MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD AT 7:30 P.M. ON MONDAY, MAY 10, 2010, IN
COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET,
CHESHIRE CT 06410

Present
Sean Strollo, Chairman; Earl Kurtz, Vice Chairman; Martin Cobern, S. Woody Dawson, Patti Flynn-Harris, Gil Linder, Louis Todisco
Staff: William Voelker, Town Planner

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

1. Zone Text Change Petition
Planning and Zoning Commission
To amend and add to Section 32, Prohibited Uses
Section 31.3 (new) Outdoor Wood Burning Fireplaces

This public hearing was continued for the commissioners to read information about wood furnaces. There were no commission or public comments.

THE PUBLIC HEARING WAS CLOSED.

2. 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.

The commission continued this public hearing to May 24th for PW Director Michaelangelo to attend this meeting and discuss the matter with the PZC.
THE PUBLIC HEARING WAS CONTINUED TO MAY 24TH.

3. Subdivision Application
   Linda Podryhula
   826 Wallingford Road
   2-lots

James Sokenchek, Kratzet & Jones Associates, represented the applicant, and stated that at the last public hearing there were things to be further addressed on the application. This is a 4 acre proposal to be subdivided into two 2-acre parcels, 80,000 s.f. each. There is an existing house on the property which will remain, and the small shed will be removed from the property line. The lot at the property line will have access off Wallingford Road; there is adequate sight distances; the house will have a well and septic system; and there is approval from the Police Department and Chesprocott. As a single lot it will be developed in a way to take care of any increase in storm water on the lot itself. The plans show a driveway and house, and the shape of each might change.

Also shown is a rain garden to control storm water runoff, and its shape and location will be part of the final plot plan to receive a permit. Mr. Sokenchek said the rain garden matches the pattern established by the commission in a development off Marion Road. The subject property has less runoff than the Marion Road property. The final size of the rain garden will depend on the size of the house and driveway. The plantings for the rain garden are shown on Sheet D-1 which mentions the internet site, UConn Cooperative Extension Systems, Rain Gardens, A Design for Homeowners in Connecticut…and this document was submitted to the commission for the record. There was mention at the last public hearing about the University of Wisconsin research done on rain gardens, and the design manual in Connecticut was based on their manual. The document was submitted for the record.

Mr. Sokenchek said that if a homeowner wants flexibility in landscaping the rain garden, the documents submitted will help them develop their patterns.

Ms. Flynn-Harris commented on discussing the landscaping with Mr. Quirk at the last hearing. The reason for the discussion centered on the sparsely planted past rain gardens, and she did not know what guidelines were being used. She said it is better to keep NEMO and use Connecticut State publications. Most important is the fact that the Town and the homeowners have the reference on the plantings as to the types of plantings and their density to make it beneficial.

Mr. Sokenchek advised that the size of the rain garden will be in the area of 675 s.f. with a volume of 650 cu. ft. The Univ. of Wisconsin document refers to the sizing of the area for the rain garden…taking the roof area and dividing by 6, and this would be the required area for the rain garden. In his development, there
would be about 4,500 s.f. of impervious; it actually exceeds this amount; and he would be capturing more than 1. ¾ inches of runoff.

Mr. Gaudio asked about the contents of the soil making a difference, i.e. gravel or clay and its absorption.

In response, Mr. Sokenchek said the rain garden is based on what can be absorbed in 24 hours or 6 hours, and there is the same basis for design. The development meets those requirements; percolations have been done; and to encourage infiltration, there are detailed leaching galleys underneath the rain garden. This allows for absorption in the ground and in the leaching galleys sidewalls. Sometimes the surfaces clog up and having leaching underneath tends to avoid problems, and there is the ability to absorb in the ground and under the ground.

Under the revised Energy Commission comments, #6, Mr. Cobern said it discussed a net zero runoff increase, and he would be more comfortable with a flat statement on this concern. It would be beneficial to put in the plans that “after the final site plan is developed, the rain garden size will be adjusted to insure it meets the criteria.”

This wording was accepted by Mr. Sokenchek who said he would accept it for the site plan.

Town Planner Voelker stated that the town engineer’s office has said the calculations were still not acceptable and they still have questions on the storm water management calculations.

