an opportunity to respond. At a regular meeting the Commission is not required to allow public comment. The Director stated typically the public is allowed to speak on any item. Attorney Olson stated if public comment is allowed you have to continue to allow public comment for all applications.

On the subject of conflicts, bias and predetermination Section 8-11 of the General Statutes states a commissioner cannot act on any application on which they have a personal interest. Commissioners should be aware that there is a prohibition on it. The attorney counseled the commissioners not to take it as a personal affront if you are asked to recuse yourself. If a commissioner does not step away and there is any basis to recuse his or herself it can be very costly for the Town with appeals and litigation. An applicant is obligated to raise bias at the beginning. Commissioner Parrott stated in a small town like South Windsor where everyone knows everyone it may be the case for multiple recusals. Vice Chairman Pacekonis suggested publically announcing that you know or have a relationship with the applicant or business so by disclosing it you can move forward confidently with the application. Attorney Olson stated if a commissioner says they know someone and still can render an unbiased decision but someone questions it and suggests a conflict, the commissioner must step down. If confronted with a questionable situation it is best to speak with the Director of Planning or have her contact the town attorney. It is a matter of the appearance of impropriety. Do not think it is personal. The attorney asked even if there is no clear conflict what would a member of the public, who does not know you, think about the fact that you would be sitting on the application when you may have a relationship with the applicant. It is the appearance of impropriety.

Concerning bias and predetermination Attorney Olson stated the courts recognize opinions exist and a commissioner would not be sitting on the commission if they did not have opinions of what is in the best interest for the town as far as development but the courts also say a commissioner must keep an open mind. A commissioner must avoid applications that they could never vote in favor of no matter what is presented. You have to avoid it if you already have a slated decision and should not sit on that application.

It is written in CGS Sections 8-11 and 8-21 that commissioners shall not represent someone in front of any other board or commission in the town. If there is a direct or indirect interest in a personal or financial sense a commissioner should not appear before that board or commission.

The standard for rendering a decision is based on substantial evidence. A decision should be based on what is in the record. Attorney Olson stressed to keep in mind the amount of evidence that supports your position. It is the commissioner's right to decide if expert testimony is credible but expert testimony cannot be refuted unless there is other expert testimony to support otherwise.

Commissioner Dexter asked how much weight public outcry holds. The attorney replied public outcry weighs heavily. Director Lipe stated it is dependent on the type of application being heard. If a site plan meets the requirements it will be permitted. Attorney Olson stated the standard of review is different depending on the type of application. With a zoning amendment a legislative hat is worn and with a site plan an administrative hat is worn where if it fits you must permit. Making legislative decisions for special exceptions or zoning amendments weighs more heavily on commissioners because they do have the right to consider greyer criteria including the POCD. It is not black and white like subdivision regulations or site plan regulations.

Commissioner Kuehnel verified after deliberations a decision must be made. Attorney Olson agreed and began a description about reasons for denial. State Statutes say to set forth your reasons for denial but if you fail to do so the court, upon appeal, has to go through the entire record to find a basis for sustaining your decision. To state your reasons for denial up front can be a double edge sword unless you are very complete in stating them.

In order to render a decision with zoning map and text amendments, the POCD and Section 8-2 criteria are used. Site plan regulations and zoning regulations are used for site plan applications. A site plan application is deemed approved if not denied or modified within legal timeframes. Subdivision regulations are what you look to for subdivision applications. Special exception applications use the zoning regulations.

Affordable housing is all statutory and the entire burden shifts to the Commission for denying an affordable housing application. The Commission has to make the case for denial. There are very few reasons that courts have ever upheld the denial of affordable housing applications.

Conditions of approval have to be spelled out in the regulations and should not be based upon factors outside the control of the applicant. For example a condition cannot be made to get an easement over a neighbor's property to get to a road because there is no control over the neighbor.

For an appeal the notice of decision must be published. The appeal period runs 15 days from the published notice. Any decision the Commission makes is subject to appeal. Chairman Bazzano asked where the notice of decision is published. Director Lipe replied it is typically published the Saturday after the meeting

in the Journal Inquirer. Public hearing notices are typically published on the two Thursdays before the meeting.

Waiver provisions, like street tree or sidewalk requirements, are allowed in subdivision regulations provided the criteria are specifically written and there is a super majority vote of ¾ of all members. Zoning regulations allow for modifications when specifically deemed appropriate with no significant adverse impact on adjacent property or public health, safety, or welfare.

Attorney Olson made a correction to the bottom cell of page 11 of the presentation handout regarding sign regulations changing Section VII.C to VI.5 and deleting 'Includes a number of content-based sign distinctions under Reed v. Gilbert'.

Chairman Bazzano directed the Commissioners to send questions to Director Lipe. The training will be continued at a future meeting for sign regulations and affordable housing.

ADJOURNMENT:

Motion to adjourn the Special Meeting at 8:20 p.m. was made by Vice Chairman Pacekonis
Seconded by Commissioner Dexter
The motion carried and the vote was unanimous.

Respectfully Submitted,

Lauren L Zarambo
Recording Secretary