MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD AT 7:30 P.M. ON MONDAY, MAY 24, 2010, IN
COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET,
CHESHIRE CT 06410

Present
Sean Strollo, Chairman; Earl Kurtz, Vice Chairman; Tali Maidelis, Secretary;
Martin Cobem, Patti Flynn-Harris, Gil Linder, Sylvia Nichols, Louis Todisco
Alternates – James Bulger; Absent: S. Woody Dawson; Alternates Leslie
Marinaro and Ed Gaudio

I. CALL TO ORDER
Chairman Strollo called the public hearing to order at 7:31 p.m.

II. ROLL CALL
Mr. Maidelis called the roll.

III. DETERMINATION OF QUORUM
Following roll call a quorum was determined to be present.

IV. PLEDGE OF ALLEGIANCE
The group Pledged Allegiance to the Flag.

V. BUSINESS

Secretary Maidelis read the call of public hearing for each application.

1. Subdivision Text Change Petition
   Planning and Zoning Commission
   Technical Subdivision Text Changes
   for Consideration
   Section 6.6.2 Other Regulations
   Section 6.2, 6.5.1C, 6.5.2, 6.7 and 6.8
   Correction to bring regulations more in line with the
   Public Works Department Road and Drainage Standards
   Town of Cheshire.
   CONTINUED TO JUNE 14, 2010

2. Subdivision Application
   Linda Podryhula
   826 Wallingford Road
   2-lots
   PH 5/24/10
   PH 5/10/10
   PH 5/24/10
   MAD 7/28/10

Mr. Todisco informed the Chairman that he has familiarized himself with the
record of the public hearing and meeting of May 24, 2010.
James Sokonchek, Kratzet & Jones, 1755 Meriden Waterbury Road, Milldale CT represented the applicant for the two lot subdivision. Mr. Sokonchek stated that the public hearing was held open pending Engineering Department review of the additional information on the drainage. An 8x11 explanation of the drainage system was submitted to the Town Engineer. Comments were received from the Engineering Department, and with this the application is complete.

There were no questions or comments. The public hearing was closed.

3. Zone Text Change Petition Application
   Cheshire Route 10 LLC
   To amend Section 45B.9.1 of Section 45B
   Interchange Special Development District (I-C.S.D.D.) to allow for orderly and flexible development of a large scale project.
   PH 5/24/10
   PH 5/10/10
   MAD 7/28/10

Attorney Anthony Fazzone represented the applicant, stating this is a continuation of the public hearing on the zone text change petition. Mr. Fazzone stated that Section 45B states that approvals are go overall for 5 years, and Section 45 B.7.2 stated that the 5 year period could be extended in one year sequences. The 5 year period may be extended for an additional five year period. Section 45 B.9.1 is not under consideration at this public hearing. After approval an applicant has 18 months to file the final development plan, and the regulations state that the PZC can grant a one year extension by the applicant coming and requesting it. The applicant is proposing an amendment which would permit more than one year extensions to file the final plan of development. All the extension to file the final plan, including the 18 months, cannot exceed the 10 years under the statute. The 10 year plan is found in other areas of the regulations with the limit of such extensions to 10 years.

There is some correspondence from the Town Attorney regarding the recent change in the statute which recognizes that there have been difficult economic times. This is not specifically application to this request. Mr. Fazzone stated that the main point at this public hearing is that for each one year extension the applicant must come back to the Commission and ask for the extension. This is the same as coming back to request a 5 year extension.

Mr. Todisco commented on the preliminary development plan approved in January 2008, with Mr. Fazzone saying approvals expire in July 2010 if the extension is not granted.

In response, Mr. Fazzone said that was correct, and if approved the applicant must return to the PZC and ask for extensions each time for filing of the final development plan.
Paragraph B in the proposed amendment to the regulations was questioned by Mr. Todisco, who asked how it relates with other aspects of the project beyond the final development plan.

Mr. Fazzone believes it deals with the applicant addressing the final development plan in phases to be approved by the Commission. Specific phases would have to be submitted at maximum intervals of 18 months. Before getting to “B” Mr. Fazzone said the applicant would have final development plans for the project and request to submit them in phases.

With paragraph A, Mr. Todisco said this gets the one year extensions in intervals, but he questioned how paragraph B comes in tying into it.

Mr. Fazzone replied that before getting to 2018 the applicant would have come to the Commission for 5 year extensions and then a request could require a public hearing. Within the current framework any extension given now would be through the existing 5 years, 2008 – 2013. The final development plan is a specific site plan. The plans submitted were generic and now must come with specific locations, size of the buildings, number of parking spaces, etc. as part of a detailed site plan. Right now, the approval to file a final development expires in July 2010.

On the additional phases of the project, Mr. Todisco asked whether this is a request to submit them in phases rather than all at once.,

Mr. Fazzone stated that this is correct.

Mr. Linder asked about giving this approval, and if the Commission would be looking at 7, 8 or 10 one year extensions. He cited extensions #1 approval; then another 12 months with the same criteria each year, nothing changed, and if the Commission is more obligated to make that second approval. Mr. Linder has concerns about the series of one year extensions and giving up control of the rights of the Town, particularly with the new Plan of Development coming in

In that regard, Mr. Todisco stated that the statute does say “may”, and does not give any criteria. On one side this gives broad discretion and on the other hand it is disconcerting not to have some criteria. If a bona fide reason could be articulated why the extension should not be granted relating to the Town’s overall zoning regulations, then Mr. Todisco said the PZC does not have to say “yes”. Every year the situation is not the same, i.e. 100% increase in traffic on Route 10, and now it is different with the traffic increase, and facts are different. The Commission has a fair amount of discretion as long as it is arbitrated in a reasonable way. Mr. Todisco stated that the applicant is reasonable in saying they would come back every year.
Ms. Flynn-Harris commented on the Town of Middlebury granting a 5 year extension to a major mixed use development. She would have expected Middlebury to be more like Cheshire making developers come forward and advise where they are with a project.

Mr. Cobern stated that we must appreciate the nature of a special permit as opposed to a site plan or subdivision application. The regulations are written that certain uses require a special permit because the PZC wants to have discretion over these approvals. He cited an excerpt from Article 40 which says that "The PZC may grant a special permit application for those uses that require it". It is not like a site plan or subdivision application which are administrative and must be approved if the criteria of the regulations are met. The Commission has discretion to not approve the regulation, and 40.8 states that another application must be submitted, and the PZC "may" approve a request without a hearing. A special permit is so-called because the burden of proof is on the applicant to convince the Commission that this is appropriate and consistent use of the property. For a subdivision application it is assumed an individual has the right to subdivide their property if they meet the criteria of the regulations. Mr. Cobern sees no problem with the Commission establishing precedence, as each application is considered individually. What is proposed is consistent with the way other special permits are handled, and is more restrictive in requiring annual, rather than 5 year, extensions. Mr. Cobern believes it is appropriate, with the Commission in a position to judge if the project is dragging on and nothing will happen. Then, the Commission is within its right to deny another extension, and request the project get started this year, with submission of the final plan. According to Mr. Cobern this application is consistent with the way other special permits are treated, and is even slightly more restrictive in that the applicant must come back each year with this process.

Ms. Nichols noted that a special permit has been granted to this applicant within certain parameters, and asked what prevents them, or any developer, coming in and changing the parameters of the special permit. She asked if this could be done.

This could be done, and Mr. Cobern explained the applicant would have to file a new application and start from ground zero. If there are some modifications made to the plans, it is the discretion of the Commission for approval of minor changes without a public hearing. If they are significant, then the public hearing can be reopened for the extension and get public comment. This is one way the Commission acts legislatively, and it has the most discretion and flexibility with the type of subject application and how to deal with it.

THE PUBLIC HEARING WAS CLOSED.
4. **Subdivision Text Change Petition**  
**Planning and Zoning Commission**  
To amend Section 6.10 Sidewalks  
**CONTINUED TO JUNE 14, 2010.**

5. **Earth Removal, Filling or Re-grading**  
**Permit Application**  
**Peter & Sia Skabardonis**  
Prospect Road  
Est. 5,000 cubic yards.

PH 5/24/10  
MAD 7/28/10

Paul Bunevich represented the applicant for this property on the Cheshire-Prospect town lines, #1190 Prospect Road. It is 3.42 acres, R-80 zone, with Chesprocott approval for on site sewer and well construction. The property has been re-graded in the past, with no rock found, the slope behind the house is 1 to 1, no blasting will be done, there is standing gravel, and soil testing has been done. They are going from elevation at 336 feet; the house is at 278 feet; so they are going up 52 feet, and 170 feet from the swale proposed behind the house. To grade at a 3 to 1 slope would be going to the top of the hill and would be beyond the 5,000 cubic yards maximum excavation. The State Soil & Erosion Control 2002 version allows going with a 2 to 1 slope as long as every 15 feet vertically there is a reversed flow bench. This breaks up the water and road erosion. The next closest house to the subject property is at #1151 Prospect Road, about 60 feet off the property line, and there is a 40 foot side yard. The town line is the dividing line for the lot. The applicant also owns 20 acres in Prospect behind the Senor Panchos Restaurant.

Ms. Flynn-Harris noted that #1197 is there, straddles the town lines, and asked whether if this stays and, where the proposed house will be, the property is being split off into a new lot.

Stating that was not correct, Mr. Bunevich said there is no lot split involved. On the plans he pointed out the existing lot line, cutting through to the left side of the existing house, garage and parking area from where the subject lot is proposed. The property is already divided; the land is vacant, wooded, with some clearing. His client is trying to propose a house as far away from the road as possible, and the house will be within 10 feet of the minimum front 40 foot setback.

Mr. Todisco noted that the applicant is cutting into the hill for a back yard.

Stating that was correct, Mr. Bunevich said the house had to be moved forward from the original application because of the minimum 5,000 cubic yard cut off. He also advised that the material excavated would be removed from the site. There is an excavation narrative that goes along with the project. It will be done in stages; there will be a silt fence along the area; and the slope will be re-graded. There will be many controls in place with this project.
Mr. Kurtz asked where the proposed home is to be located, and if this area has to be excavated.

Mr. Bunevich stated this is just a few feet; the house location is almost at the grade needed; it is tight, 20 to 40 feet from the back of the house, and it cannot be larger due to the excavation requirement. To get the rear yard, they will have to cut into the slope, and no walls are planned for the project.

THE PUBLIC HEARING WAS CONTINUED TO JUNE 14, 2010.

VI. ADJOURNMENT

MOTION by Mr. Cobern; seconded by Mr. Kurtz.

MOVED that the public hearing be adjourned at 8:15 p.m.

VOTE The motion passed unanimously by those present.

Attest:

[Signature]

Marilyn W. Milton, Clerk