With his stipulation in, Mr. Cobern said the applicant would have to demonstrate on the site plan that the rain garden is the proper size.

According to Mr. Voelker, it is better to satisfy the engineering comments. He said buyers buy from the subdivision map and design should be worked out and there is a reference for that. Mr. Disbrow is still not satisfied with the storm water calculations.

THE PUBLIC HEARING WAS CONTINUED TO MAY 24TH.

4. 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.
Mr. Gaudio was recused from this application due to possible conflict of interest.

Attorney Anthony Fazzone represented the applicant, Cheshire Route 10 LLC, which is the named application for the zone text change petition application. This application is to amend Section 45B.9.1 which is part of the Interchange Special Development District (I-C. S.D.D.) regulations. These regulations were approved in 2007 in conjunction with changes to the Cheshire Plan of Conservation and Development (Plan) adopted in July 2007. The changes to the Plan and the zoning regulations allowed for a more diverse variety of uses in the I-C zone including mixed use development.

Section 45B.9.1 requires that once the commission approves an I-C S.D.D. project then the applicant must submit a final development plan. In conjunction with the original approval a general plan of development was provided with the understanding that as things progressed and applicant received commitments from tenants and more specific engineering was done, a final development plan would be presented. The regulation requires that the final development plan be submitted within 18 months; and there is a provision for the commission to grant one approval for one additional year. It would be a total of 2 ½ years.

Mr. Fazzone said that the regulation proposed would allow the commission to have the authority under the regulation to grant extensions for the filing of the final development plan for periods of up to 10 years, including the original 18 months. The 10 years is consistent with Connecticut State Statutes and other sections of the regulations. Prior site plan approvals and special permit approvals which include site plans have been granted extensions for 5 years to a total of 10 years. This is also applicable to the subdivision regulations.

Section 8-3 of the CGS has consistently provided that site plan approvals are good for 5 years, and the commission can extend for additional periods providing the total does not exceed 10 years. Section 8-3 J specifically talks about large scale developments, commercial developments, where the square footage exceeds 400,000 s.f. whereby the commission can grant approval to reach up to 10 years.

Section 41 of the Zoning Regulations, Site Plans, follows the State statute, Section 8-3, and makes specific reference to large scale projects. Under the overall Section 45 B, I-C S.D. D. regulations there is a minimum requirement in the I-C zone that all projects coming under this regulation must be 30 acres or more. This type of project would include those projects of 400,000 s.f. or more. The I-C regulations states that all applications in the I-C zone must be treated as special permit approvals, and they are good for 5 years, and the commission has granted extensions because projects were not able to be completed or get it started. The same is true of the subdivision regulations and State statutes give PZC authority under 8-25 and 8-26C for approval of 5 years with the commission granting extensions for 5 more years to a total of 10 years.
Mr. Fazzone said that with respect to the type of development allowed under Section 45 B is large mixed use projects. Even in the best economic times one extension is not enough, and the final development plans to be presented to the commission are controlled by many factors. There is leasing and tenants, selection of locations and size within the development, financing requirements, federal and state regulatory controls are taking longer to obtain.

It was stated by Attorney Fazzone that the request is consistent with the Plan of Conservation and Development. The entire Section 45 B was adopted after a commission finding that mixed use development was consistent with the changes made to the Plan. The Plan has a priority to promote both commercial and industrial growth within the Town, and to increase the diversity in the I-C zone, and allow mixed used development in this zone.

What the applicant is looking for is more procedural than substantive, and Mr. Fazzone noted it does not allow any additional uses or changes to what goes into the I-C zone. It talks about the procedure to be followed. The change being sought allows the commission to grant extensions of one year each, up to 10 years from the date of the original approval. This gives the PZC more flexibility to achieve the goals set forth in the Plan.

Mr. Cobern stated he understands that this large project is unlike a 20 home subdivision, and more flexibility is required. He commented on the letter from Kari Olson’s letter in which excellent points are made for the commission to consider. One point is that there are a number of different types of deadlines to be met, and she pointed out that the commission must not give unlimited opportunity to keep a valuable piece of property off the market if it will not be developed. Mr. Cobern said the general concept makes sense, and personally, he would like to discuss things further on limits, what must be done to be consistent with the appropriate regulations, and maintain a sense of control to the Town to not arbitrarily write a blank check to keep valuable property off the market and undeveloped for a period of time. In principle, the request makes sense, but he wants to make sure all the details are right.

In the proposed language, Mr. Fazzone noted that there is specificity to have the time period from the original date of approval. Ms. Olson pointed out a provision under which another new application has been filed, under Section 45.7.2 which talks about the 5 year, then the 1 year, and it is after public hearing of the overall approval. This has been amended to tie into the State statutes, again going back to the original approval date. In each case, the PZC has some discretion on whether to grant those extensions.

Stating he understands this, Mr. Cobern cited a key sentence from the Olson letter, paragraph #2, “However, just because a perpetual deadline to file for site plan approval may be permissible, that does not mean that it is necessarily in the best interest of the Town.” There are two pieces to this…the commission must
be consistent with all the various regulations, and be flexible in a way which protects the best interests of the town. There is the need for some tweaking to reach that point.

Mr. Voelker stated that the reason Ms. Olson used that language is because under an original discussion it would have been proposed to allow perpetual extensions. Mr. Voelker raised a concern about this because it felt the statutory construct would be 10 years, and Ms. Olson agreed with this, as does Mr. Fazzone.

Where we are today is tighter than going with unlimited number of extensions, and Mr. Fazzone said the ultimate cutoff is the statutory construct of no more than 10 years for the overall approval. The applicant has not object to tying it up within the statutory scheme.

Ms. Flynn-Harris said that in the regulations, i.e. the site plan actually says condition of approval as set forth in CGS 8.3. This is cited in other regulations and we are not citing it so we are not being consistent. The overlaying zones in the regulations in this area should all be addressed at the same time. Other than the property which was extended for over 10 years, Ms. Flynn-Harris asked if there are other examples of site plans or a subdivision.

Mr. Fazzone cited the Riz Realty, West Main Street, Mixed Use Development received approval, and Richmond Glen ARD received a 5 year extension.

Mr. Dawson stated that, personally, he considers this a reasonable request for such a large project due to the change in the economic picture, and the developer is respected and has spent much time and money on this project. The economy is the big thing and all the presentations before the PZC showed great goals of the applicant, and he believes they will work. However, we cannot predict what the economy will be. Things are getting harder with the State to get things done; budgets are tight; and Mr. Dawson sees no harm for extensions on this specific project. With a large project there are many things which occur which hold up a project. He does not consider this an unreasonable request.

In any application coming before the Commission, with an approval now or in the future, Mr. Fazzone said the regulation will require 30 acres or more. In the regulatory process, the Army Corp of Engineers took greater jurisdiction over any wetlands disturbances than before. This is time consuming.

Mr. Kurtz stated that with this reading of the proposed text change the applicant must come one time each year for extensions to be granted out to 10 years.

Ms. Nichols stated the discussion is relating to a specific project, but this is not about a specific project. We must look very carefully because this is about going forward and once the regulations are in place they apply to subsequent projects.
We should be mindful of the current project, but decisions should be made based on what is the general rule which will be in place for some time, irregardless of this particular project.

Mr. Linder agreed with Ms. Nichols’ comment, and any decision made concerning this change should be covering a general text change, and have nothing specific to one project.

It was stated by Mr. Fazzone that he tried to gear the application and his comments in that way. Regarding any generic comments that would apply, it would be for any 30 acre mixed use development in the I-C zone.

Chairman Strollo asked how many undeveloped acres there are in the I-C S.D.D. zone.

There are over 200 acres, and Mr. Fazzone said it could be close to 400 acres.

Mr. Voelker said there is only one I-C S.D.D. zone.

PUBLIC
Tim Slocum 1285 Lilac Court, requested clarification on going from the approved date and one year out, and what is the maximum construction date.

Mr. Voelker replied that January 2008 was the original approval date, and it would bring the date out to a maximum of 10 years from that date.

Mr. Slocum said it is a good positive thing that the commission reviews the extension request every year. He thought the applicant was getting a 10 year extension without the PZC ability to question it. He is comfortable knowing that the PZC does not give up the responsibility or right to revisit a project. As to the remaining 30+ parcels in the I-C zone, there are three 30 acre parcels for projects.

Stating he was unsure of that fact, Mr. Voelker said there have been no proposals for development on any other quadrants, all of which are different, with varied development challenges. One site is controlled by the State.

On the broader use of this regulation, Mr. Slocum asked how it would be used in the I-C zone.

Mr. Voelker replied that it is not applicable to the I-C zone, only applicable to those projects which be applied for under the I-C S.D.D. Nothing is changed regarding the I-C zone. This amended text would be applicable to any project in the I-C S.D.D. 30+ acres if approved by the commission.
Mr. Slocum stated that any project coming forward could apply for the extension in the I-C S.D.D. and the new regulation would give them this right, and give the commission the level of protection for the Town.

This is 18 months for the preliminary plan and Mr. Voelker said there is one extension of 12 months, for a total of 30 months. After that it is year to year. In the I-C zone it is a 5 year approval and the applicant can come back for a 5 year extension.

Mr. Slocum does not want the commission weakened by such a text change. He wants the regulation to be fair to all and the text change becomes part of the regulation which the applicants know is available to them.

Sean Stanziel, 101 Contour Drive, stated his opposition to the proposed large and vague project and has concerns about the life style changes resulting from this project. There is a residential part to the project and limitation of 15,000 s.f. of retail development. He asked about the type of stores which will come into the project. He has concerns that the little boutique life style will not stay, and things can change with Kohl’s or Wal-Mart being developed. He has concerns about how the project will be controlled if the applicant cannot find high end tenants.

This is a legitimate concern, but Mr. Voelker said this is not the focus of the application before the commission tonight. With any changes to the development, the applicant must return to the commission and, possibly, go through the public hearing process again. This is all built into the regulations.

With development of this property, Mr. Stanziel said he did not know they would have to come back each year. He asked about this project fueling other developments in the industrial zone in the same way.

Any development can spur another development, and Mr. Voelker said other parcels in the zone are different with different issues. There is not necessarily repetition of what is done on one property to another.

Anne Giddings, 915 Boulder Road, stated it is important to remember that any decision made by the commission is not just for one application. She heard confidence expressed about this particular developer, but this is irrelevant if a change is made which could affect any developer coming into Cheshire and has a plan approved. The commission needs to think long and hard for this to be in the best interests of the Town, and it is a substantive procedural change. She said the Town must maintain control over development taking place and urged the commission to consider this as something to be approved now or more time should be spent examining this and the wording.

James Sima, 180 Birch Drive, asked about this approval, and it expiring in July 2010, and a one year extension reverts back to the January 2008 approval date.
If this approved tonight, Mr. Voelker said the applicant must come back and ask for an extension...they are not asking for an extension tonight. In that case they go year to year, and the 10 years goes from January 2008 to January 2018 – this is the 10 year window. The first 30 months expire at the end of July 2010. From then on it is annually to 2018.

Mr. Sima asked about the construction date out 10 years and the 10 year window opening the Town up to any lawsuits to always give a developer the 10 years.

According to Mr. Voelker any decision of a public agency is subject to an appeal, and the regulation makes it clear that the extension is discretionary. The PZC can change its planning goals, and there is no precedent for granting additional extensions. Every year the applicant returns for another extension, the commission can adopt restrictions if it wants. Regarding an open ended approval, this is why there is insistence on a time period. The commission does not have to give an extension and this could be appealed, and every approval is discretionary.

Ms. Flynn Harris noted that this is already cited in the regulations.

Because of the way this is set up, Mr. Fazzone said the applicant cannot get ten one year extensions. The applicant has 18 months to start with, and 10 years would not be granted. The outside date is January 2008 to January 2018.

Mr. Kurtz read comments into the record from the Central Connecticut Regional Planning Agency and the South Central Regional Council of Governments.

THE PUBLIC HEARING WAS CONTINUED TO MAY 24, 2010.

VI. ADJOURNMENT

MOTION by Mr. Cobern; seconded by Ms. Flynn Harris.

MOVED to adjourn the public hearing at 8:42 p.m.

VOTE The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk