

Joint Land Use Commissions
Special Meeting
January 20, 2011 – Draft Minutes

First Selectman Edward Haberek Jr., held a joint Land Use Commissions meeting on Thursday, January 20, 2011, at the Mystic Middle School. Members from the Planning and Zoning Commission, Inland Wetlands and Water Courses Commission, and the Zoning Board of Appeals were in attendance. Also present were Town Attorneys Thomas Londregan and Jeffrey Londregan, Town Planner Keith Brynes, Land Use Enforcement Agent Candace Palmer, Zoning Enforcement Official Joseph Larkin, and Land Use Clerks Gayle Phoenix and Kathy Tallardy. Members of the public were also present.

Mr. Haberek called the meeting to order at 7:10 p.m. He thanked all three commissions and their members for their dedication. He wanted to use this innovative approach of a meeting of the combined Land Use Commissions in order to examine and update current commission bylaws and procedures, goals, Planning Department processes, and zoning enforcement policies/procedures. Rather than seeking an outside attorney to review our policies and procedures, it's been decided to have the town's land use boards, with their expertise, perform a collaborative review and assessment. It is Mr. Haberek's goal to tweak policies and procedures in order to improve our performance, making it more efficient and operationally sound. This is the first of three meetings planned to conduct this review.

Stated Policy & Goal of Land Use Commissions for the Town of Stonington

The Zoning Board of Appeals has only a draft set of by-laws. ZBA member Matt Berger is in the process of reviewing the by-laws.

The Inland Wetlands and Watercourses Commission by-laws exist as originally adopted in 1974.

Planning and Zoning Commission by-laws are unchanged since 1988.

Attorney Thomas Londregan said it is important to identify and discuss what is working, what is not working, and what changes can be made to improve the process.

Mr. Haberek asked the commissioners what they believe is working well. Responses included:

- The commissions have very well qualified members.
- Improvement of the staff reports for the Planning & Zoning Commission. They are more informative which aids in understanding the application. Staff doing a good job.
- The comments from other departments are very helpful.
- There is a variety of thought on the commission.
- The Inland Wetlands Commission has a diverse board and has the assistance needed to answer questions.
- Good group of people on the Commissions. The diversity on the Planning & Zoning Commission is important.

Mr. Haberek asked the commissioners what they believe is not working well. Responses included:

- Zoning Regulations becoming customized by the individual heading the department. There has been an omnibus approach to revising the regulations.
- Sometimes Staff gets ahead of the Commission, forcing PZC to take off too big a bite instead of addressing issues more singularly. Staff needs to try to work more closely and in parallel with the commission.
- Better establish who sets tone for commission actions such as regulation amendments.
- The Planning & Zoning Commission needs to be more involved in the early stages of the application process, not just relying solely on Staff.
- The staff is there to aid the commission in their work. The commission should be the driving force.
- The Planning Department staff are the professionals and the commission needs to work more closely with them.

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- Lack of availability of historical building department files necessary for the Zoning Board of Appeals to have in their decision-making processes. Inconsistency in filing methods of applications/permits increases the difficulty locating the history of a property, an important part of the ZBA's consideration of an application.

Gayle Phoenix stated that the Building Department has been scanning their permit documents and plans, working from the most current, historically back. These are filed by property address and assessor's map, block, and lot number. To date, money has not been budgeted for the Planning Department to scan its files.

- Policy & policy changes should be initiated by the commission, not by staff.
- There has been some disagreement about the way things are routed. It would be helpful to have routing procedures put in writing.
- Currently no fees charged to cover staff's time for conducting administrative reviews.
- It would be helpful to have applications/projects routed to the Inland Wetlands Commission to determine if review is required by their commission.

Mr. Haberek stated that the Zoning Enforcement Officer is the staff person for the Zoning Board of Appeals. Mr. Larkin said he doesn't believe that the Zoning Enforcement Officer should be staff for the ZBA. He said the ZEO is staff for the Planning & Zoning Commission. Zoning Board of Appeals would be better served by an impartial staff member. It is awkward when someone is before the Board appealing a decision of the Zoning Enforcement Officer. Mr. Larkin suggested that the Town Planner could also staff the ZBA.

A comment was made that it is helpful to have a staff member introduce the application before the commission. Mr. Haberek stated the by-laws for all the commissions require staff. However, it does become precarious when an application comes before the ZBA that is an appeal of the decision of the ZEO. Attorney Londregan agreed that it could put the ZEO in a precarious position.

There was a brief discussion as to what the role of the ZEO would be at a Planning & Zoning Commission meeting, as suggested by Mr. Larkin.

Jurisdiction

Attorney Tom Londregan stated he wants to be sure that the commission members are comfortable with their jurisdiction. He encouraged them to bring their questions to staff to assist in providing answers. He noted that Section 8-2 of the Connecticut General Statutes is what gives the commission its power.

- New members need to have more information available to them when they become a commission member.
- It was noted that the Connecticut Bar Association holds a workshop every year for staff and commission members. It will be held this year in March.
- There is also a 3-day Inland Wetlands training session provided by the state.
- A list of professional development and relevant information should be made available for commission members

Application Process

Mr. Haberek said he was aware of an issue regarding consent agenda items.

- Items under consent agenda seem to have become mini public hearings.
- The public has wanted to speak about the consent agenda items.
- Is it necessary to require someone go through the whole public hearing process if it is only a minor change?
- It is necessary to clarify procedures for determining what qualifies as a consent agenda item.

Attorney Tom Londregan said the commission needs to determine what constitutes a minor change. Mr. Haberek suggested that a subcommittee meet with the town attorney to discuss procedures and guidelines for consent agenda items.

Conduct of Public Hearing

During the discussion regarding public hearings, Candy Palmer, staff to the Inland Wetlands Commission & Land Use Enforcement Officer, stated she provides the facts of an application to the Commission, with reasons to either approve or deny. The applicant presents their position and once the presentation is completed, the IWWC is charged with making a decision.

Mr. Larkin noted that a difference between the Zoning Enforcement Officer and Wetlands Enforcement Officer is that the ZEO approves or disapproves zoning permits and the Wetlands Commission, not the WEO, makes that decision for wetlands permits.

Mr. Haberek noted that it would be beneficial to have Building Official Wayne Greene present at the next meeting.

Complaint Procedure/Enforcement

Necessity for a written complaint

- It is important to document all complaints and put them in writing
- Each complaint should be given the same attention including anonymous complaints
- Property owners should be given notice of an impending inspection

Attorney Londregan stated that the Connecticut General Statutes does allow for an inspection without prior notification. However, he did not recommend it, but it is permitted.

Investigation/Enforcement Team:

- Need to determine who the enforcement team is
- When there is a conflict within the department resulting in differing opinions and interpretations, who makes the decision as to the required enforcement action?

The Planning & Zoning Commission 7/6/2004 minutes were read and discussed. At that July meeting the Commission assigned enforcement authority to the Department of Planning, allowing the department Director to delegate said authority as he sees fit.

Attorney Tom Londregan noted that should there be a disagreement within the department regarding an enforcement action the issue should be put before the commission in order for them to make a decision.

Report (to whom): Previously discussed.

Protocol on Decision:

- There needs to be a procedure in place
- Once a decision has been made, how it is made public?
- How is it enforced?

Notice to Commission or Board:

Mr. Haberek said at the next meeting he would like to review the by-laws for each commission. As mentioned previously, he will request Building Official Wayne Greene attend the next meeting. The meeting will focus on enforcement, including: actions, objectives, criteria, cease & desist orders, hypothetical case studies, procedural, and protocol issues.

Public Comment:

Gail Shea stated that the fee schedule for Inland Wetlands applications needs to be addressed. The fee schedule needs to be brought to town meeting for an ordinance to legalize the fees. She is also discouraged that it appears the reason for originally hiring an outside attorney is not going to be pursued.

Mr. Haberek said the housekeeping items need to have the groundwork laid and clarified. What is the problem? How is the problem determined? Is the process being done correctly?

PZC Chairman John Swenarton said he would like Gail Shea to provide him with a written summary of her comments.

Rob Marseglia stated that he was unaware of what the intended goal of the initial evaluation that was to have been conducted by an outside attorney actually was, and felt that such information would be helpful/beneficial if addressed at the next meeting.

Mr. Haberek stated that the outside evaluator was to look at criteria, subjectivity of the enforcement, procedures, and protocols. He said it is his intention to discuss these issues at the next meeting.

PZC Commissioner Rob Marseglia questioned whether a violator would be allowed to keep a violation if the 3-year statute of limitations had run out. Attorney Tom Londregan responded yes, but only if it is a structure. The statute does not apply if the violation is a use. Mr. Haberek said he plans on discussing some existing and hypothetical zoning issues at the next meeting. ZBA Member Neil Canavan said that consistency and transparency are very important in dealing with violations.

It was agreed the Planning & Zoning Commission needs to discuss and clarify the issues raised pertaining to the designation of the Zoning Enforcement Officer and enforcement. Staffing to the Planning & Zoning commission and the Zoning Board of Appeals meetings also needs to be reviewed.

It was suggested that a reading list be made available for both commission members and the public.

The meeting adjourned at 9:15.