

**TOWN OF SOMERS
PLANNING COMMISSION
P.O. BOX 308
SOMERS, CONNECTICUT 06071**

**PLANNING MINUTES
REGULAR MEETING
THURSDAY, FEBRUARY 26, 2009**

I. CALL TO ORDER

Vice-Chairman Cliff Bordeaux called the regular meeting to order at 7:00 pm. Members Cliff Bordeaux, Brad Pellissier, Greg Genlot, and Alternate Scott Sutter (seated for Karl Walton) were present and constituted a quorum. Also present were Zoning Commissioners, Jill Conklin and Dan Fraro, Selectmen David Pinney and Kathy Devlin and Town Planner, Patrice Carson.

II. DISCUSSION: PLAN OF CONSERVATION & DEVELOPMENT (POCD)

a. PUBLIC INFORMATIONAL MEETING: PROPOSED OPEN SPACE SUBDIVISION AND ZONING REGULATIONS

Mr. Bordeaux explained why the Planning Commission has drafted the regulations providing for an alternate means of subdivision. In a poll of Somers residents to determine POCD objectives, there was a strong interest in having more open space in developments. This evening's informational session was to present the preliminary draft of the Open Space Subdivision Regulation to the Town for feedback.

Ms. Carson had prepared printouts on the regulation information, which she presented to the public. She described what was included in the packet. The #1 priority in the POCD was to preserve open space for wildlife habitat, maintain the character of the Town, provide recreation areas and to reduce the impact of development on the land. Ms. Carson explained that the POCD poll was conducted by directly surveying 400 randomly selected Somers households.

Open space subdivisions are enabled by section 8-18 of the State statutes. The statute states that in this type of subdivision a minimum of 1/3 of a subdivided parcel must be maintained as open space. The statute specifically states that Towns have the right to require more than 1/3 of the land be preserved as open space. A letter from the Town Attorney included in the informational packet reiterates this. Of 20 nearby Towns that allow open space subdivisions, 9 require 50% of the land be held as open space, 6 require 40% (as is proposed for Somers) and 5 require 30%.

Somers plans to allow conventional subdivisions in certain circumstances but will increase the required open space in these from 10% to 20% like most Towns in the area have done. A fee in lieu of open space that is paid to the Town cannot exceed 10%, but the amount of land can be more than 10%.

Ms. Carson explained the proposed amendments to the Zoning Regulations. Some Towns require a developer to present plans for a conventional subdivision so the lot count can be established and then require a second set of plans for an open space subdivision. To avoid this additional time and expense the Planning Commission devised a density calculation. The calculation works as follows to provide a lot count: Property to be subdivided minus the areas that cannot be developed and 10% for roads and easements. Divide the remaining area by 40,000 square feet and the result is the lot count. This allows a developer to maintain the same number of lots as a conventional subdivision but with 30,000 square foot lots rather than conventional sized lots of 40,000 square feet. Lot frontage requirements will be reduced from 175 feet to 125 feet. If the soil on the property meets Public Health Code standards an additional bonus lot will be allowed. This bonus lot will be required to meet Connecticut statutory requirements for affordable housing. This also satisfies the affordable housing priority in the POCD.

Ms. Carson explained how the process of presenting a subdivision application would proceed. The Town staff would meet with the developer and recommend whether a property would be subdivided in the conventional manner or as an open space subdivision, the ultimate decision resting with the Planning Commission. The possible uses for the open space would be considered, i.e., to connect to established open space that is contiguous to the property, for recreation,

agricultural or wildlife habitat value or simply to screen the subdivision from the road. Once these decisions are made the subdivision process would proceed as it currently does.

The floor was opened to public comment:

Jeff Lipton is opposed to the subdivision changes. He owns about 250 acres in Town, which has been operated as a farm since 1919. The land is their savings and retirement plan. He questioned the attorney's opinion in light of a section of a State Statutes on subdivisions, which he read. He does not believe it is fair for the Town to say that landowners owe the rest of the Town a piece of what they own. He further questioned the wisdom of having septic systems on the smaller lots. He also wanted to know how the Town would maintain the open space land and mentioned the liability concerns for a homeowner's association.

