

**PLANNING & ZONING COMMISSION
REGULAR MEETING MINUTES
FEBRUARY 22, 2022 – 7:30PM
HELD AT GOSHEN TOWN HALL AND BY ZOOM VIRTUAL MEETING**

PRESENT: Chairman Don Wilkes, Cynthia Barrett, Lu-Ann Zbinden, Patrick Lucas, Laura Lemieux, William Clinton, Leya Edison and Jim Withstandley

EXCUSED:

OTHERS: Town Planner and Zoning Enforcement Officer Martin Connor, Mr. and Mrs. Nefic and Mr. and Mrs. Weigold. Optional Sign In Sheet was removed by an attendee.

1. CALL TO ORDER AND DESIGNATION OF ALTERNATES.

The meeting was called to order at 7:30PM. The meeting was conducted in person at Goshen Town Hall and virtually through Zoom and recorded digitally and no alternates were seated. Seated members were noted to be Don Wilkes, Cynthia Barrett, Lu-Ann Zbinden, Patrick Lucas and Laura Lemieux.

2. PUBLIC HEARING: None

3. READING OF THE MINUTES: The Commission reviewed the minutes from January 25, 2022, regular meeting. Corrections are attachment 1.

IN A MOTION by Ms. Zbinden and seconded by Ms. Barrett, it was voted to accept the minutes with corrections. Motion carries.

4. OLD BUSINESS:

A. 59 Old Middle Street - Determination as to whether a year round farm stand would be an extension of the principal agricultural use which is permitted use in the RA-2 Zone. A discussion and questions were asked in regards to the Richard Weigold, Northern Farm & Forestry LLC & Town of Burlington's Regulations regarding Farm Stores memo that the commission had asked Mr. Connor to provide. Questions were asked and the steps needed to continue with this were reviewed. It was decided that it would be best for Mr. Connor and Mr. Weigold to work together to come up with a direction to go and bring back to the commission.

IN A MOTION by Mr. Lucas and seconded by Ms. Zbinden, it was voted that the Commission direct the ZEO to work with local agrarian to create a Goshen version of the Farm Stand regulation for P&Z to review prior to the Public Hearing. Motion carries.

B. Consideration to include the Affordable Housing Plan as part of the 2016 POCD. Mr. Wilkes asked if we had a motion. Ms. Zbinden commented that as a commission they have not reviewed or discussed the plan. Mr. Wilkes stated that a motion can be made to accept the application then they can discuss.

IN A MOTION by Ms. Barrett and seconded by Ms. Lemieux, to consider the Affordable Housing Plan as part of the 2016 POCD.

Mr. Wilkes stated that only seated members are permitted to discuss. Mr. Wilkes asked the Commissioners if they were familiar with the AHP and if there were any questions. There were no questions. He continued with a review of the plan. A discussion was had on the reason for housing price increases. Mr. Wilkes continued with a review of the plan and asked again if there was anything anyone would like to talk about. There was no response. He then moved to review the goals and strategies. It was pointed out by Mr. Connor, that these are just suggestions and for anything to be done it must go to the NHCOC and then have a Public Hearing. Ms. Zbinden then stated this opens the doors for developers to come in. More discussion was had. Zoom connection was lost at about 8:15 due to the internet outage. Site came back on about 4 minutes later and attendees were added back into the meeting as soon as possible (sound was still on delay for a minute). Mr. Connor reminded everyone again that these are suggestions. Ms. Barrett also stated that in the goals and strategies it does not state this has to be done. More discussion was had and land acquisitions was discussed as being voted down on 2 separate occasions. Ms. Zbinden stated that at the Public Hearing most attendees were not in favor of this. Mr. Connor stated that in his years of experience, Public Hearings mostly bring those that object to the issue. Mr. Wilkes asked if there were any more questions. Mr. Lucas stated that he had received a phone call from the applicant that if he did not feel comfortable voting he could skip the meeting. He did not feel this set a very good precedent.

Mr. Wilkes called the question of all in favor of including the Affordable Housing Plan as part of the 2016 POCD say Yay? No Yay. Nay? Mr. Lucas and Ms. Zbinden. Take Roll Call. Ms. Clinton conducted Roll Call: Mr. Lucas NO. Ms. Lemieux NO. Ms. Zbinden NO. Ms. Barrett NO. Mr. Wilkes NO. Question does not pass.

5. **NEW BUSINESS:**

A. **270 Sharon Turnpike - Home based business in residential zone.** It was noted that this is a special permit application. Mr. Nefic gave a brief history on his background and described the type of home based business

which is an organic and natural sleep system. A discussion was had between the applicant and commissioners. Mr. Nefic stated that they would have between 1 and 2 client visits a month and most of the work is done via phone and email. He also stated they will not have delivery trucks.

IN A MOTION by Ms. Zbinden and seconded by Ms. Lemieux, it was voted to set a Public Hearing for March 22, 2022 for 270 Sharon Turnpike, Home based business in residential zone. Motion carries.

6. **ZONING ENFORCEMENT OFFICER'S REPORT:** January, 2022 and February, 2022 Reports were reviewed. Mr. Lucas asked if we could put the EDC on the agenda for next month under new business.

7. **CORRESPONDENCE:** Letter from Law Offices of Mark V. Connolly, LLC regarding submitted "Petition" was read into record by Ms. Lemieux.

8. **OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:** None

9. **ADJOURNMENT:**

IN A MOTION made by Ms. Lemieux to adjourn the meeting at 9:03PM. Motion carries.

Respectfully submitted,



Lori Clinton
Commission Clerk

Received Feb. 24, 2022 @ 12:01 PM.

Attest Beth Ann Z. Blevins
Goshen Town Clerk



Attachment 1

Changes to Minutes of P&Z Meeting on 01/25/2022

Messages

Ann C Zbinden <LuAnn_C_Zbinden@bd.com>

Tue, Feb 22, 2022 at 1:36 PM

: L Clinton <LClinton@goshenct.gov>

Hi Lori,

Please see a few changes to the 01/25/2022 Minutes below.

In my motion, I asked that the two seated P&Z Commissioners that served on the Goshen Housing Plan Steering Committee recuse themselves from any discussion of the Goshen Housing Plan. The motion failed.

IN A MOTION by Ms. Zbinden, and NOT seconded, to recuse two seated P&Z Commissioners that served on the Goshen Housing Plan steering committee from any discussion of the Goshen Housing Plan. Motion fails.

Below are a few changes: 1) The housing plan had not been approved by the town. It had only been approved by the **Board of Selectmen**. 2) 70 Bently Circle should be **70 Bentley Circle** (2 places). 3) typo - **can't** 4) 830g should be **8-30g**. In addition the names of some of the ZOOM meeting attendees on Attachment #2 should be changed to the best of my knowledge as follows: #2. **Audrey Blondin**, #7. **Dawn Wilkes**, #9. **MICHAUD BRIGITTE**, #24. **Peter Kujawski**.

social media. Several seated board members asked questions. Mr. Peter Herbst, 6 Cornwall Drive, reviewed and pointed out that the housing plan has already been approved by the town and selectman and it is not about what should or should not be in the plan. Mr. Bob Valentine, 225 North Street, spoke on the issues the town could have with developers if this is not done and also spoke on the misinformation being put out around town. Mr. Mike Esposito, 70 Bently Circle, spoke on red flags; the process is what bothers him; the people deserve a vote and that the decision is being made by a small number of people and it needs to be a town vote. Mr. Joseph Janice, 23 Ashley Drive, spoke on his history and feels that there is no reason why we cant have other people like him in town and that it is closed minded to feel that way. Scott Tillmann, 843 North Street, gave a brief history of his family in Goshen then spoke on the land acquisition money that is earmarked for open space and recreation. It was voted 2 times by the town not to be used for housing. If they do use it for housing it would go against what the townspeople voted for. Ms. Lu-Ann Zbinden, seated Commissioner P&Z, read her statement and that is attachment 3 with the minutes. Ms. Leya Edison, alternate non-seated Commissioner P&Z, 130 East Hyerdale Drive, read her statement and that is attachment 4 with the minutes. Mr. Mike Esposito, 70 Bently Circle, had a question for Mr. Connor or Mr. Harris on if the 25 units is forever and if it can be changed. This was a discussion had by several of the people attending the meeting. Ms. Lynette Miller, 35 Rockwall Court, spoke on the lack of the town using the moratorium, various state statutes, how the town survey was done, cluster housing and deed restrictions. Ms. Lorraine Lucas, 21 Bartholomew Hill Road, spoke on the land acquisition money as well and the fact that it is earmarked for open space and recreation and the town voted that it should not be used for housing. Mr. Peter Kujawski, 6 Bentley Circle, said we should be thanking the people who put this plan together, spoke on liability that comes from not following the town rules, spoke on scatter sites and 830g.

Thank you very much.

Lu-Ann

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Corporate Headquarters Mailing Address: BD (Becton, Dickinson and Company) 1 Becton Drive Franklin Lakes, NJ 07417 U.S.A.

Attachment 1

Minutes
essages

dy Barrett <cbingoshen57@gmail.com>
LORI CLINTON <LClinton@goshenct.gov>

Mon, Feb 21, 2022 at 2:0

i Lori, Perhaps you have seen the spelling of Bentley Circle that needs to be corrected from Bently....Thank you. Cindy

Planning and Zoning
January 25, 2022
Page 2 of 3

social media. Several seated board members asked questions. Mr. Peter Herbst, 6 Cornwall Drive, reviewed and pointed out that the housing plan has already been approved by the town and selectman and it is not about what should or should not be in the plan. Mr. Bob Valentine, 225 North Street, spoke on the issues the town could have with developers if this is not done and also spoke on the misinformation being put out around town. Mr. Mike Esposito, 70 Bently Circle, spoke on red flags; the process is what bothers him; the people deserve a vote and that the decision is being made by a small number of people and it needs to be a town vote. Mr. Joseph Janice, 23 Ashley Drive, spoke on his history and feels that there is no reason why we cant have other people like him in town and that it is closed minded to feel that way. Scott Tillmann, 843 North Street, gave a brief history of his family in Goshen then spoke on the land acquisition money that is earmarked for open space and recreation. It was voted 2 times by the town not to be used for housing. If they do use it for housing it would go against what the townspeople voted for. Ms. Lu-Ann Zbinden, seated Commissioner P&Z, read her statement and that is attachment 3 with the minutes. Ms. Leya Edison, alternate non-seated Commissioner P&Z, 130 East Hyerdale Drive, read her statement and that is attachment 4 with the minutes. Mr. Mike Esposito, 70 Bently Circle, had a question for Mr. Connor or Mr. Harris on if the 25 units is forever and if it can be changed. This was a discussion had by

linton <lclinton@goshenct.gov>
Cindy Barrett <cbingoshen57@gmail.com>

Mon, Feb 21, 2022 at 3:06

if I did not and will put in for correction. Thanks!

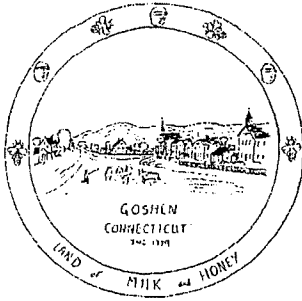
ent from my iPhone

On Feb 21, 2022, at 2:00 PM, Cindy Barrett <cbingoshen57@gmail.com> wrote:

quoted text hidden]

Attachment 1
Image 2-21-22 at 1.59 PM.jpg
260K

Image 2-21-22 at 1.59 PM.jpg
260K



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 20, 2022

Goshen Affordable Housing Plan: The final draft plan titled, "Goshen Connecticut Housing Plan 2022-2027," was completed by the Steering Committee and was forwarded to the Board of Selectmen for adoption. The Selectmen adopted plan on October 5, 2021 and have recommended that the PZC adopt the Plan as an Amendment to the 2016 Goshen Plan of Conservation and Development (POCD.) The PZC set a public hearing for 1/25/22 to consider amending the POCD to include the Goshen Connecticut Housing Plan 2022-2027. I referred the plan to the NHCOG for their review and comment prior to the public hearing as required by State Statute. Wrote a memo recommending that the Commission adopt the Plan as an Amendment to the 2016 Goshen Plan of Conservation and Development (POCD.)

Richard A. Weigold, Northern Farm & Forestry LLC, 59 Old Middle Street, year-round farmer's market: Met with Mr. Weigold and discussed his proposed plan for the usage of 59 Old Middle Street. He proposes to utilize the main front barn consisting of approximately 1550 square feet each floor as a year-round farmers market and/or consignment market for local producers. He will use the two entrances on Route 63 to create a distinct traffic flow and create approximately 20 parking spaces. Previous owner, Tom Breakell previously used property for a seasonal farm market. Asked Mr. Weigold to submit his proposal to the PZC in writing to determine as to whether a year-round farm stand would be an extension of the principal agricultural use in the RA-2 Zone.

Michael & Suzanne Rinaldi, lot line revision between 777 and 795 East Street North: Met with Ms. Rinaldi her engineer and TAHD and reviewed a lot line revision between her neighbor and she and her husband. The proposed revision complies with Zoning and the Public Health Code per TAHD.

Town of Goshen, Camp Cochipiinee, 291 Beach Street, discussed construction of a 20' x 30' x 16' open air pavilion: Discussed pavilion with Public Works Director and Recreation Director. Assisted them in completing Site Plan application for Commission

approval. TAHD Approval has been obtained. No regulated Inland Wetlands activities proposed. Proposed pavilion meets the Zoning requirements. Wrote memo to Commission 12/23/21 recommending approval. Site Plan approval issued.

EDC Review of Zoning Regulations: I attended two meetings of the EDC to discuss the Zoning Regulations regarding business uses in the CB Zone and home occupations. Discussed with their subcommittee members their suggested revisions for the P&Z Commission to consider. I reviewed their suggested changes and recommended they meet jointly with PZC to discuss these recommendations. Any proposed changes would require referral to the Northwest Council of Governments and a public hearing on any Zoning Text Amendments proposed. Discussion on suggested changes scheduled for February PZC Meeting.

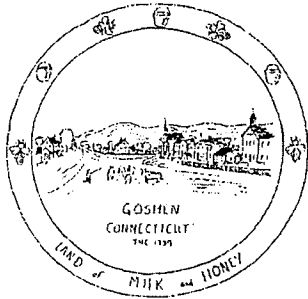
Proposed Amendment Zoning Regulations Section 3.10, Temporary and Limited Moratorium on Cannabis Establishments: I wrote a draft regulation to provide the Commission with the time necessary to consider adoption of potential changes to the Zoning Regulations pursuant to Section 8-2 of the Connecticut General Statutes regarding Cannabis Establishments. Referral was made to the NHCOC who had no comment. This temporary and limited term moratorium, if adopted, will provide the Commission with the time necessary, up to one year, to develop regulations if they choose to for cannabis establishments that meet statutory responsibilities and promote the public's general health, safety and welfare. The Commission held a public hearing on the moratorium at their 10/26/21 meeting and approved the moratorium their 11/22/21 Meeting. Notified CT Office of Policy & Management of the Moratorium.

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. The tenant has been evicted who has created the junkyard on the property. Attorney, Alan Hudson represents the property owner and indicated in a phone call that a company has been hired to clean up the site. 1 large dumpster on site. Continued progress on the cleanup has occurred however unregistered motor vehicles some junk and an RV remain.

Sharlene Copeland, Hageman Shean Rd., Assessor's Map 06-014-021-00, Occupied trailer & junkyard: Received complaint from neighbor that someone was living in a trailer on the property. Wrote a request for voluntary compliance letter to the property owner. Wrote a follow-up violation notice 11/16/21. Property owner responded that her son would resolve the issue. Trailer has been removed and additional clean-up done.

Issued ZP 22-1 to Mark Abbott, 168 West Hyerdale Drive, screen porch and deck additions.

Issued ZP 22-2 to Eric Strachan, 361 West Hyerdale Drive, dwelling and attached garage



TOWN OF GOSHEN

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

To: Planning & Zoning Commission
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Date: February 22, 2022

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Richard A. Weigold, Northern Farm & Forestry LLC, 59 Old Middle Street, year-round farmer's market: Met with Mr. Weigold and discussed his proposed plan for the usage of 59 Old Middle Street. He proposes to utilize the main front barn consisting of approximately 1550 square feet each floor as a year-round farmers market and/or consignment market for local producers. He will use the two entrances on Route 63 to create a distinct traffic flow and create approximately 20 parking spaces. Previous owner, Tom Breakell previously used property for a seasonal farm market. Asked Mr. Weigold to submit his proposal to the PZC in writing to determine as to whether a year-round farm stand would be an extension of the principal agricultural use in the RA-2 Zone. At the 1/25/22 Planning & Zoning Commission Meeting, a preliminary discussion with Richard Weigold, Northern Farm & Forestry LLC, occurred regarding his use of 59 Old Middle Street and the 1,550 sq ft barn on his property for a year-round farmer's market and or consignment market for local producers. It was a consensus of the Commission that the present Goshen Zoning Regulations would not allow for such a use. As a Consultant for the Town of Burlington I crafted a Farm Store Regulation that was approved by their P&Z Commission. That Zoning Regulation for a Farm Store was similar to what Mr. Weigold would like to use his property for. The Commission asked that I share Burlington's Regulations for Farm Stores for your review and consideration. I prepared a memo to the Commission dated 2/5/22 outlining the Town of Burlington's

Zoning Regulation on Farm Stands. Either Mr. Weigold or the Commission itself could propose a similar amendment to the Zoning Regulations to allow farm stands.

Halim Nefic, 270 Sharon Turnpike, Special Permit application for a Home Based Business in a residential zone: Met with property owner and discussed her application for a home based business – office and small showroom for an organic and natural sleep system. The Commission needs to accept the application and set a public hearing date.

EDC Review of Zoning Regulations: I attended two meetings of the EDC to discuss the Zoning Regulations regarding business uses in the CB Zone and home occupations. Discussed with their subcommittee members their suggested revisions for the P&Z Commission to consider. I reviewed their suggested changes and recommended they meet jointly with PZC to discuss these recommendations. Any proposed changes would require referral to the Northwest Council of Governments and a public hearing on any Zoning Text Amendments proposed. Discussion on suggested changes scheduled for March PZC Meeting.

Proposed Amendment Zoning Regulations Section 3.10, Temporary and Limited Moratorium on Cannabis Establishments: I wrote a draft regulation to provide the Commission with the time necessary to consider adoption of potential changes to the Zoning Regulations pursuant to Section 8-2 of the Connecticut General Statutes regarding Cannabis Establishments. Referral was made to the NHCOG who had no comment. This temporary and limited term moratorium, if adopted, will provide the Commission with the time necessary, up to one year, to develop regulations if they choose to for cannabis establishments that meet statutory responsibilities and promote the public's general health, safety and welfare. The Commission held a public hearing on the moratorium at their 10/26/21 meeting and approved the moratorium their 11/22/21 Meeting. Notified CT Office of Policy & Management of the Moratorium.

Patricia A. Studley, 12 Sunset Drive, Occupied Trailer & Junkyard. Dumpster has been removed and outside junk cleaned up.

Sharlene Copeland, Hageman Shean Rd., Assessor's Map 06-014-021-00, Occupied trailer & junkyard: Received complaint from neighbor that someone was living in a trailer on the property. Wrote a request for voluntary compliance letter to the property owner. Wrote a follow-up violation notice 11/16/21. Property owner responded that her son would resolve the issue. Trailer has been removed and additional clean-up done.

Issued ZP 22-3 to Diana Bernard, 180 Shear Shop Road, Traditional Home Enterprise - Farm use.

Issued ZP 22-4 to Ed & AJ Building & Remodeling, 116 Weldon Ct, construct new dwelling.

Issued ZP 22-5 to Ed & AJ Building & Remodeling, 31 E. Hyerdale Dr., construct new dwelling.

LAW OFFICES OF
MARK V. CONNOLLY, LLC

111 SIMSBURY ROAD
SUITE 201B
AVON CT 06001-3763

TEL. 860-677-8050
MVCLLC@COMCAST.NET

February 22, 2022

Mr. Todd Carusillo
First Selectman

Ms. Barbara L. Breor
Town Clerk

Mr. Martin J. Connor
Town Planner

Town of Goshen
42A North Street
Goshen, CT 06756

Ms. Breor and Messrs. Carusillo and Connor:

I have been asked to review a certain submitted petition ("Petition") received on February 16, 2022 by the Town Clerk from a number of Goshen electors and to render an opinion under Connecticut law on whether the Town of Goshen must proceed to notice a special Town meeting and referendum on the subject matter of that Petition. For purposes of this opinion, I will assume that the Petition received on February 16, 2022 by the Town Clerk satisfies the state statute as being signed by the requisite number of twenty inhabitant electors qualified to vote in town meetings. Those facts should be verified by the Town Clerk.

The Petition seeks a Town referendum and reads as follows:

The Goshen Board of Selectmen (BOS) adopted the "Housing Plan 2022-2027" on October 5, 2021 which satisfied the requirements for the State of Connecticut CGS 8-30j, that the town "prepare, amend or adopt" an affordable housing plan. There is no State law mandating implementation of this Plan which includes recommendations for expenditures of Town funds including Title 67 Land Acquisition Funds.

Shall the “Housing Plan 2022-2027 be made an amendment, included or otherwise incorporated into the Town of Goshen Plan of Conservation and Development (POCD) dated August 23, 2016”?

It is my understanding from a detailed agenda item for the Goshen Planning and Zoning Commission dated January 20, 2022 by Martin J. Connor, AICP Town Planner, that “Goshen Connecticut Housing Plan 2022-2027,” was completed by the Goshen Housing Steering Committee and was forwarded to the Board of Selectmen for adoption. The Selectmen adopted the Plan on October 5, 2021 and recommended that the Goshen Planning and Zoning Commission (“PZC”) adopt the Plan as an Amendment to the 2016 Goshen Plan of Conservation and Development (POCD.) The PZC set a public hearing for January 21, 2022 to consider amending the POCD to include the Goshen Connecticut Housing Plan 2022- 2027. The PZC will hold a meeting and a vote on February 22, 2022 on the question of the adoption of the Goshen Connecticut Housing Plan as an Amendment to the 2016 Goshen Plan of Conservation and Development.

Short Answer:

The specific issue examined by this opinion is whether the Petition poses a legitimate and proper purpose for a Town Meeting or Referendum. It is my legal opinion under the various authorities cited herein that the Petition does not satisfy the statutory requirement of a “legitimate and proper purpose.” The question of adopting the Goshen Connecticut Housing Plan 2022- 2027 as a part of the Goshen Plan of Conservation and Development is vested in the Goshen Planning and Zoning Committee by state statute. The Petition seeks to remove and usurp this power and authority of the Goshen Planning and Zoning Committee and make that question the subject to a Special Town Meeting or Referendum.

Source of Municipal Powers

Pursuant to the Home Rule Act; General Statutes § 7-187 *et seq.* towns in Connecticut may adopt municipal charters or home rule ordinances, which constitute the organic law of the town; see General Statutes § 7-188 *et seq.*; or their powers may be granted by a special act. In the absence of one of those sources of authority, the town's powers are set forth in the General Statutes. See *City Council v. Hall*, 180 Conn. 243, 248, 429 A.2d 481 (1980) (municipality's powers include those expressly granted to it by state). *Morris v. Congdon*, 277 Conn. 565, 893 A.2d 413, 417 (2006).

The Town of Goshen does not have a municipal charter or home rule ordinance, and its powers were not granted by a special act of the Legislature. Thus, its municipal powers are derived from and delineated by the General Statutes.

Town Meeting and Referendum Power

General Statutes § 7-1(a) provides in relevant part that "the selectmen . . . shall warn a special town meeting on application of twenty inhabitants qualified to vote in town meetings. . . *Id.*

Proper Purpose

Under the uncontroverted case law interpreting the statute, there is no duty to warn a meeting pursuant to such an application unless the board is reasonably certain that the purpose of the application is legitimate and proper. *Lyon v. Rice*, 41 Conn. 245, 248-49 (1874); *Willis v. Sauer*, 19 Conn. Sup. 215, 217, 111 A.2d 36 (1954); *State ex rel. Weisberg v. Board of Selectmen*, 16 Conn. Sup. 485, 486 (1950).

Morris v. Congdon, 85 Conn.App. 555, 858 A.2d 279 (Conn. App. 2004)(*rev'd on other grounds*) .

Because the Petition must be for a proper purpose, the principal inquiry under § 7-1 is whether the proposed Town meeting and referendum is for a legitimate and proper purpose. In this case, the purpose impacts upon the exercise of the planning and zoning powers of the Town of Goshen.

Planning and Zoning Power under Chapters 124 and 126 of the General Statutes

A municipality is required by statute to delegate the power to zone to a planning and zoning commission, which acts independently of the local legislative body. See Conn. Gen. Stat. §§ 8-1 *et seq.*; *Olson v. Town of Avon*, 143 Conn. 448, 123 A.2d 279 (1956); T. Tondro, Connecticut Land Use Regulation 10 (2d Ed.1992). The power to adopt, enforce or amend zoning regulations vests with the PZC. See *O'Meara v. Norwich*, 167 Conn. 579, 581, 356 A.2d 906 (1975); *Vip of Berlin, LLC v. Town of Berlin*, 951 A.2d 714, 50 Conn.Sup. 542, 550 (Conn. Super. 2008)

Title 49 of The Town of Goshen Ordinances and Regulations, set forth below and effective April 8, 1988, designated the Town's Planning Commission as the entity empowered to wield the zoning powers granted by §§ 8-1 and 8-4a of the General Statutes.

The Town of Goshen, pursuant to Sections 8-1 and 8-4a of the Connecticut General Statutes, hereby designates its current Planning Commission as the Goshen Planning and Zoning Commission with authority to exercise the powers and duties delegated to the Town by Chapter 126 ("Municipal Planning Commission") of the Connecticut General Statutes and by Chapter 124 ("Zoning") of the Connecticut General Statutes, which Chapter is hereby adopted.

Under Connecticut law, municipalities have police power over certain areas of regulation that appear to parallel that of local zoning power. Connecticut General

Statutes section 7-148 affords municipalities the police power to regulate "the mode of using any buildings ... for the purpose of promoting the safety, health, morals and general welfare of the inhabitants of the municipality ..." and to regulate and prohibit the carrying on of any business with adverse impacts to public health.

While a municipality's police power appears to overlap areas of regulation with the zoning and planning authority, the Court must still determine whether the Ordinance at issue constitutes a "zoning function" or an exercise of police power. *Gold Diggers, LLC v. Town of Berlin, Conn.*, 469 F.Supp.2d 43, 66 (D. Conn. 2007)

The federal district court in *Gold Diggers LLC* went on to note that "the Connecticut Supreme Court faced the question as to whether municipal ordinances were properly considered zoning or an independent police regulation" in *State ex rel. Spiros v. Payne*, 131 Conn. 647, 41 A.2d 908 (1945). "*Spiros* teaches that "the answer must be found" in the nature and purpose of the ordinance, its relation to the general plan of zoning, its provisions, and its terms." 469 F.Supp.2d at 66.

According to the *Spiros* Court,

[Z]oning may be defined as a general plan to control and direct the use and development of property in a municipality or a large part of it by dividing it into districts according to the present and potential use of properties. An ordinance affecting only a single or a few definite areas in a city is not in itself a zoning ordinance, though it designates that area or those areas by reference to their description in the zoning ordinance in effect in the city; e.g., an ordinance forbidding loitering on the streets in business zones as designated on the zoning map of the city would not in itself be a zoning ordinance.
131 Conn. at 652, 41 A.2d 908.

Actions by the Town's legislative body, be it a Town Council, a Board of Selectmen or a Town Meeting, that attempted to amend, adopt or to repeal actions by the Town's Zoning Commission have been rejected by the Connecticut courts as inconsistent with the exclusive grant of authority over zoning matters contained in General Statutes §§ 8-1 *et seq.* See *Olson v. Avon, supra*, 143 Conn. at 454, 123 A.2d 279; *State ex rel. Bezzini v. Hines*, 133 Conn. 592, 596, 53 A.2d 299 (1947); *Poulos v. Caparrelli*, 25 Conn.Supp. 370, 372, 205 A.2d 382 (1964).

The issue of formulating and adopting a municipal Plan of Conservation and Development was intended by the Connecticut Legislature to be an act of local planning and zoning authorities. Section 8-23 of the General Statutes tasks municipal planning and zoning commissions with adopting "a plan of conservation and development for the municipality" and amending it every ten years. Subsections (h) and (i) of section 8-23 underscore that a local planning and zoning commission have the authority to adopt or amend a Plan of Conservation and Development, even if the Plan or any part of it was not endorsed by the Town's legislative body, albeit by the requirement of a two-thirds vote of the local planning and zoning commission.

Based upon the weight of these numerous authorities, the clear conclusion is that the present Petition does not set forth a legitimate and proper purpose. It seeks to wrest control over the content of the Goshen Plan of Conservation and Development and the potential inclusion of the Goshen Connecticut Housing Plan 2022-2027 in the POCD from the Goshen Planning and Zoning Committee. The Petition would subject the content of the Goshen POCD to a Town referendum. Connecticut courts have never endorsed or approved action by a town's legislative body to amend, repeal or supplant the actions of a town's planning and zoning commission in this way.¹

Very truly yours,



Mark V. Connolly

¹ Indeed, as long as such authority has been vested in the zoning commission, neither the town's legislative body nor the zoning commission can authorize the town's legislative body to exercise that power that has been vested exclusively with the zoning commission. See *Olson v. Avon*, 143 Conn. 448, 452-56, 123 A.2d 279 (1956) (holding invalid regulation providing that zoning regulations could not be amended, repealed or changed unless approved by majority at town council meeting). This court previously has explained: "The [enabling act] gave to the zoning commission the power to make zoning regulations and to amend, change or repeal them from time to time, and prescribed certain limitations and procedures to be followed in taking such action; and such provisions have been ever since and still are contained in the zoning statutes. A reading of them leaves no doubt that it was the intent of the General Assembly to vest in a zoning commission the sole authority to make, amend or repeal regulations; and for that purpose the zoning commission became the legislative agency of the municipality. To admit that a town meeting could amend or repeal regulations duly made by the [zoning] commission would be to recognize in it a power directly at variance with the legislative intent." *State ex rel. Bezzini v. Hines, supra*, at 596, 53 A.2d 299; accord *Olson v. Avon, supra*, at 456, 123 A.2d 279 (A town zoning regulation requiring approval of changes in zoning regulations and zone boundaries by town meeting "is contrary to the [G]eneral [S]tatutes relating to zoning, which give the power to decide such matters to the zoning commission exclusively.... It follows that the town meeting had no power to override the change of zone for the plaintiffs' properties enacted by the zoning commission.").

Avalonbay v. Zoning Com'n of Stratford, 908 A.2d 1033, 1046 280 Conn. 405 (Conn. 2006) (dissenting opinion)