

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

**ZONING MINUTES
REGULAR MEETING
APRIL 7, 2008 - 7:00 PM p.m.
TOWN HALL**

I. PUBLIC HEARING

a. APPLICATION FOR RENEWAL OF SPECIAL USE PERMIT FOR FLEA MARKETS, AUCTIONS & MUSIC FESTIVALS, 430 SOUTH ROAD, PLEASANT VIEW FARMS REALTY

Chairman Rob Martin opened the public hearing at 7:01 p.m. and the legal notice was read.

Jeff Lipton requested his annual renewal of a special use permit for his property at 430 South Road. Over the coming year there will be about six functions staged at the property.

Chairman Rob Martin opened the floor to anyone wishing to speak for or against the application. No citizens expressed an opinion regarding the application.

Ms. Carson stated that the application was reviewed by the Planning Commission and they voted to recommend approval of the application since no complaints had been filed in the past year regarding the permitted special use of the property.

At 7:10 p.m., a motion was made by Jill Conklin, seconded by Dan Fraro and unanimously voted to close the Public Hearing for Pleasant View Farms Realty's application for renewal of special use permit for flea markets, auctions & music festivals at 430 South Road.

b. CONTINUATION: APPLICATION FOR ZONE CHANGE FROM A-1 TO I, 225 & 251 FIELD ROAD, SMYTH & AVERY

Chairman Rob Martin opened the public hearing at 7:11 p.m. and Ms. Carson stated that there is no legal notice requirement for the continuation of a public hearing.

Attorney Parks had additional exhibits and comments. He presented a petition, a copy of the Somers Plan of Conservation and Development and a graph he prepared from information within the Plan of Development, all to be marked as exhibits. He also provided a history of other properties where zoning was changed to conform to property lines.

He gave a presentation in light of the public concerns from the last hearing.

He showed a zoning map from the 1960's explaining that the zones have changed little since that time. His concern was that the balance between homeowner and business interests tipped too heavily in favor of the homeowner. Since the 1960's residences have grown in number 200% faster than business. Because of this disparity, Somers' residents carry 98% of Town taxes and Somers' businesses pay 2% of the taxes. In neighboring towns with more businesses, a higher percentage of town taxes are paid by business.

Attorney Parks responded to citizen contentions that they purchased their homes in reliance of the A-1 zoning of the property in question. He stated that when the properties were purchased the Town had a policy of approving zoning applications that allow property lines to also be zoning demarcation lines. Therefore, the homeowners should have had a reasonable expectation of a zone change for the property. He reminded the Commission that approval of the application was recommended by the Planning Commission in accordance with the POCD.

Potential pollution was another concern voiced by citizens. Attorney Parks contends that the possibility of pollution is not a criterion on which to determine whether to allow a zone change. Other government entities strictly regulate the uses of a property to minimize the possibility of pollution.

Mike Mocko discussed the site plan. He reiterated that the intention of the berm is to prevent view of the buildings on the Smyth property. The berm also provides protection from noise and the shrubbery on it offers some air filtering. At this time the roofs of the industrial area can be seen from Lindell Drive, but with the proposed plan they would not be visible.

In a previous special meeting, the Zoning Commission walked the site in question. Per a request by Mr. Martin, Mr. Mocko showed a map of the property and pointed out where the Commission had walked.

Mr. Mocko went on to describe the lighting plan and the dugout style construction of the buildings. Both are designed to minimize the impact on the surrounding neighborhood.

The back of the building that would be closest to the residences would only be used for maintenance of the building or emergency access. Ms. Carson stated that the Commission could condition a site plan approval upon all equipment i.e., gas tanks, compressors, etc., being in front of the building.

Ms. Carson explained that if a new owner were to purchase the Smyth property after the zone change was approved the Commission could require them to conform to protective features such as a berm separating industrial buildings from residences, etc.

Jason Avery submitted, for the record, a letter from Daniel Avery and zone maps. Ms. Carson read the letter aloud. The letter pointed out that when the Avery's purchased the property in 1960, all of Field Road was zoned industrial and offered the desired opportunity for their business to grow. To stay viable the Avery business needs to expand now and Mr. Daniel Avery asked the Commission to respect the needs of the business.

Two petitions with a total of 85 signatures were submitted recommending approval of the zone change.

Mr. Martin opened the floor to public comment, reminding those who had spoken at the previous hearing that their comments were still on record.

Pete Southwick, 431 Billings Road – spoke against the zone change. He said that Smyth and Avery's only argument was that they have a right to expand their businesses. He continued that the applicants had been found to be non-compliant with regulations involving chemical discharging. He said that one business had been required to vacate for two years and is back in business now. He feels that the Town is reluctant to enforce zoning regulations and fears that if the zone change occurs the Lindell Drive residents will have no recourse when regulations are violated.

John Cowles, 26 Lindell Drive – feels the track record of the applicants in removing trees and doing nothing to improve the property speaks louder than the concept plans. He argued against Attorney Parks' assertion that when purchasing their Lindell Drive residences the buyers should have been on notice of a potential zone change. He believes that researching the history of zone changes in a town on top of all the other concerns a buyer must consider is unreasonably burdensome. He does not want the unsightliness of the Field Road businesses any closer to his property. He also pointed out that those neighboring towns with a higher proportion of business to residences have higher taxes. So he contests the argument that more businesses would reduce residential taxes. He continued that the Ellington commercial sites that had been agricultural land is not what he wants for Somers' future.

Jeffrey Sizer, 110 Partridge Run – stated that the best way to ensure industrial and residential harmony is through a buffer zone. He believes that an industrial zone should not abut directly on a residential zone. He also referred to the

unsightliness of the industrial properties. He expressed concern that in the future a forty-foot building could be built on the property with security lights and pit bull dogs.

Angela Koehler, 43 Sunshine Farms Drive – said that she thought zoning rules did not protect them when the required 20-foot tree line was removed. The original plan for the current site on her street had evergreens, but deciduous trees were planted and offer no visibility screen in the winter. She also stressed that Somers has lower taxes than neighboring towns with more businesses.

Jane Legg, 13 Lindell Drive – has concerns regarding the well water use and septic systems for the businesses and what would happen in case of fire. She also has problems with the lights, noise and fumes coming from the current businesses. She feels that because zoning rules have not been enforced a concept plan means nothing to the homeowners.

Jim Pfeifer, 19 McCulloch Drive – spoke regarding the environmental issues. He pointed out that some Field Road properties have been demonstrated to have impacted the ground water. He recommended that the Commission consider the water pollution potential when making their decision since the residents depend on well water.

Malcolm Chadborne, 50 Nutmeg Drive – had owned property on Lindell Drive. He said the Commission should protect the people on Lindell Drive by not approving the zone change.

Attorney Parks stated that many of the concerns expressed by the citizens involve scenarios that are not permitted under Somers current zoning regulations. He said that some of the problem businesses pre-date the zoning regulations and are grandfathered. Regarding the tree removal and six years without improvement, Attorney Parks said that the finished project cannot be judged by how things appear during construction. He reiterated the Commission's need to consider a balance between residential and industrial rights.

Joan Rivard, 74 Maple Ridge Drive – stated that the zone change would lower property values on the abutting properties thus lowering taxes. She recommended that the Commission protect the homeowners.

John Cowles, 26 Lindell Drive – pointed out a junk car on one of the photos submitted to the Commission and stated that he expects that the property would eventually look like the rest of Field Road.

Jeffrey Sizer, 110 Partridge Run – asked why the trees were removed from the property previously.

Jason Avery explained that it was done to re-grade the property.

The Commission had no other questions for the applicants.

At 8:39 p.m., a motion was made by Wes Smith, seconded by Dan Fraro and unanimously voted to close the Public Hearing.

II. CALL TO ORDER

Chairman Rob Martin called the regular meeting of the Zoning Commission to order at 8:40 p.m. Members Jill Conklin, Rob Martin, Wes Smith and alternate Dan Fraro (seated for Ray Hafford) were present and constituted a quorum. Town Planner Patrice Carson was also present.

III. MINUTES APPROVAL

A motion was made by Dan Fraro, seconded by Wes Smith and unanimously voted to approve the minutes of the March 3, 2008 meeting as amended.

A motion was made by Dan Fraro, seconded by Wes Smith and unanimously voted to approve the minutes of the March 17, 2008 meeting as written.

IV. INTERVIEW DESIGN REVIEW BOARD CANDIDATES

Ms. Carson said the Board of Selectmen would be appointing a candidate this evening, however the Zoning Commission could continue to look for more candidates. The Design Review Board can have more than five members. The current Board members are Gail Panciera, Landscape Architect Kenny Albert, James Meagher, Neil Connell and Richard Cheney. The Commission felt that in the future, this item only needed to be on the agenda when they had someone to interview.

V. OLD BUSINESS

a. DISCUSSION/POSSIBLE DECISION: APPLICATION FOR RENEWAL OF SPECIAL USE PERMIT FOR FLEA MARKET, AUCTIONS & MUSIC FESTIVALS, 430 SOUTH ROAD, PLEASANT VIEW FARMS REALTY

Ms. Carson stated that the renewal period is typically one year, so the permit would be from April 2008 to April 2009. In previous years the Zoning Commission asked Pleasant View Farms to notify the Commission in advance of any events. She reiterated that there have been no noise or other complaints in the last year.

A motion was made by Jill Conklin, seconded by Dan Fraro and unanimously voted to approve the application for the renewal of Pleasant View Farms Realty's Special Use Permit for flea markets, auctions and music festivals at 430 South Road, with the requirement that the Zoning Commission be notified in advance of any upcoming events.

b. DISCUSSION/POSSIBLE DECISION: APPLICATION FOR ZONE CHANGE FROM A-1 TO I, 225 & 251 FILED ROAD, SMYTH & AVERY

Wes Smith said that he would like to vote on this issue but first needed to listen to the tapes of the previous meetings. He requested the vote be postponed so he could do this. He would be available to attend the May 5, 2008 meeting. There was a consensus to wait until the May 5th meeting for further discussion on the zone change.

c. DISCUSSION/POSSIBLE DECISION: ZONING COMMISSION'S PROPOSED AMENDMENTS TO THE ZONING REGULATIONS FOR OUTDOOR WOOD BURNING FURNACES (OWBF'S)

Ms. Carson distributed a sample regulation allowing OWBF's. She suggested that the Commission could add a time restriction to the regulation and change the permitting requirement from special use permit to zoning permit. The Commission discussed specifics of the sample regulation.

The Commission further discussed whether the Town could be held responsible if the DEP terminated the use of an OWBF for excessive emissions. Ms. Carson explained that the Zoning Commission can only regulate the location not the discharge. The Commission agreed that OWBF owners need to know that approval under the Somers Zoning Regulations does not guarantee continued legal use. If the DEP finds a unit to be in violation of air quality regulations the DEP can shut down the unit.

The Zoning Commission agreed to require:

1. a zoning permit instead of a special use permit
2. burning to be prohibited between April 15th and October 15th except by special use permit for agricultural business.
3. waiver of the survey requirement if the unit is 500 feet from any property line.

The Commission requested the Town Planner for forward the regulation to the Town Attorney for legal review.

d. OTHER – There was no other Old Business.

VI. NEW BUSINESS

a. DETERMINATION OF STAFF REVIEW: CHANGE OF USE TO RETAIL, 11 SOUTH ROAD, ROULIER/WORTHINGTON POND FARM

Ms. Carson explained that Dan Roulrier would like to use part of the building at 11 South Road for a retail model train business. There was a consensus of the Commission to allow the application to be reviewed by staff.

b. Other – There was no other New Business.

VII. DISCUSSION: PLAN OF CONSERVATION AND DEVELOPMENT

a. RIDGELINE REGULATIONS – REVIEW DRAFT

There was no discussion of the ridgeline regulations.

VIII. STAFF/COMMISSIONER REPORTS

Joy O'Connor has taken a new position and is no longer Somers Zoning Enforcement Officer. The Town is interviewing for her replacement.

IX. CORRESPONDENCE AND BILLS

The following bill was presented for payment:

Journal Inquirer (March 17th Public Hearing) \$157.40

A motion was made by Dan Fraro, seconded by Jill Conklin and unanimously voted to pay the bill.

X. ADJOURNMENT

A motion was made by Dan Fraro, seconded by Jill Conklin and unanimously voted to adjourn the April 7, 2008 Zoning Commission meeting at 9:15 pm.

Respectfully submitted,

Jeanne Reed,
Recording Secretary

Wesley Smith,
Commission Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING.