

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

**ZONING MINUTES
REGULAR MEETING
APRIL 6, 2009
TOWN HALL - 7:00 p.m.**

I. PUBLIC HEARINGS:

Chairman Rob Martin called the public hearing to order at 7:00pm. Chairman Martin explained that the Town Attorney had not arrived yet and would be needed before commencing item I.a.

A motion was made by Ms. Conklin; seconded by Mr. Smith and unanimously voted to take the Public Hearing items out of order and take item I.b. first.

b. SPECIAL USE PERMIT APPLICATION FOR HOME OCCUPATION FOR SECURITY CONSULTING OFFICE, 249 NINTH DISTRICT ROAD, MCCAFFREY

Chairman Martin read the legal notice. Mr. McCaffrey stated that he plans to operate a security consulting business from his home at 249 Ninth District Road. He explained that no clients will come to his residence. The home office will be used for administrative purposes and for telephoning only. The bulk of his work is done off-site at his client's facilities.

Mr. Martin explained that the Planning Commission had recommended approval of this application and they found that it fits within the regulations for home occupation. No one spoke for or against the application.

A motion was made by Ms. Conklin; seconded by Ms. Rasid and unanimously voted to close the Public Hearing for Mr. McCaffrey's Special Use Permit application for a home occupation for a security consulting office at 249 Ninth District Road at 7:04pm.

A motion was made by Ms. Rasid; seconded by Mr. Fraro and unanimously voted to again take the agenda out of order and go to the regular meeting item IV.b.

II. CALL TO ORDER

Chairman Rob Martin called the regular meeting of the Zoning Commission to order at 7:05pm. Members Jill Conklin, Dan Fraro, Rob Martin, Wes Smith, and Paige Rasid (seated for Ray Hafford) were present and constituted a quorum.

IV. OLD BUSINESS:

b. DISCUSSION/POSSIBLE DECISION: SPECIAL USE PERMIT APPLICATION FOR HOME OCCUPATION FOR SECURITY CONSULTING OFFICE, 249 NINTH DISTRICT ROAD, MCCAFFREY

A motion was made by Mr. Fraro; seconded by Mr. Smith and unanimously voted to approve Mr. McCaffrey's Special Use Permit application for a home occupation for a security consulting office at 249 Ninth District Road.

III. MINUTES APPROVAL: March 2, 2009 & March 16, 2009 & March 26, 2009

The March 2, 2009 and March 26, 2009 minutes were unavailable.

A motion was made by Mr. Fraro; seconded by Ms. Conklin and unanimously voted to approve the minutes of March 16, 2009 as written.

As the Town attorney still had not arrived, a recess was called at 7:07pm.

I. PUBLIC HEARINGS (cont.):

a. PROPOSAL TO SETTLE A LAWSUIT: ROBERT SMYTH VS. SOMERS ZONING COMMISSION DOCKETT #CV08-4009357S PENDING IN TOLLAND SUPERIOR COURT REGARDING ZONE CHANGE APPLICATION (PREVIOUSLY DENIED BY THE ZONING COMMISSION) FOR PROPERTIES AT 225 FIELD ROAD (MAP 02 BLOCK 50) & 251 FIELD ROAD (MAP 02 BLOCK 44 LOT 03)

The Public Hearing was opened at 7:15pm and the legal notice was read.

Town Attorney Carl Landolina of Fahey, Landolina and Associates explained that the zone change application was made about one year ago by Mr. Smith and Mr. Avery. These properties have frontage on Field Road in the industrial zone and the rear portions of the properties are zoned residential. The applicants sought to move the industrial zone line so as to match with their property lines. The application was denied after a Public Hearing last Spring.

Mr. Smith appealed to Superior Court claiming that the decision to deny was in error and should be overturned. A mediation program has been established by the courts for zoning cases. The parties met with Atty. Joseph Capicella as mediator and produced an agreement. This agreement must first be approved by the Zoning Commission and then would go to the court for approval.

