

**PLANNING & ZONING COMMISSION
REGULAR MEETING – MINUTES
JANUARY 28, 2020 – 7:30PM
GOSHEN TOWN HALL CONFERENCE ROOM – 42 NORTH STREET**

PRESENT: Don Wilkes, Laura Lemieux, Patrick Lucas, Cynthia Barrett, and Alternates Leya Edison, Will Clinton

OTHER: Town Planner and Zoning Enforcement Officer Martin Connor, AICP, Mark Harris

ABSENT: Lu-Ann Zbinden, Alternate Thomas Carey

1. CALL TO ORDER AND DESIGNATION OF ALTERNATES.

Don Wilkes called the meeting to order at 7:30PM. Alternate Leya Edison was seated for Lu-Ann Zbinden.

2. PUBLIC HEARINGS:

A. Chase Jespersen – 42 East Street South – Special Permit Home Based Business

The Clerk read the Legal Notice into record. Chase Jespersen presented his site plan for his home based landscape business. Mr. Jespersen has 2 full time employees. He has plans to add some landscaping in the barn area to help with mud control. Mr. Connor read his report dated January 23, 2020 into record, with a favorable recommendation. Mr. Jespersen has received his Certificate of Occupancy and is residing in the home. Mr. Wilkes asked about the water line shown on the site plan down to the barn. Mr. Jespersen explained that the water line plan was abandoned when the barn was constructed because there was ledge discovered upon construction of the barn. Ms. Edison asked if the business offered snow removal as well. Mr. Jespersen stated that the plow vehicles would only be picked up by the employees and leave to go to the customer properties. There would be no excessive noise associated with the plow services. There are 4 trucks that will be picked up and leave the site. Heavy equipment used for plowing certain properties are kept on those properties. Ms. Lemieux asked about signage. Mr. Jespersen does not anticipate display of any signage. Mr. Jespersen plans on adding arborvitaes along the road to shield employee parking. The paving of the employee parking area was addressed. There will be an area large enough for employee vehicles in the designated area noted on the site plan.

Mr. Wilkes asked for public comment. Amy Tobin stated that she supports Mr. Jespersen's business and wishes him luck.

IN A MOTION by Ms. Edison and seconded by Ms. Barrett it was VOTED to close the public hearing at 7:43PM. Motion carries.

3. READING OF THE MINUTES:

The Commission reviewed the minutes from the November 26, 2019 regular meeting.

IN A MOTION by Ms. Lemieux and seconded by Mr. Lucas it was VOTED to approve the minutes from the November 26, 2019 meeting. Motion carries.

4. OLD BUSINESS:

A. Chase Jespersen – 42 East Street South – Special Permit Home Based Business

IN A MOTION by Ms. Lemieux and seconded by Ms. Edison it was VOTED to approve the permit for Special exception based on the information received. With no further discussion, motion carries.

5. NEW BUSINESS:

IN A MOTION made by Ms. Lemieux and seconded by Mr. Lucas it was VOTED to add Mr. Olsen to the agenda-4 Old Middle Street-Special permit for change of use from retail to restaurant

use. Motion carries. Mr. Olsen owns Ducci Kitchen, which he has now closed in preparation for his retirement. Mr. Olsen is interested in changing the use to allow Charlene, a woman who is interested in opening a food service business to operate out of the lower space. Mr. Olsen is making preparations for septic reserve area, application to State of CT to allow for public water supply, and he has contacted Ron McCarthy for an updated survey plan to show parking area. Mr. Connor explained that there needs to be a Special Permit application submitted with a site development plan showing uses on property, parking requirements for those uses and what is provided. The application needs to be submitted with the plan and the fee, then a meeting can be scheduled and a public hearing can be set. Mr. Olsen contacted Bill Colby to do further testing on the septic to locate a reserve area. Further discussion on the procedure, overall plan for the building, application process and TAHD requirements. Mr. Olsen thanked the Commission for their time and will be filing the proper paperwork.

A. Commissioner roles and responsibilities: Mr. Harris suggested to Mr. Connor that it would be good to review with the Board roles and responsibilities of the Commissioners, as there are many new members who could benefit from a review. The NHCOC presentation by Attorney Michael Zizka will be held on Tuesday, February 4th with a change of venue to Education Connection on Goshen Road in Litchfield. The Commissioners are highly encouraged to attend the presentation. Mr. Connor reviewed handouts with the Commissioners. Items covered and discussed from the handouts included; Legal Basis of Authority, Membership, Terms of Office, Alternates, Powers and Duties, and Combined Planning and Zoning Commissions. Each section of the hand out was read, reviewed and discussed.

6. ZONING ENFORCEMENT OFFICER'S REPORT:

The Commission reviewed Mr. Connor's report of activities over the previous months. Discussion on various properties on the report including; a complaint of odor and noise at AJ's Steak and Pizza, occupied trailer & junkyard at 12 Sunset Drive some clean up has occurred, the occupied trailer at 129 Bartholomew Hill Road has been investigated and letter sent for compliance, 150 East Street South only one car remains so there is no longer a junkyard violation, the tree has been replaced at 159 Sharon Turnpike- JRD Properties, and the solar panel project at 42 North Street is near completion.

IN A MOTION made by Ms. Lemieux and seconded by Ms. Barrett it was VOTED to accept the ZEO activity report dated January 28, 2020, as presented. Motion carries.

7. CORRESPONDENCE:


Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter and the NHCOC "Save the Date" flyers were presented to the members.

8. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

9. ADJOURNMENT:

A MOTION was made by Ms. Lemieux, to adjourn the meeting at 8:45PM.

Respectfully submitted,


Erin Reilly
Commission Clerk

Received January 30, 2020 @ 1:09 P.M.

Attest 
Goshen Town Clerk



TOWN OF GOSHEN

42A NORTH STREET GOSHEN, CT 06756-0187
PHONE 860 491-2308 x 232 FAX 860 491-6028

Martin J Connor, AICP, Town Planner/Zoning and Inland Wetlands Enforcement Officer

To: Planning & Zoning Commission
From: Martin J. Connor, AICP
Subject: Chase Jespersen, 42 East Street South, Special Permit, Home Based Business - Landscaping
Date: January 23, 2020

Chase Jespersen has submitted a Special Permit - Site Plan application, per Section 5.6.1 of the Zoning Regulations, to operate his landscaping business on his property at 42 East Street South where he has recently constructed a new house and barn. The property is located in the RA-5 Residential / Agricultural Zone, is 5 acres in size and is located at the corner of Pie Hill Road and East Street South. The 50 ft x 100 ft barn and 12 ft x 35 ft hoop house recently completed has its own driveway access off Pie Hill Road. Mr. Jespersen will utilize the barn and hoop house in connection with his landscaping business, Jespersen's Landscaping LLC. The Goshen Inland Wetlands Commission previously approved the house and barn which constitutes a favorable recommendation from the Inland Wetlands Commission on the project. The Torrington Area Health District approved the house, barn and hoop house as well. He will reside in the new dwelling on the property which has just received, Zoning Compliance, Permit to Discharge from the Torrington Area Health District, driveway approval from the Highway Supervisor and Certificate of Completions from the Building Official on the barn, hoop house and dwelling. The requirements for approval of a home based business are as follows:

5.6.1 HOME BASED BUSINESS IN RESIDENTIAL ZONES:

A Home Based Business where such business use does not comply with the requirements of Article 3, Section 3.7.4 - Home Office; 3.7.5 - Storage Use in an Accessory Building; or 3.7.6 - Traditional Home Enterprises, shall require a Special Permit (Article 5) and Site Plan (Article 4) and shall meet the requirements of Section 5.6.1.3 below.

5.6.1.1 Purpose

The purpose of this Section is to provide the opportunity for the use of a residence for limited business purposes, while maintaining the residential nature of the lot and neighborhood, protecting the environment and residential property values.

5.6.1.2 Procedures

5.6.1.2a *The application shall include plans clearly drawn to scale showing the floor area and layout of the dwelling unit and/or accessory building and gross floor area devoted to the Home Based Business Use.*

5.6.1.2b The applicant shall submit a business use and activity plan. This shall consist of a written statement describing in general the type and nature of the proposed activity, the product, equipment and/or processes involved, projected typical traffic volume and type, customer/client activity and such other information as the Commission shall require in order to make a determination that the proposed use complies with the standards and requirements of these Regulations.

5.6.1.3 Requirements

5.6.1.3a. No retail sales shall be permitted on the premises unless such sales are determined by the Commission to be incidental to the primary Home Based Business Use and such sales are specifically limited as a condition of the Special Permit.

5.6.1.3b. The Home Based Business Use may occupy a portion of a Single-Family Dwelling Unit and/or an Accessory Structure on a Lot with a Single-Family Dwelling Unit as specified herein and as determined by the Commission.

5.6.1.3c. A Home Based Business located in a Single-Family Dwelling Unit shall not occupy more than one half of the gross floor area of the dwelling unit. The Home Based Business Use, whether located in a residence or an accessory structure, shall be clearly secondary to the residential use on the Lot.

5.6.1.3d. The Home Based Business Use may occupy an Accessory Building if:

- i. the location and appearance of the Accessory Building is consistent with the residential character of the Lot and the neighborhood;
- ii. it can be demonstrated that the type and intensity of the proposed Use in the accessory building will not alter the primary residential character of the lot.

5.6.1.3e. The Home Based Business Use shall be conducted by the resident of the dwelling unit and by members of the family residing on the premises. No more than two non-resident persons shall be employed, full-time or part-time, on the residential lot in association with the Home Based Business Use.

5.6.1.3f. With the exception of permitted signs and required off-street parking spaces, there shall be no display of products or exterior evidence of the Home Based Business including but not limited to, exterior evidence or storage of goods, supplies or other materials associated with the Home Based Business.

5.6.1.3g. The appearance of the lot and structures on the lot shall not be altered in a manner that would cause the residence to differ from its residential character either by use of materials, construction, lighting, signs or the emission of sounds, vibrations or electrical impulses. The Home Based Business use shall not constitute a threat to the quality of surface or groundwater resources (see Article 6 Section 6.1 - Protection of Surface and Ground Water)

5.6.1.3h. Traffic generated by the Home Based Business Use shall not significantly exceed the volume of traffic consistent with the site and neighborhood. The number of daily vehicle trips associated with the Home Based Business Use, including delivery and pick-up of materials and commodities by a commercial vehicle, may be limited by the Commission as a condition of the Special Permit according to the nature and location of the proposed Home Based Business Use.

5.6.1.3i. No on-street parking spaces shall be permitted in association with a Home Based Business Use.

5.6.1.3j. *Off-street parking spaces shall be provided to accommodate the parking needs of the Home Based Business. No additional off-street parking spaces shall be created between the dwelling unit and the street Line. The Commission may limit the number of parking spaces allowed where it is determined it is necessary to control and limit the volume of traffic.*

5.6.1.3k. *The Commission may require a landscape plan that specifies plantings and locations designed to screen the off-street parking area from view from a public street or neighbor. Landscape screening shall be required if based upon site inspection and public hearing testimony, the Commission determines that such screening is necessary to protect neighboring residential property values and to maintain the single-family residential appearance of the neighborhood.*

5.6.1.3l. *Events for the purpose of selling merchandise or taking orders shall not be held more often than once per month.*

5.6.1.3n. *The Use shall not utilize or store hazardous materials, unless the Commission determines that the proposed types and quantities of the hazardous materials utilized or stored will pose a minimum risk to health. Home Based Business Uses which pose a significant threat to water quality shall not be permitted including but not limited to furniture stripping, auto or major appliance repair.*

Mr. Jespersen has submitted a narrative date 11/25/19 which addresses the requirements of Section 5.6.1 above. He appears to have adequately addressed these requirements. He will use the barn and hoop house for storage of equipment and vehicles in conjunction with his business. He has only two full time employees, business occurs offsite with no customers visiting the property. His business runs Monday – Friday from 8 am – 4 pm.

Conclusion:

I recommend approval of the application as it complies with the Zoning Regulations. In my opinion he meets the general and specific requirements for special permit approval. I do not recommend any conditions of approval.

Cc: Chase Jespersen

Jespersen's Landscaping

Chase Jespersen
1741 Tarringford Street
Torrington CT 06790
860-309-8031

jespersenlandscaping@yahoo.com

- 5.6.1.3A. – Business provides labor & services, no retail.
- 5.6.1.3B. – Single family residence located at 42 East St S with an additional pole barn structure used to house equipment.
- 5.6.1.3C. – Business will not be run out of the single family residence. Accessory building is for equipment storage with no office. Single family residence is 2500 sq. ft. bigger than accessory building.
- 5.6.1.3D. – Accessory building fits into the landscape of the surrounding neighborhood with a barnlike, agricultural appearance.
- 5.6.1.3E. – Chase Jespersen is sole resident of single family residence with accessory building having 2 employees on salary.
- 5.6.1.2B. – Accessory building houses Jespersen's Landscaping LLC. It runs Monday through Friday roughly from 8:00 AM to 4:00 PM. Business occurs offsite with no customers visiting property. Neighbors will not experience any disrupting noise or busy activity at property.

11-25-19



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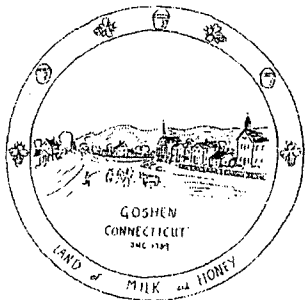
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TOWN OF GOSHEN

42A NORTH STREET GOSHEN, CT 06756-0187
PHONE 860 491-2308 x 232 FAX 860 491-6028

Martin J Connor, AICP, Town Planner/Zoning and Inland Wetlands Enforcement Officer

To: Planning & Zoning Commission
From: Martin J. Connor, AICP
Subject: Activity Report
Date: January 28, 2020

Chase Jespersen, 42 East Street South, Special Permit for Home Based Business in Residential Zone – Jespersen Landscaping,: Mr. Jespersen has a house and barn and hoop house under construction. He wishes to use the barn and hoop house for his equipment to run his landscaping business. He has submitted application, narrative and site plan. Site visits made to the property to check on soil and erosion controls. Approval for house and barn previously granted by Inland Wetlands Commission and TAHD. Approval for hoop house was also granted. House, barn and hoop house have received Zoning Compliance and a Temporary Certificate of Occupancy from the Building Official. Wrote an application review memo to the Commission. I recommend that the Commission approve the Special Permit with no special conditions as the application and plans comply with the specific and general requirements for Special Permit approval.

Charles Olsen, Clark Olsen LLC, 4 Old Middle Street, Special Permit for change of use from retail to restaurant use: Met with property owner, project engineer, TAHD and potential tenant regarding change of use to restaurant and catering operation. Special Permit / Site Plan approval will be required. Owner and his engineer are working with the TAHD regarding adequacy of septic system and well for a restaurant use prior to making a Special Permit application.

A J's Steak and Pizza, 171 Goshen Road, complaints received regarding odors, traffic and noise: Investigated written complaint from neighbor. No Zoning violations found. Complainant has also made complaints to TAHD and DEEP. Wrote letter regarding my findings to complainant.

Patricia A. Studley, 12 Sunset Drive, Occupied Trailer & Junkyard: Received complaint from Public Works Supervisor that a occupied trailer and junk was located in the Town right-of-way at the end of Sunset Drive. I investigated complaint and sent letter requesting voluntary compliance. Vehicles have been moved outside of the Town right of way and some clean-up has occurred. Wrote follow-up letter citing junk pile remaining and television set next to utility pole.

Joseph W. Harnett & Barbara Muchelot, 129 Bartholomew Hill Road, Occupied

Trailer: I investigated complaint and sent letter requesting voluntary compliance. No further complaints have been received.

Estate of Josephine Kubish & Buzziena White, 192 & 192A Kubish Road, dirt bike track: I investigated complaint and sent letter requesting voluntary compliance. Met with Ms. White and her partner who agreed to stop the group riding activity. No further complaints received.

Nan P. Carr, 150 East Street South, junkyard violation: I investigated complaint and sent violation letter. Partial cleanup done but property still in violation. Cease and Desist Order issued. Only one junk car remains so she is no longer in violation of order.

JRD Properties, LLC for All-Star Transportation, 159 Sharon Turnpike – Special Permit Office and Bus Parking: Wrote request for voluntary compliance to replace street tree that died and was required landscaping when approval granted by the Commission. Replacement tree has been planted.

Joseph LaRose for Patricia LeShane, 62 Cottage Grove Rd. construct, additions: Met with builder and owners and to discuss addition to a non-conforming dwelling. Made site visit. A Special Permit application has been filed with the ZBA. A public hearing was held on 9/19/19 and the special permit approved. Zoning permit issued. Site visits made to the property to check on soil and erosion controls.

8-24 Referral from Town of Goshen-lease property at 42 North Street to Regional School District Number 6-for placement of a solar array and other equipment necessary for the production of solar energy: Met with the 1st Selectman and discussed the project. Reviewed Proposed Property Use Agreement between Town and Region 6. For user of land for Solar Array, Region 6 will maintain tennis courts presently being maintained by Town. Energy produced will be used by Region 6. Project will require Inland Wetlands Commission approval for work in a regulated area. PZC Site Plan approval will be required after Wetlands approval. This project is consistent with 2016 POCD, Chapter 5 Recommendations, Sustainability, "Promote Solar Power/Renewable Energy and reduction of greenhouse gas emissions in the Town." I recommend that the Commission make a favorable recommendation to the Board of Selectmen regarding Region 6's proposed use of Town Land for a Solar Array. Inland Wetlands approval granted. Met with Engineer regarding minor modification. Issued ZP #19-32 to Regional School District #6, 50 North Street, construct ground mounted solar array. Site visits made to the property to check on soil and erosion controls.

Clint Thorn, 298 Town Hill Rd., addition: Met with owners and to discuss addition to a non-conforming dwelling that was damaged in fire. Made site visit. Wrote report to ZBA. ZBA approved Special Permit to add onto the existing dwelling. Discussed approval with owner. Issued ZP 19-5 for the addition. Construction underway. Made site inspections.

Sara Wright, 3748 Hall Meadow Road, construct dormer addition: Met with builder

Scott Winn, regarding dormer addition begun without the required, building, TAHD and zoning approvals. Site visit to the property. Wrote report to ZBA. Special Permit approved by ZBA. Zoning permit issued. Construction underway. Made site inspections.

Issued ZP #19-40 to Blake Morrison for Ashley Merz 199 Trust, 32 Birchwood Lane, construct garage.

Issued ZP #19-41 to Edmond Meto. 13 Rockwell Ct., deck and screen porch addition.

Issued ZP #19-33 to Anna Dotolo, 61 Pie Hill Rd., construct dwelling.

Commission and Staff: Expectations of Each Other

by Michael Chandler

Editor's Note: For many years Michael Chandler wrote "The Planning Commission at Work" column for the PCJ. We're reprinting here one of Chandler's columns that closely ties in to what you just read on the preceding pages.

In my last column, I looked at the relationship between the planning commission and the local governing body. In this column, I want to shift the focus to the important, but often overlooked, relationship between commission and staff.

Historically, the emergence of the planning commission as an important component of local government played a major role in the birth – and growth – of the planning profession. Accordingly, it seems fair to suggest that the commission and staff share a close relationship. As such, a challenge facing both commission and staff centers on identifying ways the relationship can be cooperative, as well as beneficial.

THE ROLE OF EXPECTATIONS

Relationships involve expectations. What expectations will or should a planning commission have of the planning

In my experience, here are ten of the most common expectations I've heard each "side" express:

COMMISSION EXPECTATIONS OF STAFF

- Be well organized and anticipate the type and kind of information the commission will need to perform its duties.
- Respond to requests for information in a timely and professional manner.
- Prepare accurate, well-documented, and well-written reports that, where appropriate, lay out options for the commission to consider.
- Leave personal or political bias out of reports.
- Provide exhibits, illustrations, and/or pictures to help commissioners visualize the location or layout of proposals.
- Help orient new commissioners, and provide educational opportunities for all members.
- Be accessible to all commissioners, whether in person, at meetings, or over the phone.
- Keep all commissioners equally informed; do not show favoritism.
- Make the commission decision work after it's made.
- Act in a fair, ethical, and consistent manner.

STAFF EXPECTATIONS OF COMMISSION

- Prepare for meetings by reading all reports and by visiting (if legal in your community) each site on the agenda.
- Whenever possible, call staff with your questions before the meeting, so answers can be researched and shared during the meeting.
- Examine all the facts on a given issue and make the best decision possible.
- Do not ridicule or make light of the staff in public; instead, provide criticism in private.
- Do not assume the staff is wrong and citizen is right when there is a disagreement.
- Compliment the staff when and where appropriate.
- Trust and respect the staff.
- If the commission disagrees with a staff recommendation, explain your reasoning.
- Do not hold a grudge if you disagree with a staff recommendation.
- Act in a fair, ethical, and consistent manner.

staff? Likewise, what expectations will or should the planning staff have of the commission? Without discussing the expectations each has of the other, misunderstandings are likely to result. This, in turn, can lead to publicly aired disagreements or squabbling that reflects poorly on both staff and commissioners.

The simplest way to overcome the guessing game is for commissioners and staff to share their expectations with one another. A work session or retreat can focus on discussing expectations.

If the planning commission and its staff can communicate with one another, the occasion for commission-staff entanglements will be minimized. This is critical because the business of planning is too important to be sidetracked as a

result of differences or difficulties involving the commission and staff.

Remember, the common goal of staff and commission is to serve the public good. This requires, above all, that all actions be taken in a fair, ethical, and consistent manner. ♦

Michael Chandler is a planning consultant based in Richmond, Virginia. He is a former Professor and Community Planning Extension Specialist at Virginia Tech. Chandler has for many years conducted planning commissioner training programs across the country.



This article was originally published in PCJ #24, our Fall 1996 issue.



On-Line Comment:

"I am a planning commissioner in a small town (population 1578). Mike's article hits on the very heart of where problems begin, lack of clear expectations. We have a permanent part-time zoning administrator. That is our only staff. Perhaps the most important expectation is CONSISTENCY!" While the commissioners may or may not agree with the job the zoning administrator does, we all expect him to be consistent in administering our zoning ordinance. Lack of consistency leads to public perception of favoritism or incompetence."

— Dennis Riffin, Rock Hall, Maryland

The Role of the Professional Planner

by Perry L. Norton, AICP

Editor's Note: Long-time planner and teacher Perry Norton passed away in December 2009. We're honored that Norton wrote five articles for the PCJ.

In this short article reprinted from our Fall 1996 issue, Norton offers his insights on the job of the professional planner – a topic that I think will be of particular interest to citizen planners in understanding the role of their staff.

n thinking about the role of the professional planner, it is helpful first to look back. Before there were professional planners, there were "citizen" planners. They weren't initially called "citizen planners," they were members of civic improvement associations which came into being after the 1893 World's Columbian Exposition in Chicago – a spectacular showcase of buildings, architecture, and civic design, which inspired business and community leaders across the country to see what they might do to improve their cities.

As the more or less ad hoc improvement associations began to produce ideas, and plans, momentum grew to formalize these activities and to give them more clout in community decision making. In the 1920's, under the stewardship of Herbert Hoover, then Secretary of Commerce, some model state enabling ordinances were drafted for the creation of official planning boards.

The movement grew rapidly, and as it grew more demands were put on the shoulders of the volunteers who became the members of those planning boards, or commissions. The boards turned for help to people who would, as staff or consultants, conduct studies needed to provide the information the boards needed to make plans for the future of their communities. Thus entered the professionals.

To a very significant degree, that role of providing information is still one of the major functions of professional planners, whether full time staff members in the employ of government, or under contract to provide consulting services to a planning board.

IF PLANNING HAS
SOMETHING TO DO WITH
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NEED TO HAVE SOME IMAGE
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FUTURE OUGHT TO BE.

The second role professional planners took on is less prosaic, but perhaps even more important. If planning has something to do with the future, don't we need to have some image of what we think the future ought to be so that we have some reference point to guide our decision making today? The current buzz word for this role is "visioning." The word is new, but the action has been around for a long time – first articulated in the so called Comprehensive Master Plan.

But it is not a simple process for people, commissioners, and the general public, who have lived their lives in one community, to divest themselves of the baggage of the day to visualize what tomorrow might be. Professional planners took on the role of facilitator or "enabler," helping the citizen boards they worked with to develop a coherent vision of the future of their community, and the means of achieving that future.

There is one more role. From our deliberations we may arrive at what we think is the best decision. But as we know, the best laid plans can go astray. We always need, therefore, to know our

options before we take any action. But we need to ask: are we taking the route of least resistance at the cost of what we hope to achieve? Professional planners can provide the "if this then what" print-outs; members of the planning board must pull up their resources to set the course. ♦

The late Perry Norton had his start as a planner with the Chicago Housing Authority. Over the years, he worked as a planner in Cleveland, Ohio; served in the mid-1950s as the first full time Executive Director of the American Institute of Planners; worked as a planning consultant; and taught planning at New York University.



After "retiring," Norton served as a moderator of CompuServe's municipal planning forum, and helped pioneer the use of the internet as a place for discussions among planners.

Taking a Closer Look: Basic Planning Tools



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What Planners Wish Their Planning Commissioners Knew

by Jim Segedy, Ph. D., FAICP, and Lisa Hollingsworth-Segedy, AICP

Lisa recently visited with Paulding County, Georgia's Planner, Chris Robinson, whose career has included work at two regional planning commissions, two counties, one city, and one state agency. She asked him "over the years and in all the places where you have worked as a planner, what did you wish your planning commissioners knew?"

Chris' answers started us down a road studded with memories of our own experiences over the years as we worked to empower planning commissioners at their job. It never hurts to remind ourselves who we are, and what we're doing on the planning commission in the first place.

So with our thanks to Chris for his perspective, and apologies to David Letterman, here's our Top Ten List of things planners wish their planning commissioners knew. One caveat: each state has slightly different planning and zoning laws, and local commissions' procedures will vary. Still, the basic ideas we set out should be relevant for most of you.

10. *The responsibilities and duties of being a planning commissioner.* Planning commission involvement is not an appointment to accept for status or just to add to your resume. It involves training, study, and preparation for every meeting. You will need a clear understanding of the commission's role in administrative and legislative actions, as well as legal issues such as due process, "takings," preemption, and more.

Planning commissioners are responsible for working together to ensure that the community grows and develops according to the vision established in the plan. As you consider an appointment (or accepting a re-appointment) carefully consider the significant commitment required, from the amount of time involved in preparing to make informed

decisions to the (potentially lengthy) meetings each month.

9. *Proper adoption of the zoning ordinance, map, and amendments is very important.* Planning commissioners should be familiar with their state's code language that spells out the procedures for how a zoning ordinance and/or map can be amended. Requirements for advertising and public hearings are the most common items addressed, but some states specify additional standards.

STAFF ARE A RESOURCE TO
YOU AS PLANNING
COMMISSIONERS TO MAKE
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8. *The relationship between the comprehensive plan and the zoning ordinance.* Your comprehensive plan (or master plan, or something similar) is the critical guidance document for your community. It likely contains an examination of current conditions, identifying goals and objectives for the future, and a general framework for how to achieve those goals – and why. The plan establishes the framework for decision-making and the public purpose for local government regulations pertaining to land use.

7. *The definition of "hardship" when granting a variance.* Typically, a variance from the zoning code's standards is allowed only when there is a "hardship on the property." In other words, the property cannot be developed under the current rules because of specific conditions on the site or its unusual configuration. "Hardship," as the word is defined in zoning codes, does not relate to the

financial well-being of the property owner, or whether the site could generate greater profit (that is, more than a "reasonable return") if a variance were granted. As one of the leading treatises on zoning law states, "the courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit."¹

The technical zoning definition of hardship is too often ignored by planning and zoning boards (the body authorized to grant variances differs from state to state). One consequence of this, and of too readily granting variances, is that the community's zoning ordinance and comprehensive plan will be undermined. Bottom line: it is important to know the criteria in your ordinance for granting variances, and then make decisions in accordance with those criteria.

6. *Politics is for politicians – not planning commissioners.* In most places, planning commission appointments are made by elected officials. Sometimes these officials have "expectations" about their appointees and the decisions they are called on to make. This has the potential of damaging the commission's integrity as an independent body. As Greg Dale (who has frequently written on ethical issues for the PCJ) has noted: "As a planning commissioner you have an ethical obligation to remain in a position of objectivity and fairness. Any time you take a position at the urging of an elected official, you run the risk of tainting your credibility as an objective decision-maker."²

One of the fundamental purposes behind the creation of planning commissions early in the 20th century was to

1 Anderson's *American Law of Zoning*, 4th Edition, Sec. 20.23, p. 495.

2 "Who Do You Work For," in PCJ #16 (reprinted in *Taking a Closer Look: Ethics & the Planning Commission*; for details: www.plannersweb.com/ethics.html).

provide for an independent, non-partisan, body to provide advice to the governing body on planning, zoning, and other land use matters. As planning historian Laurence Gerckens has noted, "it is worth recalling that citizen planning commissioners were put into that position ... to provide insights into the problems and potential of the community, and to provide leadership in the solution of problems before they arise."³

5. "Health, safety, and welfare." These three words are the foundation upon which a community's comprehensive plan and land use ordinances are built. Planning commission decisions should be based on impacts on the health, safety, and welfare of the community, not just on the welfare of any one individual or group.

Planning commissioners should also be familiar with the concepts of "due process" and "takings" so they are not "buffaloed" by applicants who will argue that an adverse decision will violate one or both of them.* Your by-laws and/or zoning ordinance should contain a checklist or form that will keep you on track and document due process and findings for approval or denial.

4. *Conflicts of interest – and how to avoid them.* As a planning commissioner, you are called upon to check your personal interests at the door of each meeting. It is critical that you keep the community's best interests in focus, not how the proposal may impact your own business, property, or income. You and your fellow commissioners should be familiar with your commission's rules on conflicts of interest (which we hope your

commission has!) and scrupulously adhere to them.

It is also important to put aside personal feelings about either the applicant or members of the public who may be testifying. Jim recalls that during his term as a planning commissioner, he heard fellow commissioners say, "they seem like nice people," or "my kid plays soccer with the their kid." These should have nothing to do with your review of a project. If you can't focus on making objective decisions based on your ordinance's criteria, you probably shouldn't be serving on a planning commission.

3. *The role of planning staff.* If your community employs planning staff, it is part of their job not just to ensure that development applications are complete,



but to conduct a basic evaluation of the permit request against the standards contained in your ordinance. In some communities, staff may also prepare recommended findings based on their technical review of the application. But staff should never direct you how to vote, and you

should always independently evaluate the recommendations you receive, the material presented by the applicant, and any testimony or public comments you hear.

Staff are a resource to make your deliberations easier by assembling the information you need before you meet. Most staff welcome questions from commissioners in advance of the meeting. This can help keep the meeting on track and keep you as a planning commissioner well informed.

2. *Site visits to subject properties are important.* Looking at photos and maps just isn't the same as seeing the site and observing the conditions that may be impacted by a proposed development. Driving by the site for a quick look usually isn't as revealing as getting out of your car and walking around the site. Issues involving scale or density, for example, can seem abstract without a

real feel for the specific area potentially affected by the project.

Some planning commissioners are reluctant to go on site visits because they are concerned about running afoul of Sunshine Laws, or even trespassing. Site visits are fact-finding missions, so as long as you restrict conversations to details of the permit request and don't stray into the area of discussing possible decisions, you should be fine. Of course, be guided by advice your commission receives from its legal counsel on site visits.

1. *Why avoiding ex-parte communications is critical.* Decisions must be made on the basis of fact – and in the light of day. Information gathered should come through appropriate channels: the permit application; maps and photos that support it; what you observe on a site visit; clarifications provided by your staff; and public hearing comment. If your decision is based, even in part, on information you privately received from the applicant or from someone opposing a project, you are – in our opinion – leaving yourself open for a court challenge.

However, in the review process for this article, we heard from one planner who informed us that ex-parte communications are allowed in her jurisdiction, though members are encouraged to report the content of such communications at the commission meeting and to remain objective.

Your best bet is to follow the communication and decision-making standards spelled out in your planning commission by-laws and/or your zoning ordinance procedures. If your commission or board doesn't have provisions addressing how to handle ex-parte contacts, set aside some time to develop them. ♦

Jim Segedy is the Director of Community Planning for the Pennsylvania Environmental Council. Lisa Hollingsworth-Segedy is the Associate Director for River Restoration for American Rivers' Western Pennsylvania Field Office. They both thank Chris Robinson for his contributions to this column.



³ "Community Leadership & the Cincinnati Planning Commission," *PCJ* #18 (Spring 1995).

⁴ Editor's Note: for a good overview of procedural due process and "takings," we'd recommend respectively "Procedural Due Process in Practice," by Dwight Merriam, FAICP, Esq., and Robert Sitkowski, AIA, Esq." (*PCJ* #31); and "Taking on Takings Claims," by Dwight Merriam (*PCJ* #60). Both articles are included in our publication, *Taking a Closer Look: Planning Law* (2008). For details: www.plannersweb.com/law.html.

Planning Commission



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Legal Basis of Authority

Chapter 126, Section 8-19 of the Connecticut General Statutes (CGS) provides that any municipality may by ordinance create a planning commission.

Membership

Commissions must consist of five members who are:

1. Electors, and
2. Hold no Salaried Municipal Office.

The Chief Executive Officer, Town Engineer or Commissioner of Public Works shall be Ex-Officio members, without voting privileges

Terms of Office

Terms of office and method of selection shall be fixed by ordinance, however terms of office shall be so arranged that no more than three (3) members' terms shall expire in any one year.

Election of Officers, Keeping Records

Commissions must:

1. Elect a chairperson and secretary from its members,
2. Adopt rules for the transaction of business,
3. Keep a public record of its activities and,
4. File an annual report with the local legislative body.

Alternates, Staff and Consultants

The ordinance establishing the Planning Commission may provide for the appointment or election of alternate members to the Planning Commission. When seated, alternate members shall have all the powers and duties of regular members. Alternates shall be electors of the municipality and shall not be members of Zoning Board of Appeals or the Zoning commission. The ordinance shall also provide for the manner of designating alternates to act.

Voting

A vote of a majority of a legal quorum of the commission is required for action, unless otherwise stated in the statutes. For example, an ordinance may provide that a waiver of the

subdivision regulations requires a 3/4 vote of all members and contracts and expenditures require a majority vote of the whole membership. A tie vote means an application is denied.

Powers and Duties

Once established, a Planning Commission has the following powers and duties:

1. *Plan of Conservation and Development:* The commission must prepare, adopt or amend a plan for the municipality, showing the commission's recommendation for the most desirable use of land for residential, recreational, commercial, industrial, conservation and other purposes and for the most desirable density of population in the various parts of the municipality. The plan shall be reviewed at least every ten years and amended as the commission deems necessary. [8-23]

2. *Municipal Improvements:* No municipal agency or legislative body shall (1) locate, accept, abandon, widen, narrow or extend any street, bridge, parkway or other public way, (2) locate, relocate, improve, acquire land for, abandon, sell or lease any airport, park, playground, school or other municipal property or public building, (3) locate or extend any public housing, development, redevelopment or urban renewal project; or (4) locate or extend public utilities for water, sewerage, light, power, transit and other purposes, until the proposal to take these actions has been referred to the commission for a report.

Failure of the commission to report within 35 days after the date of submission of the proposal is deemed an approval of the proposal. If the commission disapproves the proposal it must report its reasons to the legislative body. The report is advisory and can be overridden by a majority of a town meeting or a 2/3 vote by the legislative body. [8-24]

The review and approval of proposed municipal improvements does not apply to the maintenance or repair of existing property, public ways or buildings.

*Bracketed numbers reference sections of the Connecticut General Statutes, visit cga.ct.gov/2009/pub/title8.htm



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Roles and Responsibilities of Local Land Use Officials

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3. *Subdivision Regulation*: The Commission must establish, change or repeal regulations for the subdivision and resubdivision of land. [8-26]

4. *Approve Subdivisions*: To hear, consider and decide upon applications for approval of subdivision or resubdivision of land. [8-26]

5. *Waive Certain Subdivision Regulations*: The commission, upon a 3/4 vote of all members, may waive certain requirements of the subdivision regulations where special conditions exist, but only in accordance with standards and criteria set forth in the subdivision regulations and only if the waiver will not adversely affect adjacent property or public health or safety. [8-26]

6. *Exceptions to Zoning*: To hear, consider and decide upon applications for Special Permits or Special Exceptions to the extent required by the zoning regulations of the municipality. [8-2, 8-26e]

7. *Advise on Zoning*: If the Planning Commission is separate from the Zoning Commission, the Commission may review and report on any proposed zoning regulations or boundaries or any changes to such regulations or boundaries.

The failure of the Planning Commission to report prior to or at a public hearing on the proposed changes shall be taken as approval of the proposal. The report shall contain the findings of the Planning Commission on the consistency of the proposed regulation with the municipality's Plan of Conservation and Development. A proposal disapproved by the Planning Commission may still be adopted by the Zoning Commission by a vote of not less than 2/3 of all Zoning Commission members.

8. *Open Space proposals*: The Commission may approve all applications for Open Space Grants prior to submission to the commissioner of environmental protection. [7-131e(c)]

9. *Oversee Infrastructure changes*: The Commission may prepare and file surveys, maps or plans of proposed highways, streets or sidewalks or the relocation, grade, widening or improvement of existing highways, streets or sidewalks or of any proposed building or veranda lines with the town clerk

and to assess the benefits and damages to any person owning land in such survey, map or plan. [8-29]

Combined Planning and Zoning Commissions

Since 1959 municipalities have been allowed to establish combined planning and zoning commissions. Under Section 8-4a of the CGS, any municipality may establish a single commission to carry out both planning and zoning. The Planning and Zoning commission may consist of 5, 6, 7, 8, 9 or 10 members, not counting non-voting members. On commissions with 5 or 6 members, the terms of no more than 3 members may expire in any year, on 7 or 8 member boards no more than 4, and on 9 and 10 member boards, no more than 5 may expire in any year.

Upon the establishment of a combined commission, all regulations adopted by the separate planning and zoning commissions that were in effect prior to the establishment of the new combined board shall continue in full force until revised or repealed by the new board.

Vacancies shall be filled as provided in the ordinance establishing the combined commission.

CHECK OUT THESE ONLINE TOOLS AND RESOURCES

- *Online Academy* - provides online resources for those who want a quick refresher or are unable to attend a training. Visit clear.uconn.edu/lua/online

- *Community Resource Inventory Online* - provides organized maps, tutorials and case examples that assist you in developing a basic inventory of your towns natural and cultural resources.

- *Connecticut's Changing Landscape* - provides data about how CT's landscape has changed since 1985. Local Land Use officials can use this resource to evaluate the environmental, social and economic impacts of development that guide their decision making.

For more information

Call: 860-345-4511

Email: clear@uconn.edu

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The Land Use Academy is a program of the Center for Land Use Education and Research (CLEAR). Land, Sea and Space Grant collaborating.

Zoning Commission



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Legal Basis of Authority

In Connecticut, any municipality may, by vote of its legislative body, adopt the provisions of Chapter 124, Section 8-1 of the Connecticut General Statutes (CGS) and establish a zoning commission.

Municipalities are not required to establish Zoning Commissions however most have. If the municipality does establish a Zoning Commission, it must also establish a Zoning Board of Appeals.

Membership

1. The Zoning Commission shall consist of not less than 5 nor more than 9 members.

2. The membership of the commission must comply with state statutes or town charter or ordinances providing for the maximum number of members who may be affiliated with a particular political party.

3. Members of the Commission shall be electors of the municipality.

Terms of Office

The number of members, the method of their selection and removal and their terms of office shall be determined by ordinance. The town legislative body cannot be designated to act as the Zoning Commission except;

- In towns of less than 5,000, or
- If a legislative body was so acting prior to July 1, 1974 or
- If a legislative body was so acting prior to June 17, 1987 pursuant to a special act.

The ordinance establishing the Zoning Commission shall provide for the appointment or election of alternate members to the Zoning Commission. When seated, alternate members shall have all the powers and duties of regular members. Alternates shall be electors of the municipality and shall not be members of Zoning Board of Appeals or the Planning Commission. The ordinance shall also provide for the manner of designating alternates to act.

Powers and Duties

Zoning Commissions have the following powers:

1. To establish, change or repeal zoning regulations and zoning districts, including village districts, in accordance with the considerations set forth in C.G.S. Section 8-2. [8-3]

2. To hear, consider and decide upon petitions for changes in the zoning regulations or zoning district boundaries. [8-3]

3. To provide for the manner in which the zoning regulations are to be enforced and to take appropriate actions to enforce them. [8-3 (e), 8-12]

4. To certify, when appropriate, that a building, structure or use is or will be in conformity with the zoning regulation. This function may be delegated to a zoning enforcement officer. [8-3 (f)]

5. To require, when it deems appropriate, that a site plan be filed to aid in determining the conformity of a proposed building, structure or use with the zoning regulation, and to approve, modify or deny such a site plan. This function may be delegated to a zoning enforcement officer. [8-3 (g)]

Alternates

**Bracketed numbers reference sections of the Connecticut General Statutes, visit cga.ct.gov/2009/pub/title8.htm*



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6. To hear, consider and decide upon applications for special permits or special exceptions in accordance with the zoning regulations. This function may be delegated to a zoning board of appeals or a planning commission. [8-2, 8-3c]

7. To approve or disapprove the construction of any above ground vault, crypt, columbarium or mausoleum for public use in any cemetery containing less than five acres. [Public Act 87-490]

8. To approve or disapprove the location of crematories proposed for plots of land which have not been used for cemeteries for at least five years or which are not established cemeteries containing twenty or more acres. [19a-320]

9. Regulate and restrict proposed location of any steam plant, gas plant, gas tank, water tank, electric substation, antenna, tower or earth station receiver of any public service company not subject to the jurisdiction of the Connecticut Siting Council. [16-235]

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