John Gale has 134 acres and a business in Town and opposes the proposed regulation and believes it discriminates against landowners. He questioned the validity of the 400 random call survey. He said his land is his retirement and does not feel the Town deserves a piece of it.

Ms. Carson explained that the survey was conducted by a professional survey company. She also pointed out that both Mr. Lipton and Mr. Gale would probably fall under the Open Space Subdivision Regulations instead of the Conventional Regulations and have the same lot count on the properties and would therefore be unaffected by these regulations. In fact, they both may benefit from the bonus lot and the reduced cost of road and infrastructure. Furthermore, the houses in open space subdivisions garner more money, pay more taxes and have better resale values.

Jeff Lipton had questions regarding the fees charged to the property owner during the subdivision process. He brought to the Commission's attention an error regarding the subdivision fee. Ms. Carson stated that there was an error and that this fee is 10% of the fair market value of subdivided land and will not be increased to 20%.

Mr. Bordeaux reiterated that the Planning Commission's intention in devising the regulation was to not harm the landowner. By maintaining the same number of lots there will be no potential income taken. In fact, it allows for savings in infrastructure costs and for more creativity in the use of the land.

Ms. Devlin suggested that the Commission show pictures of open space subdivisions at the next meeting on this issue.

George Schober developed the Greystone Farms subdivision and other subdivisions in other Towns. He is an attorney and a developer. He stated that the way the regulations are written, lots will be lost. He went over the problem areas he saw in the proposed regulations.

He suggested that the regulation state clearly that open space subdivisions will be the norm in Somers at the discretion of the Commission. He pointed out in the "Referrals" clause, that Planning can invite any other commission to review the subdivision plans. He said that this would increase the cost to the developer.

On page 3 paragraph B. of the proposed regulation, he suggested that the legal documents be required "prior to approval" of the application rather than accompanying the initial application. He suggested the use of the same language for paragraphs C. and E. of this section as well. These paragraphs pertain to deed restrictions on commonly owned open space and owner's association documents.

Attorney Schober questioned whether the 10% deduction for roads in the yield formula would be deducted even if there were no need to construct roads. He also pointed out that licensed landscape architects who may be required by Planning are very expensive. He used a hypothetical 100-acre lot as an example to question the viability of the yield formula and speculated that a landowner would not be able to create the same number of lots as in a conventional subdivision.

Attorney Schober concluded by announcing that he would be suing the Town on an unrelated issue.

Ralph Wetherell asked what entitled the Town to any land. Ms. Carson explained that the State enables the Commission to take open space when land is subdivided. Mr. Wetherell explained that he owns 100 acres that was approved for a 54-lot subdivision 30 years ago. He described the property and asked how many lots he could have under these regulations. He feels the regulation cuts the marketability of his property by half. He also asked who would maintain the open space. Ms. Carson said there are several options depending on how the space is used: recreation space would be maintained by the Town, passive space might require no maintenance, possibly a farmer might lease the land, etc.

Bob Pettee opposes the regulation because he believes the Town gets enough of people's money and they should not be taking people's property as well. He thinks this will reduce building in Town and will put more people out of work during the financial crisis. He feels that the government is already taking too many rights away.

Selectman Pinney stated that people are willing to pay a premium to live in Somers largely due to the efforts of our Zoning and Planning Commissions and regulations. He recommends rechecking the yield formula to ensure its fairness, but believes the regulations would maintain a high value for properties to be developed and for land sale. He appreciates the work of the farmers who keep their land in service because it preserves the special appeal of Somers. He believes the regulation serves the Town and does not harm the landowners.

Jeff Lipton asked that the Town look into a more fair way to assess the subdivision fee when a large lot is split and only a portion is taken for subdividing.

A gentleman in the audience expressed his concern that if open space land is taken by the Town, then taxes will not be assessed on it. This will increase everyone's taxes and in this economy this is not a good thing. Concern was expressed that the landowner would be hurt because a developer will say that they will only pay for 60% of the land since 40% is going to be taken. More questions were raised regarding the validity of the POCD survey. Ms. Carson offered to provide a copy of the survey to those interested.

Mr. Bordeaux acknowledged that the feedback would be very helpful in adjusting the regulation and he thanked those who offered their opinions.

III. OLD BUSINESS

a. ZONING REFERRAL: SITE PLAN APPLICATION FOR CHANGE OF USE TO BUSINESS, 138 MAIN STREET, REDMOND

Ms. Carson said that Mr. Redmond still has not submitted all his information. It was recommended to send the referral back to Zoning recommending denial without prejudice to allow Mr. Redmond more time to furnish the necessary information because Planning Commission's thirty-five days will expire before their next Planning meeting.

A motion was made by Mr. Pellissier; seconded by Mr. Genlot and unanimously voted to recommend denial without prejudice to the Zoning Commission of Redmond's site plan application for change of use to business at 138 Main Street based on the lack of information with which to base a decision. The Commission requested to have the application referred again once the information was received.

b. **OTHER** – There was no other New Business.

IV. NEW BUSINESS

a. ZONING REFERRAL: SPECIAL USE PERMIT APPLICATION FOR HORSES FOR COMMERCIAL PURPOSES, SECTION 214-89.A., 163 BILTON ROAD, YOUNG

The Commission reviewed the location of the 27-acre property on the map. It is next door to the state-owned prison property. The Young's have a house, barn and an indoor riding rink on the property. They are asking to board horses and to provide for their care. They will not offer training or lessons. The horses will be allowed to pasture thereby avoiding

the need for a waste collection system. The number of horses they can board is determined by Zoning regulation and the acreage of the property. Ms. Carson explained that this is a commercial use in a residential zone that is allowed by special use permit.

A motion was made by Mr. Sutter; seconded by Mr. Genlot and unanimously voted to recommend approval to the Zoning Commission of Young's Special Use Permit application for horses for commercial purposes under Section 214-89.A. at 163 Bilton Road. The Commission finds this an acceptable home occupation in accordance with the recommendations of the POCD.

b. ZONING REFERRAL: SITE PLAN APPLICATION FOR RETAIL BUSINESS & OFFICE, 21 ELEANOR ROAD, KEARNS

Ms. Carson explained that this is the Eleanor Road industrial building that currently houses Filter Fab. The Kearns' businesses would be on the other side of the building. Mr. Kearns owns a pavement marking business and Mrs. Kearns has a tack shop. It would be a retail business going into an industrial zone thus satisfying the POCD.

A motion was made by Mr. Sutter; seconded by Mr. Pellissier and unanimously voted to recommend approval to the Zoning Commission of Kearns' site plan application for a retail business and office at 21 Eleanor Road. The Commission finds that the application falls under the recommendations of the POCD for business location.

c. **OTHER** – There was no other New Business.

V. STAFF/COMMISSIONER REPORTS

The Commission gave their feedback on the evening's public information session. They agreed that the response was not unexpected and they would consider the valid concerns raised. Ms. Carson reiterated that she would review the calculations again. She will also look into withholding 10% for roads when no road is needed. Ms. Carson pointed out that the Town is indemnified by State law against liability on public open space when it does not charge for its use.

A motion was made by Mr. Sutter; seconded by Mr. Genlot and unanimously voted to schedule the public hearing for open-space subdivisions for March 19, 2009 at 7:00pm at Somers Town Hall.

VI. AUDIENCE PARTICIPATION – There was none.

VII. CORRESPONDENCE AND BILLS – There were none.

VIII. MINUTES APPROVAL: February 12, 2009

A motion was made by Mr. Genlot; seconded by Mr. Sutter and unanimously voted to approve the minutes of February 12, 2009 as written. Mr. Pellissier abstained from voting.

IX. ADJOURNMENT

A motion was made by Mr. Sutter; seconded by Mr. Pellissier and unanimously voted to adjourn the February 26, 2009 meeting of the Planning Commission at 8:57pm.

Respectfully submitted,

Jeanne Reed
Recording Secretary

Bradley Pellissier
Commission Secretary