Atty. Landolina explained the terms in the proposed Settlement Agreement:

1. The Smith property would be rezoned in its entirety as industrial property.
2. The judgment would enter without cost to either party and future uses of the property would conform to the then existing Zoning Regulations when the site plan is submitted.
3. Additional conditions would be that an 8-foot berm along the entire boundary of the Smyth property would be needed along with a landscaping plan showing the berm.
4. The berm would extend along the boundaries of the Navakonis and Decker properties and would have additional plantings where the emergency access road would be.
5. A locked gate would be installed at this access road to prevent its use for anything other than emergency access.
6. No mechanical equipment is to be located on the top of any of the buildings.
7. No operations or activities are to be conducted outside the buildings.
8. Full cut-off lighting would be required with no lights behind the buildings unless required by the Fire Marshal.
9. Hours of operations will be 7:00am to 11:00pm Monday through Saturday.
10. All doors are to be located in the front or sides of the buildings with no doors in the rear unless required.
11. No auto body repair or painting is to occur in the newly constructed buildings.
12. All buildings must be at least 90 feet from the rear property line.
13. At the time of site plan submissions, the applicant must comply with any additional requirements imposed by regulation.

Atty. Landolina explained that these conditions are more onerous than would be required for an industrial property. Mr. Avery is not a party to the lawsuit and therefore the Avery property has not been included under the terms of this agreement.

Atty. John Parks presented himself on behalf of Mr. Smyth and Mr. Avery. He explained that because the residential land has no frontage the properties cannot be developed for residential use. The Town has had a policy of keeping zone lines consistent with property lines.

Atty. Parks reiterated that the stipulated conditions explained by Atty. Landolina are all in addition to what is required under the Zoning Regulations. He pointed out that if this settlement were not successful and his client prevailed in the ensuing court hearing these conditions would not apply. For instance, the parties have agreed to a building setback of 90 feet from the Decker and Navakonis properties but Zoning Regulations only require a 20-foot setback. Also, there are no limits on the hours of operation in an industrial zone. However, the plaintiff is willing to agree to these conditions and enter into a stipulated judgment through the court.

Atty. Parks stated that although Mr. Avery is not a party to this appeal he has expressed his willingness to abide by the terms of this agreement. Atty. Landolina said that if Mr. Avery becomes a party, then his interest can be discussed at that time. There may also be a need for an additional Public Hearing if that happens, because the notice of this hearing did not include Mr. Avery.

Atty. Landolina addressed the audience stating that this meeting would not be used to rehash the Public Hearing of last April or to admit new evidence regarding the zone change. The purpose of this meeting is to focus on the reasons why the stipulated agreement should or should not be approved.

The Commission questioned the agreed upon placement of the septic system. Mr. Mocko of the engineering firm who provided the original conceptual site plan, spoke regarding the septic system. He said that since the septic system will be underground it could be within or beside the berm or under the parking lot in front of the building. The location of the septic will be determined based on engineering requirements. However, the area in front of the building will be the site of other utilities and storm drainage and thus the rear yard may be a better location for it. When the final engineering site plan is developed the location of all the neighboring wells would be included to ensure proper setbacks from the septic.

Chairman Martin opened the floor to those speaking against the application.

Atty. Bruce Fader spoke on behalf of neighboring property owners John Cowles of 26 Lindell Drive, Edward Decker of 393 Billings Road, Richard Navikonis of 385 Billings Road, Jane Legg of 13 Lindell Drive, and Robert Cox of 19 Lindell Drive. He reiterated that although Mr. Avery is not a party in the terms of the stipulated agreement, Avery's name and property is included in the judgment referred to in the Public Notice. Therefore, Avery's way would be paved to come in the backdoor if the Commission votes in favor of the stipulated judgment.

Atty. Fader gave the reasons why his clients oppose the agreement. He distributed a copy of the Smyth appeal to the Commissioners. He said that one reason his clients oppose the agreement is because Smyth's appeal would not be successful in court. He cited page 4 paragraph 18 of the appeal that states the plaintiff's assertion that the zoning denial constitutes a "taking" of his property. Atty. Fader said because of the use of this terminology he may introduce evidence for things that go beyond the record itself. He introduced lot maps and deeds to demonstrate that the demarcation of the zoning lines on the properties is a fabrication. Atty. Fader said that his evidence shows that Smyth's allegation that his parcel B is in a split zone is a fabrication because Smyth configured the lot line for parcel B.

Atty. Parks explained that the map that Atty. Fader based this claim on was a proposal by Mr. Smyth but had never been done and that parcels A and B as shown on the map had never been subdivided.

Atty. Fader continued onto another reason he said shows that the underlying basis of the appeal is without merit. On page 5 paragraph 19 of the appeal the plaintiff gives reasons for his belief that the Commission acted arbitrarily when denying the rezoning application. The appeal states that the Commission failed to state a reason for denial of the application. However, the Commissioners who voted in favor stated their reasons for approval. By law the Commissioners who denied the application do not need to state their reasons, therefore this reason for the appeal is groundless.

The plaintiff also claims in his appeal that the Commission failed to have at least 5 Board members to vote on the applications as required by section 8-3 of the Connecticut Statutes. Atty. Fader read the section which states "a majority of all the members of the Commission" must vote. Atty. Fader explained that because a petition had been filed against the application a super majority of 2/3, or 4 Commissioners in favor, was needed to vote to pass it. There are only 5 Zoning Commissioners and 2 voted against the application so even if all the Commissioners voted, the application could not have received the necessary 4 votes to pass it. Therefore this assertion is also groundless.

There was discussion between the Town Attorney and Atty. Fader as to whether the petitions had been filed for the rezoning application. Mr. John Cowles said that it was recorded in the minutes of the March 17, 2008 hearing. The minutes state that he had presented a petition of the 24 abutters within 500 feet of the property in question. Atty.

Landolina said that the minutes speak for themselves and he would not accept a copy of the petition into evidence. Atty. Fader asked that he be contacted if this petition is not already in the record.

The plaintiff's appeal also states that the Commission failed to take the Plan of Conservation and Development into consideration when denying the application and Atty. Fader said that this assertion is also groundless.

The appeal states that the Zoning Commission ignored the recommendation of the Planning Commission when arriving at their decision. Atty. Fader pointed out that the Zoning Commission is not required to adopt what the Planning Commission recommends.

The appeal states that the Commission failed to complete a Public Hearing within 35 days as required by statute. Atty. Fader explained that zone changes are legislative decisions and are not subject to any timeline. In summary, the plaintiff's appeal is groundless and would not succeed if it went to litigation. Therefore, the stipulated agreement should be rejected because it would accomplish the rezoning wanted by the plaintiff.

Atty. Landolina explained that all applications that require Public Hearings must be completed within 35 days. If the Zoning Commission itself filed a zoning change that would not be subject to a timeline.

Atty. Fader pointed out that even if the Commission does not comply with the timeline requirement it does not mean that the applicant is automatically approved for the zone change as would be the case in a site plan application.

At this time Atty. Fader focused on the stipulated judgment. He pointed out that no site plan was included with the zone change application. This is problematic because the conditions of the agreement attach to a zone change and not to a site plan application. The special conditions in the stipulated agreement render the agreement void. He said that the stipulated agreement is void because it violates 8-2 of the Connecticut Statutes, which state that when a Zoning Commission adopts zoning regulations the regulations must be applied uniformly throughout the town. This means that in any industrial zone in Somers there cannot be exceptions or conditions that are particular to one property. Atty. Fader explained that this agreement is unenforceable because it violates section 8-2. He explained that if the agreement is approved and Mr. Smyth sells the property the Zoning Commission would need to approve any site plan application by the new owner that fits within the regulations for the industrial zone.

Atty. Landolina did not agree with Atty. Fader's assertion on this point. He said that if the court grants the stipulated judgment then the judgment would be res judicata on everything that happens from then on.

Atty. Fader spoke regarding the petitions submitted by the Town citizens. He explained the right to intervener status granted under the CT General Statutes 228-19. This states that any citizen has the right to make sure that any proposals do not have a reasonable risk of generating an unreasonable likelihood of causing damage to the State's natural resources.

The Commission took a short recess at 8:43pm and reconvened at 8:49pm.

Atty. Fader submitted the petitions of Edward J. Decker of 393 Billings Road, Richard T. Navakonis of 385 Billings Road, Jane Legg of 13 Lindell Drive, Robert E. Cox of 19 Lindell Drive and John Cowles of 26 Lindell Drive. In addition to the petitions he submitted several exhibits, which included a memorandum to the Somers Planner and an exhibit showing the property has been leased by Conval. He said this evidence is significant because Conval has a history of issues with environmental laws. This causes concern that these issues may become problems on the subject property if rented by Conval. Documents regarding enforcement measures by the DEP against Conval were submitted for the record.

Atty. Fader stated that the Town Attorney would need to make a procedural review of whether the petition complies with procedural requirements. **Atty. Landolina** informed the Commission that there was no way the Public Hearing could be closed that evening since he would be making this review.

Atty. Parks said that he understood that Atty. Fader was suggesting that Mr. Smyth had redrawn his property lines between parcel A and parcel B to come back at a later time claiming that the parcels are partly zoned industrial and partly

residential. However, the configuration of the property has not changed since 1960. The map that Atty. Fader had used to show the reconfigured line was a concept plan prepared for the Planning Commission. He explained that this was a zoning location survey and the reason the property could not be subdivided per this map was because the lot has insufficient frontage.

Atty. Parks said he would not address the other issues raised by Atty. Fader, as this is the jurisdiction of the court.

There were no other citizens who spoke for or against the agreement. Chairman Martin let the audience know that the Hearing would be continued. He asked that Atty. Landolina review the petition regarding 22a-219.

A motion was made by Ms. Conklin; seconded by Mr. Fraro and unanimously voted to continue the Public Hearing for Robert Smyth vs. Somers Zoning Commission Docket #CV08-4009357S on Monday, April 27, 2009 at 7:30pm, with an executive session meeting at 7:00pm that evening. The location of the meeting is to be determined.

IV. OLD BUSINESS (cont.):

Chairman Martin reopened the regular meeting of the Zoning Commission at 9:23pm. Members Jill Conklin, Dan Fraro, Rob Martin, Wes Smith, and Paige Rasid (seated for Ray Hafford) were present and constituted a quorum.

A motion was made by Mr. Smith; seconded by Ms. Conklin and unanimously voted to take the agenda out of order and go to item IV.c.

c. DISCUSSION/POSSIBLE DECISION: PROPOSED AMENDMENTS TO THE ZONING REGULATIONS TO ALLOW OPEN SPACE SUBDIVISIONS

Mr. Martin explained that the Planning Commission would be meeting on April 9, 2009 to discuss the Open Space Regulations. In order for Planning to move forward on the regulation the Zoning change must be approved. He explained that the Zoning Commission cannot wait to learn how Planning votes before approving the Zoning regulation change. Atty. Landolina agreed stating that without this change Planning would be adopting regulations that would have no meaning because they refer to Zoning Regulations. He said that Zoning's jurisdiction is only to those matters germane to the Zoning Regulations.

Ms. Conklin said she has trouble going forward until she knows what the Planning Commission's final decision would be. She said that she feels that going to 20% open-space in a conventional subdivision is too much. Atty. Landolina reiterated that that is outside the jurisdiction of the Zoning Commission and that Planning does not need permission from the Zoning Commission to go to 20%. In fact they could go to 20% even if the new Zoning Regulations are not changed.

