

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Public Hearing and Regular Meeting

October 8, 2014

Vice-Chairman Carol Anest called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:05 p.m. in Conference Room L101 in Newington Town Hall, 131 Cedar Street, Newington, Connecticut.

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Frank Aieta
Commissioner Carol Anest
Commissioner Michael Camillo
Commissioner Kenneth Leggo
Commissioner Robert Serra Sr.
Commissioner Stanley Sobieski
Commissioner Brian Andrzejewski - A
Commissioner Anthony Claffey - A

Commissioners Absent

Chairman Cathleen Hall

Staff Present

Craig Minor, Town Planner

Commissioner Andrzejewski was seated for Chairman Hall.

II. APPROVAL OF AGENDA

Craig Minor: No changes to the agenda.

III. PUBLIC HEARINGS

A. Petition 44-14: Special Exception (Section 6.15.6: Health Club) at 37 Ann Street, 37 Ann Street LLC, owner; CT workout, applicant, Benjamin Petitpas, 85 Market Square, Newington, CT, contract. Continued from September 22, 2014.

Vice-Chairman Anest: Will the petitioner come forward please and state your name and address for the record?

Benjamin Petitpas: Benjamin Petitpas, 85 Market Square, Newington, CT.

Vice-Chairman Anest: Can you explain about your petition please?

Benjamin Petitpas: What I would like to do is to open up a fitness center/personal training facility at 37 Ann Street, basically moving my current business to that location.

Vice-Chairman Anest: I believe at the last meeting we asked you to come back with some plans showing us square footage.

Michael Gallon, 43 Cheney Lane: I am the real estate broker for the applicant, and handling his business at this location. At the last public hearing the applicant was requested to provide

additional information for the Commission, specifically as it related to a site plan of the building and identification on that site plan certain components on the site.

What we have here is a site plan of 37 Ann Street. We also have provided to you in your packet a reduced version of this, identifying those components which we were asked to identify. I'll quickly go through those. The space that CT Workout is proposing to lease is this crosshatched space, approximately 7,245 square feet. The remaining space, which is warehouse space, is 23,510 square feet. The two parking areas for the building are on the east side of the building, at the entry to the space, and there is approximately ten spaces here, eight general and two handicapped. Then to the south side of the building, there is an existing parking lot here with approximately fifty spaces. There is a main entry into this space on the east side of the building at this location, there is an additional access to this space in this location here, and there are additional entries to the building, here, here and here. There is an existing walkway from the parking shown here that will allow people coming to the club to park their cars, come up the walkway and into the building. They will also have the option to enter in and egress from this location. It's also a secondary location for the fire code.

We were also asked to identify the signage on the building. I believe you have been provided pictures of the building. You have a picture showing the east side of the building, you have a picture that is a close up of the east side of the building, right near the entrance, that shows the current signage, the Dining Furniture sign, which is a fairly substantial sign. You also have a photograph showing the view from the parking lot down the walkway, showing the access, as well as a photograph of the parking lot. The signage...

Craig Minor: Excuse me Michael, I'm not sure the Commissioners have that last picture that you just described. Were you describing this one, or maybe you hadn't gotten to this one yet?

Michael Gallon: I thought I gave you a different view. That walkway extends all the way down, I thought I gave you a shot up here, but apparently I didn't. The landlord will remove the signage here, and Ben, do you have our, this sign? This is a replica; this is an existing sign that the applicant is currently using on Market Square in the window, but it would be consistent with the format and the graphics of this sign located where the sign is being taken down that is on the existing building. We thought we would have the material board here tonight, the material is called what?

Benjamin Petitpas: Tube aluminum; one inch tube aluminum material. In basically the same colors, same everything.

Michael Gallon: So it will not be the raised channel lettering that you see currently on there. It will be a flat aluminum board backed with the existing lights that are there. It will not be the size of that sign. That sign is probably eight feet by twenty-four feet; it's a huge sign.

Commissioner Aieta: How big would your sign be?

Benjamin Petitpas: Roughly four by sixteen.

Commissioner Aieta: For the Planner, how would we determine, because it is on two streets, what are we determining for...

Craig Minor: For signage? They are allowed two square feet of signage per linear foot of building. When they come in for their sign permit, the ZEO will take a ruler and measure how wide the building is as it faces the street, and they are allowed two square feet for every linear foot of building facing the street. He will add this to that, to that, to that, and that's the formula.

Commissioner Aieta: Okay, so we are just taking the side facing Kitts Lane, not the one that is facing Ann Street.

Craig Minor: Correct. But it is a corner lot, so he might be able to get more.

Commissioner Aieta: The sign that he has proposed - the size seems to be adequate for that size building.

Vice-Chairman Anest: Any other Commissioner comments, questions?

Michael Gallon: It looks like from this point here to this point here is roughly a hundred feet. Then this is another twenty-five feet, I'm not sure about this cut back here, but it's basically, from this corner to here, it's probably 125 feet, right?

Commissioner Aieta: There is probably 175 foot frontage.

Michael Gallon: Yes, it's approximately 180 roughly this way.

Craig Minor: Right, and they get another one square foot per one linear foot on this.....

Commissioner Aieta: Then he's got plenty for signage. And it's your client's intent to someday take over the whole building?

Michael Gallon: Potentially. Right now this space here is about 8,000 square feet; we're taking 7200 square feet. We have a five year lease with options for an additional, two or five years. This space would be the first phase of expansion; it would get us close to 8,000 square feet. Potentially some day he could expand into some or all of this building. As shown here, this is the existing parking and this is the additional parking. I believe this is on record, but that is probably a long term horizon, if it happens at all.

Commissioner Sobieski: Craig, quick question: let's assume they don't expand to the other half, and someone else moves in; would that sign be affected?

Craig Minor: It would be affected. A building has a budget, or allowance if you will, of signage. That's why the ZEO used to make sure a landlord keeps in mind the total amount, so the landlord didn't end up coming back to Art and saying, gee, I've used up all my signage, but I have one more tenant.

Michael Gallon: And we would look at what is allotted for this property, and take our proportional share on a square foot basis, certainly no more than that.

Commissioner Aieta: What size was the sign?

Benjamin Petitpas: Four by sixteen.

Commissioner Sobieski: That four by sixteen is on the Kitts Lane side?

Benjamin Petitpas: It's on Kitts Lane.

Michael Gallon: Right across from the Stop and Shop.

Vice-Chairman Anest: You are going to basically put it where this sign is?

Michael Gallon: Right, same location. Have I answered all the questions from the Commission?

Commissioner Aieta: Just one comment. It was very helpful you bringing this in so we have an understanding of what is going on with the property, and we visually can determine what we are doing. It's really good that you brought this in.

Michael Gallon: Thank you.

Vice-Chairman Anest: Is there anything else anyone would like to add? Since this is a public hearing, if there is anyone here wishing to speak in favor of the petition, would you please come up and state your name and address for the record? Is there anyone here who would like to speak in opposition to this petition? Is there anyone who would just like to speak regarding this petition? Seeing none, are there any further Commissioner comments? What's the pleasure of the Commission.

Commissioner Aieta: I'd like to close the public hearing and move this to Old Business and act on it tonight.

The motion was seconded by Commissioner Serra. The vote was unanimously in favor of the motion, with six voting YEA.

Vice-Chairman Anest: Craig, can you take care of that?

Craig Minor: I can just run back to the office and put together a draft motion. I can do that during Public Participation.

Vice-Chairman Anest: Sure.

Michael Gallon: Is the applicant required to stay?

Vice-Chairman Anest: No, thank you very much.

Michael Gallon: Thank you.

Vice-Chairman Anest: You're welcome.

IV. PUBLIC PARTICIPATION (For items not listed on the Agenda, speakers limited to two minutes.

John Bachand, 56 Maple Hill Avenue: I would like the Planner to be here, so I'll wait until the next Public Participation.

Vice-Chairman Anest: I can see if anyone wants to speak before you; maybe he'll be back.

John Bachand: It's probably going to take a while. Anyway, I'm handing out a letter here; I want it to become part of the Packard's Way file. I just want to thank you for coming out, I mean, I didn't request it, but you were concerned about the drainage, so I appreciate that, and I apologize for speaking out of turn there about the other issue that didn't have anything to do with me, I have a tendency of doing that, so I'm trying to learn the process.

As far as the drainage goes, this is the same letter I e-mailed already. I just wanted it to be on file with the subdivision plan. There's two issues here, one is the drainage, but the other, and the Planner is going to have to address that, is the validity question. I just talked to the young couple that bought that property in the corner, and I asked them, were you ever made aware of any question about the validity of the subdivision? They said no. I was a little bit surprised about that, they were a little concerned. I said, don't take it from me, just take it with a grain of salt that there is a question and they heard me, in fact, they heard me ask the Planner if there had been word from the Town Attorney on this. I had to do my own research because I got tired of waiting and from what I found is that the plan was invalidated in 2007. Just because there's asphalt there, just because there is a piece of paper in the land records, technically, as far as I can determine, obviously I'm not a lawyer, but as far as I can determine based on state and town statutes, regulations, the subdivision was invalidated. So it's there, it's physically there, so I think there is

going to have to be some kind of a re-application or re-approval or something like that. I don't know what mechanism there is to do that, but to ignore it I don't think is the smart way to go. It's very frustrating. Anyway, once that is resolved, let's go back to the drainage.

The three items on the first page here are still exactly the same three things that I mentioned in my letter of 2012 that still have to be addressed. The Certificate of Action has to be put on file and has to be on file in the land records. That has modifications that talk about the drainage, the modifications specified that is the Condition Seven, and that was that fifteen inch stub going to the property to the north. Chris mis-spoke, or he made some kind of a wild assumption that it goes to the property line. The guy who installed it himself told me where it goes to, and it's at least eighteen inches short and it's never been measured, but that can be verified in the field. It has to go to the property line so that I have access to it in the future. If Donna and I come to an agreement on it, it will cost me money, I don't think it should, but I think I may go that route just to smooth this over and get it going. It might be easier like that. They warned me that if I had to go through the Town, when the Town owns it, it would be more stringent and more specifications that I probably would have to meet. The Planner asked me for a plan, I made a plan, I gave him all the specifications from Ferguson Pipe, and then I never heard back from him again, and then this week he said we can talk about it before the meeting. I thought that was odd, because I work hard and I wasn't available to meet with him, and then number three, that's the installation of the fifteen inch storm pipe. So, the plan has to show the pipe; the plan has to be on file in the land records forever, like it is supposed to be; and the Certificate of Action with those modifications has to be on there. Again, I'm concerned about that validity question and maybe someone here can ask the Planner about that status.

Vice-Chairman Anest: We will, because that is on the agenda: "Discussion of Packard's Way".

John Bachand: I'm talking about the validity question.

Vice-Chairman Anest: We will talk about that during New Business.

John Bachand: Okay, thank you.

Vice-Chairman Anest: Thank you.

Gail Budrejko, 21 Isabelle Terrace: I appreciate the documentation that the Planner made. I think he's going to have it in his report regarding the use of "designated open space". I wish he was here, but maybe you guys can do it, when he does decide to discuss it, maybe you can provide a little bit more detail. I'm aware that at any point in time land use is a snapshot of that point in time, and that designated land use can be changed. I mean, zoning changes, through action by this body, but my apprehension is that we're vulnerable to another end run, run around in the future, since town owned developable land is very scarce and we seem to have a very pro development agenda. So, and I'm just using the community center as an example because it's the most recent one, had the referendum passed, would the construction be able to proceed without any action from this body? Second, if action would need to be taken by this body, what would have the action have been? Would the zoning need to be changed, and if so, what type of compelling reasons would be enough to change something classified as designated open space? Two years of hard work, monies expended, desire to keep a campus-like feel; I mean, what type of reasons would be compelling enough for us to give up open space? What reasoning and logic would have to be presented? And thirdly, if the end result from this body would have been not to change the designation, would that mean that the money spent not only on the planning, but the referendum as well, which there was a lot of time, money and ill will generated in this town, was for naught, because actions hadn't been taken? Again, I don't want to beat a dead horse, but this disregard of land use happened once, and I don't know what we can do to either prevent it or make sure that something like this doesn't happen again. Because again, a lot of people who are involved in this town and what would happen one way or the other, whether the referendum passed or didn't pass, I don't understand the communication, or lack thereof.

Vice-Chairman Anest: Thank you. Anyone else? Nobody else would like to speak?

V. REMARKS BY COMMISSIONERS

Commissioner Aieta: Just on Gail's questions. The next step, if it did pass, it would have to come to this Commission for an 8-24 referral. I'll ask the Planner, if this Commission found reasons why we didn't want it on dedicated open space, does that hold any water with the Council? Or does the Council say, thank you for your recommendation, but we're going to put it there anyway.

Craig Minor: It very much holds water. If this Commission issued a negative 8-24 report, then it would require a two-thirds vote by the Council for the project to go forward, as opposed to just a simple majority. So a negative recommendation definitely carries weight.

Gail Budrejko: It carries weight but it doesn't mean that it couldn't go forward.

Vice-Chairman Anest: What he is saying is that the Council would have to pass it by a two-thirds vote to override it, if they so desired to do that. We would hope they would take under advisement what we bring forward.

Commissioner Aieta: I think if we, as a Commission, went that route and we gave a negative report, we wouldn't give a report saying, we don't want it; we would have a report with all the reasons why it should not happen. It would be a strong report; it wouldn't be just one sentence, well, we don't think that's a good place to put it. We would give them the reasons why, backed up with the 2020 Plan, other commissions' input, from the Conservation Commission, a bunch of other things would be part of that report back to the Council. I would at least try to make it so that we had some kind of record to substantiate a vote like that. It would be hard for them to ignore our report.

Gail Budrejko: This isn't really zoning. It would just be your recommendation.

Craig Minor: People need to remember that the Town government is actually exempt from the zoning regulations. By state statute any substantial town project has to go through this 8-24 process that everybody has been hearing about for the past couple of months, but the Town is not required to comply with the zoning regulations.

Commissioner Aieta: Mr. Planner maybe you could talk about open space. You gave an opinion at the last meeting what "dedicated open space" means. Maybe you could just repeat that and talk about that.

Craig Minor: I'll do that during my report.

Commissioner Aieta: Okay, good. Thank you.

VI. MINUTES

September 22, 2014

Commissioner Sobieski moved to accept the minutes of the September 22, 2014 meeting. The motion was seconded by Commissioner Camillo. The vote was unanimously in favor of the motion, with six voting YEA.

VII. NEW BUSINESS

- a. Site Visit at Packard's Way

Craig Minor: I put this on the agenda just in case something took place earlier tonight that the Commission might want to vote on, which you wouldn't be able to do because voting wasn't on the agenda. This would be the opportunity to do it. My sense is that's not the case, but if the Commission wants to maybe discuss it a little, and get it into these minutes, this would be an appropriate time to do that, if the Commission wants to.

Vice-Chairman Anest: What's the pleasure of the Commission?

Commissioner Aieta: I think probably we should discuss it a little bit so that we have some kind of record as to what happened out in the field, what we observed, and what we consider an option to move forward to try to alleviate the problem of the drainage.

Craig Minor: Right. There will be minutes from our meeting earlier tonight that will be put on record.

Vice-Chairman Anest: Okay. Mr. Bachand during public participation passed out the October 6th letter that he wants made part of the record, and also put into the Packard's Way subdivision file.

Craig Minor: Okay. We can do that.

Commissioner Leggo: I felt that it was good for us to go out there and actually hear from all of the parties involved and everything to be right there on the site that we were talking about. It kind of brought everything together.

Vice-Chairman Anest: Have we heard anything from the Town Attorney regarding the subdivision?

Craig Minor: I did meet with the Town Attorney last week and went over the history of the project. We discussed it, but I don't have a written answer from him yet.

Vice-Chairman Anest: But we are anticipating one within the next...

Craig Minor: He didn't say when he would have his answer.

Vice-Chairman Anest: I think that's important, to have that answer.

Craig Minor: Yes.

Vice-Chairman Anest: And for all the other lot owners, to clarify it in their minds.

Commissioner Aieta: I want to ask you a question, working in a law office, as far as title; when they do title searches, wouldn't they pick up, I mean, there are people who have bought land there, just to try to explain how a title search works.

Vice-Chairman Anest: If someone did a full title search, they would go to, there's something on file, right?

Craig Minor: Yes, the approved map is on file signed by the TPZ Chairman.

Vice-Chairman Anest: So what would happen is the title searcher would look at the map, look at the boundaries of the particular lot that they are purchasing to make sure the boundary descriptions are accurate. Sometimes searchers don't look to see if they are valid when they are filed, the date that they are filed, the date the subdivision is approved; it depends on the title searcher. I'm sure they had someone go out and look at it, but maybe they didn't, I can't say.

Commissioner Aieta: But there was a process for the homeowners; they paid for title insurance to ensure them that the title is clear, it's a clear title, like a motor vehicle title, and there's no problems.

Vice-Chairman Anest: Right, that there are no liens, that type of thing. But then there is survey coverage too that you can get. So there is another step with title insurance. If there is something, they usually check to see if...

Commissioner Aieta: So they might not have...

Vice-Chairman Anest: Picked up that the map was not filed in its entirety. Was it filed in its entirety?

Craig Minor: Well, enough of the map was filed to satisfy the minimum state requirement, but our regulations, just like most towns, require the other pages of the plan to be recorded: the road profile, the details of how the E & S measures would be installed, all the additional stuff. The bare bones map was recorded.

Vice-Chairman Anest: Would you follow-up on that and as soon as you have something...

Craig Minor: I'll let you know.

Vice-Chairman Anest: Anything else on the site visit?

VIII. OLD BUSINESS

- a. Petition 44-14: Special Exception (Section 3.15.6: Health Club) at 37 Ann Street; 37 Ann Street LLC, owner, CT Workout, applicant, Benjamin Petitpas 85 Market Square, Newington, CT contact.**

Commissioner Leggo moved to approve Petition 44-14; Special Exception (Section 3.15.6: Health Club) 37 Ann Street, 37 Ann Street LLC, owner, CT Workout, applicant, Benjamin Petitpas, 85 Market Square, Newington, CT, contact.

CONDITIONS: None

The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YEA.

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING

None

X. TOWN PLANNER REPORT

- a. Town Planner Report for October 8, 2014

Craig Minor: The first item, "Zoning Enforcement Issues raised at the previous meeting": none. "Old performance bonds held by the town": I will have a report at the meeting, and there is a report on the table. The only change is that we've moved forward on getting those trees planted at Rockledge. I sent out invitations to bid, I got responses from three local landscapers, and we went with Lenares Landscaping. I met Mr. Lenares out at Rockledge earlier this week, and showed him the houses where the trees are going. The homeowners still need to coordinate with Lenares exactly where they want the trees to be, but they cannot be any closer than ten feet from the property line; that's the regulation in Newington. So that is finally moving forward. And then just a couple of hours ago the owner of the IHOP property came to the office with the letter I sent

him back in July, telling him that there is money available if he wants some landscaping done; he just wanted to make sure that the letter was on the level, because it is a kind of a bizarre letter, like, we have money for you, and it's not from Nigeria or Ghana, so we may see some progress on that IHOP money. The next item, the "Newington Junction TOD committee": the final report from the consultants, which was presented earlier this year, will be posted on the town web site shortly. As of now, the next meeting of the committee has not be scheduled, and yes, that final report is on the town web site if anybody wants to read it.

Vice-Chairman Anest: Is it on our page or...

Craig Minor: I think my secretary put it on the Town Planner page, so go to the Town Planner page and there should be a link to it on the left hand side of the screen. "Sign regulations committee": the committee met on Tuesday, September 30, and they agreed to recommend that TPZ amend the sign regulations regarding the length of time that a temporary sign may be up; prohibit pennants and streamers; prohibit the use of vehicles as signage; created definitions of the various types of signs; and some minor wording changes. A copy of the proposed revision has been sent under separate cover. I recommend that this be put on the agenda for the next TPZ meeting for discussion.

Commissioner Sobieski: I have a question. On signage for vehicles: I glanced over this really quickly, if you are going to allow the vehicle to have signs on it, it's going to be stationary. I think you should have some type of requirement to move from one spot to another, to make sure that the vehicle is operational. I'm just saying, if it stays in one spot.....

Vice-Chairman Anest: We'll discuss that at the next meeting.

Craig Minor: We can talk about that under New Business at the next meeting.

Commissioner Aieta: We have been playing with this for nine or ten months. We had language at the beginning that was very strong, and then we were told by the Planner, after talking to counsel, that we might be treading on constitutional rights, so we are trying to get regulations where we can regulate these vehicles with signage on them. We tried to move carefully as to how we worded it; I wanted a stronger regulation to prohibit them altogether, but we couldn't because of legalities. We'll talk about it and see if we can beef it up some more.

Craig Minor: Okay, number five: Name Change at Deming Farm. The new owner/developer of the Deming Farm planned unit development on Deming Street would like to market these homes under a different name: "Newington Ridge Preserve". The street name, Deming Farm Drive, is not being changed. Police Chief Mulhall and Fire Chief Schroeder have no objection to this. It does not require TPZ approval; it's just in my report for your information.

Number six: Designated Open Space in the 2020 Plan of Conservation and Development: a question was asked during public participation at the TPZ meeting of September 22nd about the term "dedicated open space" as it is used in the 2020 Plan of Conservation and Development. The person wanted to know if land identified as "dedicated open space" in the 2020 Plan could be developed. The term "dedicated open space" appears in the "Land Use in Newington" section of Chapter Two: Conditions and Trends of the 2020 Plan. on page 10. This section shows how all land in Newington was being used when the plan was being written in 2009. All activities are divided into six general categories: residential, commercial, open space (which consists of dedicated open space and managed open space), community facilities, vacant, and other. It's a snapshot of land use in 2009. While open space is discussed at much length in the 2020 Plan, it's important to remember that the term "dedicated open space" simply refers to how that land was being used when the 2020 Plan was written. It's a description, not a designation. Property in one category is not prohibited from changing to some other category. There may be other reasons why the Town might not want to develop open space, but its historic use as open space

does not prohibit it from doing so, subject to the requirements of Section 8-24 of the Connecticut General Statutes.

Vice-Chairman Anest: Can you elaborate on that?

Craig Minor: Yes. As I said, when the 2020 Plan was done, what the Commission did was it went around town and identified every piece of land was being used, and came up with these six general categories, for purposes of getting a handle on how land is being used in Newington, at that moment. One of the categories was open space. That category had two parts: "dedicated open space", which is basically open space that belongs to some government entity, and "managed open space" which is open space that belongs to some private person, like a farm. But the Plan uses these terms only, as I said in my memo, to describe this property, not to say that that is how it must be used. That's at that moment in time. There may be other reasons why you don't want to develop open space, but just because it's described as being open space at that time in 2009, that, in and of itself, doesn't say anything about how that land could be used in the future. There are other places in the Plan which talk about the desire to preserve open space and desire to expand open space, but there's really nothing in the Plan that prohibits the Town, if it wants to, after going through an open public process, to use land any way it wants to, assuming that there aren't deed restrictions and other things of that sort. For example, I don't know how the Town acquired the Mill Pond land, but let's say it was given to the Town by some philanthropist with the condition that it never be used for anything other than open space. That would be a reason why the Town couldn't do so. But just because the 2020 Plan describes it as being open space doesn't mean that the Town can't change its mind and use that land some other way.

Vice-Chairman Anest: There are other maps on the 2020 Plan, not dated 2009, I think one of them is dated 2006, that shows it as dedicated open space.

Craig Minor: That may be true.

Vice-Chairman Anest: And we relied on that, knowing that we wanted the property to remain as open space. That's why we put it in the Plan.

Craig Minor: That certainly may have been the intent of the Commission when you wrote the Plan in 2020, but I'm not sure it says that. Reading it as someone who literally came to Newington a couple of years ago, I haven't come across, and I've looked through this a little bit lately. Other than the fact that the Plan talks about expanding Newington's linkages of open space, and one of the proposed open space trails does go through, for example Mill Pond, that would be a reason why we wouldn't want to develop that piece of property. But not because it's designated, identified, I'd really rather use the word identified, as designated open space. Just because it's described as open space doesn't mean it has to remain open space. There may be other things in the regulations, such as the fact that area of town is identified as a future corridor. That would be a reason, based on the Plan, why that particular piece of open space should remain as open space.

Vice-Chairman Anest: So when the Commission goes in 2020 to do the 2030 Plan, could the Commission at that time could say, we don't want that designated as open space, even though it was previously?

Craig Minor: You could, but I don't know if you would want to tie your hands that strongly.

Vice-Chairman Anest: If it was designed as that in 2009...

Craig Minor: Again, I wouldn't say "designated". It was described as being open space, and I'm maybe splitting hairs because there is an important difference between being designated as something and being described as something.

Vice-Chairman Anest: It says "designated open space".

Craig Minor: That's the brand name that was given to that category of open space. They could just as easily have called it municipal or publicly owned open space.

Commissioner Aieta: The 2020 Plan is a ten year plan, so the way that I interpret it and the way that I remember the discussions, and the input from the public and all of the intents of this Commission, was that dedicated open space was to be preserved as open space for the duration of the Plan. And it's been that way for the last ten times that we have done a master plan of development. There are areas of town that are described as dedicated open space. From my understanding and my interpretation of it, dedicated open space cannot be built upon. We enforced it with the language of the 2020 Plan and that plan is supposed to bring us to 2020.

Vice-Chairman Anest: I concur with Frank, because that was my understanding too when we did this.

Craig Minor: Right, but that's not the case. The master plan is just a guide. It's your zoning regulations that...

Vice-Chairman Anest: It's a recommendation.

Craig Minor: Exactly. It's your recommendation, but it's not something that you couldn't change yourselves. You could change your mind. You are expected, as time goes by, to change your mind. The automobile regulations for example: there was a time when you didn't want to allow automobiles, and over time that changed. Other things in the master plan that you felt one way about in 2009, you might feel differently about in 2015 or 16. It doesn't tie your hands. You have the flexibility of either keeping it as open space or not. You have the ability to use your judgment when the time comes and make a decision based on the facts whether to allow something that might conflict with what the master plan recommends.

Vice-Chairman Anest: So what mechanism can be used to make sure that when we categorize something as dedicated or preserved open space it will stay that way?

Craig Minor: Well, a referendum would certainly do that. A referendum saying that this "land shall only be used for open space" would certainly be binding forever on future generations. A deed restriction, like I said before, if the land is given by someone with a restriction, that's forever, more or less, but something in the master plan is not forever. It's only something that you felt about at that time. Things change over time.

Commissioner Aieta: Let's take for example the Mill Pond piece that's talked about in the 2020 Plan as dedicated open space. How is that currently zoned?

Craig Minor: It's R-12.

Commissioner Aieta: So is that what you are saying is the basis of the use of that Plan, if it's not used as dedicated open space?

Craig Minor: I don't follow your question.

Commissioner Aieta: Well if it wasn't dedicated open space, it could be used as housing, R-12 lots, which is 12,000 square feet, 80 foot front, 150 deep.

Craig Minor: Right.

Commissioner Aieta: We don't have a designation on our zoning map as open space zone.

Craig Minor: Correct. Newington does not. Some rural towns in Connecticut do have an open space zone, an agricultural zone, but you don't in Newington.

Vice-Chairman Anest: Is that something that we can look into?

Craig Minor: Sure.

Commissioner Aieta: When we look at the update of our regulations, the auto uses and all of the other things that we are going to do pretty soon, we could look at that. We could do a survey of all of the open space left in town, and make a determination as to whether we should re-zone those spaces as an open space zone.

Craig Minor: Sure.

Vice-Chairman Anest: And I do know, back when the Open Space Committee was working, and there were members from, of us, on the Open Space Committee, we did determine what... You might still have a map. Ed did comprehensive overlays of where the open space was in the town. Now my question is: the Cedar Mountain property, the Marcap property that we purchased a while back...

Craig Minor: Actually the Marcap property is Commercial Development zone.

Vice-Chairman Anest: That should definitely should be changed.

Craig Minor: You probably should change the zoning now that it's Town owned and always will be.

Vice-Chairman Anest: I think that is definitely something that we should...

Commissioner Aieta: That's another piece we should look at.

Craig Minor: I'll start working on that.

Commissioner Aieta: Just for the record: the Toll Brothers piece is currently zoned R-20, which is the 20,000 square feet, 100 foot frontage, 200 deep.

Commissioner Sobieski: I was just looking here at page 18, where it mentions that we should look into getting a land trust commission. It says, "support the establishment of a local land trust or other organization to assist in the preservation of open space".

Vice-Chairman Anest: I think there was one started. Can we find out what happened to that one? I know there was one that was started.

Commissioner Sobieski: How do other towns handle this? Maybe Craig could get us an answer on that, please?

Craig Minor: Newington does have a Conservation Commission. Unfortunately much of their time is taken up dealing with wetlands regulations, because they are also the Wetlands Agency. They are both; it's like you, you're a combined Planning and Zoning Commission. In Newington the Conservation Commission is a combined Conservation Commission and Wetlands Agency. In some towns, like Cromwell where I was before, there is a separate Conservation Commission that deals with open space and wild life sanctuaries and things like that, and a Wetlands Agency that approves wetlands permits.

Commissioner Sobieski: No, a land trust.

Craig Minor: Berlin has a very active land trust, because apparently there were enough citizens in Berlin a decade or two ago who felt that the town should buy up open space. I'm not sure Newington has enough open space that isn't already protected by the Town, or Eddy Farm, or whatever, to warrant it. I don't know if there are enough citizens who say, "I'm going to give up a couple of nights a week for the next year or so to create a land trust".

Commissioner Sobieski: I guess what I was thinking was all public lands would be under their custody and control.

Craig Minor: Is that what you are asking?

Commissioner Sobieski: That's what I'm asking.

Craig Minor: Yes, but not overnight. The Berlin land trust acquired land over time. I'm sure they were given some, they probably bought some; it took a while, and I'm pretty sure the Town of Berlin owns some open space, separate from the Berlin Land Trust.

Commissioner Aieta: One more quick thing. I think the strongest way to protect open space would be to zone it as dedicated open space.

Craig Minor: Except remember the Town is not subject to your zoning regulations.

Commissioner Aieta: There have been instances where private developers have come in and tried, and we had to buy the open space.

Craig Minor: It certainly would send a strong message to elected officials if the Planning and Zoning Commission was to change the zone to something like "open space".

Vice-Chairman Anest: It would impact Eddy Farm and the Deming Young Farm. I notice that Deming Young Farm is R-12, Planned Development. It would be prudent to have that re-zoned.

Craig Minor: In the case of Eddy Farm, the Town owns the development rights.

Vice-Chairman Anest: No, Deming Farm, I definitely think that should be a priority.

Craig Minor: We can do that at the next meeting. That's it for my report.

XI. COMMUNICATIONS

Craig Minor: I get from CCROG, in addition to that e-mail that I share with you which is a teaser of all zone changes being proposed in the entire CCROG area, summaries of proposed amendments in the towns that abut Newington, which theoretically could impact Newington. No action is required on them. That's all I have.

Commissioner Aieta: One of the referrals that come in, that landscaping supply company on the Berlin Turnpike that is adjacent to Russell Road. They're coming in for a.....

Craig Minor: Subdivision.

Commissioner Aieta: We have to watch that carefully as to what the next step is because that is abutting areas that we are trying to preserve.

Craig Minor: Right, and by law, Wethersfield is required to let us know of any proposed site plan or development of that property, before it happens.

Vice-Chairman Anest: Was their meeting last night?

Craig Minor: I don't know. I haven't been following the subdivision too closely because it is just a subdivision. They haven't yet said what they want to do with the land. But once they do submit a site plan to Wethersfield, I will definitely want to get a copy of it and share with you.

XII. PUBLIC PARTICIPATION (for items not listed on the Agenda, speakers limited to two minutes.)

John Bachand, 56 Maple Hill Avenue: First I just want to thank you in the strongest terms for your interest in this open space thing. Seems like it's a no brainer; I'm really surprised that these open spaces are zoned right now industrial, Mill Pond, residential; it's kind of crazy. As far as the 2020 Plan, if it's the plan for ten years and it's designated as open space, you say it's not a designation, but it certainly sounds like a designation to me. If it's supposed to be good for ten years, it just should be at least in effect for ten years. I don't know if that 2020 Plan is actually considered like a charter, but one thing that Frank mentioned about the Toll project, which I thought was interesting. That was R-20, at one time.

Commissioner Aieta: It still is.

John Bachand: Well, not the proposed construction on the site. It's greatly reduced down to eight to ten thousand square foot lots; and definitely not twenty thousand square foot lots.

Commissioner Aieta: No, what they did was to take an R-20 development, and used our recommendation that they cluster the houses on smaller lots to get more open space. It's something that this Commission has done throughout the Town with, what do they call it?

Craig Minor: "Cluster subdivision" is the term that is often used; "open space development" is another.

Commissioner Aieta: It was our recommendation that they push it closer to Russell Road, instead of building R-20 lots which is what they could have done and make those lots all the way up to the top of the mountain, and then there wouldn't be open public space, it would be private owned space.

John Bachand: I thought in this town our ridge lines are protected.

Commissioner Aieta: Yes, but that's for buildings, not for ownership.

John Bachand: So they wouldn't be able to build on that.

Commissioner Aieta: No, but it would be privately held land, and you wouldn't have people being able to go up there and enjoy the vistas and walk the property, and do anything else. It would be private property.

John Bachand: I don't think they could have gotten any more houses in there. If they were held to R-20, they would have had a much smaller yield on that.

Commissioner Aieta: We pushed them. As a Commission we can't say to a property owner "you don't have the right to use your property". It's zoned residential. We could not say to them "you can't use your property". It's unconstitutional. If they met all the guidelines and all of the site plan conditions, we as a Commission could not say to them that we disapprove it.

John Bachand: I appreciate the explanation. In hindsight, maybe it's a little bit flawed because if they were held to twenty thousand square foot lots, then would have a much smaller yield. It's all wetlands in there; they maxed out the area they could build on with 48 houses. Everything else there is ridgeline and wetlands, so they would have had a much smaller yield. Back to the Packard's Way visit: Frank, you brought up the title insurance. This young couple that I talked to,

I specifically asked them, did you get title insurance, and they said no, we didn't think we needed it. It's a new lot.

Vice-Chairman Anest: I think they probably got it.

John Bachand: Well, they told me specifically that they didn't, so that's got them a little bit worried. Craig, you weren't here but I asked that young couple if they ever heard anything about this validity question, and they said no, and I thought that was a little bothersome. I think they should at least have been made aware of it, because there is a question. I guess that's about it. I just want to say, as far as changing the zone of the open space from residential and industrial to open space, the Planner said that the town is not bound by the zoning regulations; so what mechanism is there to truly dedicate open space in perpetuity so that it cannot be touched? I know there is a deed restriction, you mentioned that; what other mechanism does the town have for its property that it has now?

Craig Minor: There is nothing that the Planning and Zoning Commission can do that could forever tie the hands of the Town Council from using the land the way that the Town Council feels it should. But as I said before, a referendum saying that this land shall never be used for anything other than open space would be binding forever on the Town Council. If there was a condition when the land was given to the town that the land would always be used for such and such, that would be binding on the town more or less forever. But there's nothing that this board can do that would prevent the Town Council from doing something that it felt was appropriate. The most you can do is issue an unfavorable 8-24 which would force a two-thirds vote by the Council to go forward.

John Bachand: I think it's a great step forward anyway to change the zone, but would the Town Council have the authority itself to deem that property untouchable? Could they raise that themselves and pass that themselves?

Craig Minor: I don't think the current Town Council can do anything that would prohibit future Town Councils from doing something.

John Bachand: Okay, thank you.

Vice-Chairman Anest: Thank you Mr. Bachand.

Gail Budrejko, 21 Isabelle Terrace: I'm really encouraged, and I know that getting the designation as the land is zoned would not be binding on the Town Council, but I do believe it would strengthen arguments in the future, make a few more road blocks. I think that most people would be shocked to find that Mill Pond is residential. In our mind it is zoned as recreational open space, and solidifying that through your action, I really do thank you. You guys are listening and we appreciate that. It would really shock if this referendum passed and you recommended against it via the 8-24 action that a simple majority vote could over-ride...

Craig Minor: No, two thirds.

Gail Budrejko: Okay, two thirds, but basically. Party politics unfortunately some times plays a role in this town, and it is unfortunate but it has happened in the past and it could happen in the future, but this would throw an additional kind of road block of protection, so thank you.

Vice-Chairman Anest: Thank you. Anyone else like to speak?

XIII. REMARKS BY COMMISSIONERS

None

XIV. CLOSING REMARKS BY THE CHAIRMAN

Vice-Chairman Anest: I just want to thank everyone this evening and welcome Anthony Claffey as our new alternate.

Commissioner Claffey: Thank you.

Vice-Chairman Anest: You heard a little of what we do and what it's all about. If you have any questions, please feel free to reach out to anyone.

XV. ADJOURN

Commissioner Sobieski moved to adjourn the meeting. The motion was seconded by Commissioner Carillo. The meeting was adjourned at 8:10 p.m.

Respectfully submitted,



Norine Addis,
Recording Secretary