Ms. Conklin continued that many people objected to the Town taking the 20% and to taking 40% in the open-space subdivisions. Atty. Landolina repeated that those are Planning Commission issues. However, Ms. Conklin insisted that she would like to meet jointly with Planning again to learn how they will be voting before voting on the Zoning Regulation.

Atty. Landolina said he did not think it is appropriate for someone to vote on a Zoning question because of what Planning may or may not do. He said that it is his job to ensure that the process is secure. He warned that once the vote is taken the Commissions cannot come back in a couple of weeks and vote the other way. Chairman Martin said he did not see what would be accomplished with another meeting.

Mr. Smith said that he would vote in favor of the regulation because he does not think the cookie cutter lots of the conventional subdivisions improve the community or provide "eye-appeal". He likes the communities where the open-space concept has been used. He thinks these subdivisions have more "eye-appeal" and are more environmentally friendly. Mr. Martin said he echoes this sentiment and wants to do what is best for the Town.

Ms. Conklin said she agrees with open-space development, but she thinks the developers should make the choice. She said that property owners have concerns that in estate settlement situations their children will have to give away 40% of their land to the Town. She suggests that the Town hold workshops to show the developers in Town how the open-space subdivisions work.

Mr. Martin said that the choice of the type of subdivision should be with the Town Commissions because they are working for the best interest of the Town. The developers are developing for personal gain.

Ms. Rasid wanted to know about the appeals process for the developers. Atty. Landolina explained that the developer could go before Planning citing the reasons for wanting to do a conventional subdivision. If unsuccessful they could then appeal to the court.

Mr. Fraro feels that the property owner should be able to make the choice regarding the type of subdivision to create, but he said that the open-space subdivisions would be much nicer for the Town. He said that by voting for the Zoning change the Commission is giving permission to Planning to do what they want.

A motion was made by Mr. Smith and seconded by Mr. Martin to approve the proposed amendments to the Zoning Regulations to allow open-space subdivisions with an effective date of April 9, 2009. The motion passed by a vote of 3 in favor (Martin, Rasid and Smith), 2 opposed (Conklin and Fraro) and 0 abstentions.

d. SITE PLAN APPLICATION FOR CHANGE OF USE TO BUSINESS, 138 MAIN STREET, REDMOND

Mr. Martin explained that this application is for On The Fly Computer Guy. The Planning Commission and ZEO have recommended that the company vans be required to park in the rear of the parking lot. The Zoning Commission is waiting to hear from the WPCA and from the applicant regarding storage of hazardous materials (computer parts).

A motion was made by Mr. Smith; seconded by Ms. Conklin and voted unanimously to table Redmond's Site Plan application for a change of use to business at 138 Main Street.

e. OTHER – There was no other Old Business.

V. NEW BUSINESS

a. OTHER – There was no New Business.

VI. DISCUSSION: PLAN OF CONSERVATION & DEVELOPMENT – There was no discussion.

VII. STAFF/COMMISSIONER REPORTS

The Commission received the March summary of Ms. Robitaille's ZEO activities.

VIII. CORRESPONDENCE AND BILLS

The following bill was submitted for payment:

Journal Inquirer	for Meetings on 3/2/2009 and	\$731.91
	Public Hearings on 3/16, 3/26 & 4/6/2009	

The following transfers were requested:

\$350.00 from Land Use Copier and \$200.00 from Dues and Seminars = a total of \$550.00 to Advertising.

A motion was made by Mr. Fraro; seconded by Ms. Conklin and unanimously voted to pay the bill and to transfer money to fund the advertising account.

IX. ADJOURNMENT

A motion was made by Ms. Conklin; seconded by Ms. Rasid and unanimously voted to adjourn the April 6, 2009 meeting of the Zoning Commission at 10:06pm.

Respectfully submitted,

Wesley Smith, Secretary

Jeanne Reed, Recording Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING.