



The Planning Commission
Town of New Fairfield
New Fairfield, Connecticut 06812

Planning Commission Town of New Fairfield

MINUTES – Regular Meeting

Monday August 22, 2022, 7:30pm
Community Room @ 33 Route 37
New Fairfield Conference Room
New Fairfield CT

Commissioners Present: Ms. Cynthia Ross-Zweig, Chair
Mr. Cory Neumann
Mr. Jeff Morrell
Mr. Ernie Lehman
Ms. Kristen Bennett O'Rourke

Commissioners Absent:

Alternates Present: Mr. Patrick Callahan

Alternates Absent: Mr. Dylan White
Ms. Olivia Micca

Guests Present: Attorney Neil Marcus
Khris Hall
Thora Perkins
John Martins
Amy Johnson

Call to Order: 7:30 pm

ELEVATION OF ALTERNATES - n/a

APPROVAL OF THE MINUTES

Kristen Bennett O'Rourke made a motion to approve the minutes from the July 25, 2022 meeting. Ernie Lehman seconded the motion. (4-1-0)

CORRESPONDENCE / ANNOUNCEMENTS

Cynthia Ross-Zweig went over the monthly budget.

PUBLIC COMMENT

Thora Perkins of 6 Field Avenue, spoke as a resident regarding two parcels of land (32 Calverton Drive & 39 Fulton Drive) that are being considered to be sold to a private homeowner. Thora Perkins is requesting that the sale and value of the parcel be reviewed.

John Martins of 37 Fulton Drive, whose land is connected with both 32 Calverton Drive and 39 Fulton Drive, stated that the land went up for sale so quickly with a very small sign. He would have liked the option to purchase the properties. He stated that there was machinery on the lots but that the only items

left are piles of wood. He stated that feels that he should have received a letter regarding the sale of the property since he is an adjacent land owner. He has been a resident of New Fairfield since 1994. He stated that he had previously requested to purchase the land from the city and was told that the property was not for sale.

Amy Johnson commented on the properties being sold and concerned about the rush sale of the land. She is requesting that current New Fairfield residents have the first option to purchase the lots. She is also requesting that it be sold at fair market value.

John Martins stated that there are two more lots 28 and 30 that he is also interested in purchasing since they also connect to his lots. He also stated that he takes care of these lots. On the town records the property is owned by Melissa Grant, who is John Martins wife.

Thora Perkins also stated that according to the state statutes that the Planning Commission decision needs to go along with the current Plan of Conservation and Development and inquired if selling of town owned land went along with the plan.

NEW BUSINESS

8-24 REFERRAL: 32 Calverton Drive, Map 36, Block 12, Lot 23: For the purpose of the sale of 32 Calverton Drive New Fairfield, CT.

8-24 REFERRAL: 39 Fulton Drive, Map 36, Block 12, Lot 22: For the purpose of the sale of 39 Fulton Drive New Fairfield, CT.

Attorney Neil Marcus read the statute of what an 8-24 Referral is. The statute states that no municipal agency or legislative body shall locate, set, abandon, widen, narrow, or extend any street, bridge, parkway, or public way. The municipal agency shall not locate, relocate, substantially improve, acquire land, abandon, sell or lease any airport, park, playground, school or other municipally owned property or public building. He stated that the town is looking for an advisory report whether it be a positive or negative 8-24 Referral report back to the Board of Selectmen. The criteria for the report should be based on the Planning Commission Conservation and Development. Attorney Neil Marcus stated that these lots have been used as dumping lots however he did not have the names of the individuals that complained about the dumping being done on the lot. Attorney Neil Marcus stated that the town has cleaned up the lots from time to time over the years. Attorney Neil Marcus stated that the question should be if the town should keep the lots and maintain the lots or should they go through with the sale. And should these types of lots be used as open space lots or are they scrap parcels? The Planning Commission does not make the sale of the properties; the Planning Commission recommends with a positive or negative referral regarding the property and would need to be done within 35 days. If there is a negative referral the reason or reasons would need to be given.

Cynthia Ross-Zweig stated that the sale of these properties was not originally sent as an 8-24 Referral. Cynthia Ross-Zweig saw it in the paper and then brought it to the attention of the Board of Selectmen. The 35 days, for the Planning Commission referral, would start from the submission date which in this case would be August 22, 2022.

Cynthia Ross-Zweig stated that the properties were acquired by the town due to delinquent taxes by the previous owner of the property as a tax foreclosure. Attorney Neil Marcuse stated that at the time of the tax foreclosure all adjacent property owners would have been notified. Now that the lots are owned by the town a petition would have to be filed by the person or person's wanting to purchase the property. The petition to purchase the land could be filed by any individual wanting to purchase the property. Most towns like to get rid of these types of properties as they are considered nuisance properties due to lack of taxes coming in and dumping issues with vacant land that the town would be responsible for.

Kristen Bennett O'Rourke stated that the Planning Commission should be looking to the Plan of

Conservation and Development as a standard for making a decision on the 8-24 Referral as well as using one's own rationale and common sense.

Patrick Callahan asked about 35 days from this meeting and the process of the properties being put up for sale and has that process ended at this point.

Selectmen Khris Hall stated that the potential owners came to the First Selectmen stating they wanted to purchase the property and clean up the property. At that time there weren't any other offers on the table. The properties have been owned by the town for 43 years and the other for 28 years. The first hearing was on April 28, 2022, in Executive Session, to consider the offer. Khris Hall went over the process for a real estate transaction, stating that the process was followed, the process was not rushed and that the properties are not of great value. She stated that the town saw it as a way of getting the properties back on to the tax rolls and the properties cleaned up.

Attorney Neil Marcus stated that the statute talks about sales and leasing of properties as well as abandonment of property can also be a way of the property transferring to a land trust.

Cynthia Ross-Zweig asked whether transferring the title of any parcel or the acquiring of any parcel should need to go through the 8-24 Referral process. Attorney Neil Marcus stated that the 8-24 Referral process is not required but that if a member of the town challenged the transfer due to the step being missed, within the appropriate statute of limitations, the sale could potentially be reversed.

Jeff Morrell asked about the two properties that were not included in the sale. Khris Hall stated that those two properties weren't included because there wasn't anyone interested in purchasing those additional properties. John Martins stated that he is interested in purchasing all of the pieces of property. He stated that he has kept up 39 Calverton for years. John Martins also stated that if there were items dumped on the property or machinery left on the property, he notified the town or removed them himself.

Cynthia Ross-Zweig stated that she drove out to the property and there is wood dropped there but not much other than that on the lot. The lot does have a great view of the water but does not know if the land includes water rights.

Jeff Morrell asked about the land and the shape of the land and questioned whether the Town of New Fairfield was paying taxes on that land to the state of New York. Attorney Neil Marcus stated that the state of New York is not being paid any taxes for these lots. Jeff Morrell questioned drainage to the different ponds and lakes and questioned the need for easements for future town drainage issues. Attorney Neil Marcus stated that if the easements may be needed in the future these concerns should be addressed prior to the 8-24 Referral being voted on.

Cynthia Ross-Zweig stated that this issue is already on the town agenda for a vote on the purchase of these lots. Attorney Neil Marcus stated that the Planning Commission has 35 days from the date of this meeting to give their decision. He also stated that the town could have their meeting and vote but that the owners would still have to wait for the transfer of property pending the decision of the Planning Commission. The town meeting vote could overrule the decision of the Planning Commission by a two-thirds vote. Attorney Neil Marcus stated that the value of the property is not up to the Planning Commission; the value of the land would come from the Tax Assessor. Khris Hall stated that the town is selling below market value to get the properties off the town books, get the properties back on the tax rolls, and so that the town is no longer responsible for the property. The potential owners live across the street from the properties which happen to be in New York.

Cory Neumann stated that the lot is a non-buildable lot and is not worth \$22,000.

Kristen Bennett O'Rourke restated the statute. She also stated that ultimately the Board of Selectmen

could overrule any decision made by the Planning Commission with a two-thirds vote of those present at a town meeting. Attorney Neil Marcus stated that the Planning Commission's opinion is required but it does not change the majority vote.

Jeff Morrell would like to talk to Tony Iadarola about drainage issues. Jeff Morrell stated that these two lots are collection places for drainage. Khris Hall stated that there aren't any drainage issues on those two lots per the First Selectmen. Jeff Morrell stated that he has been on the Calverton side for drainage issues. Khris Hall stated that if there was drainage retention it would be further up the hill from these two lots.

Cynthia Ross-Zweig made a motion to continue until the next regularly scheduled meeting of September 26, 2022 so that the drainage questions can be addressed and that all board members can individually visit the property. Ernie Lehman seconded the motion. **(5-0-0)**

Review of planning guideline and statutes with Attorney Neil Marcus

Attorney Neil Marcus stated that there have not been many procedural changes over the last few years. He clarified the below for the board members.

- 1) **Timing of Applications:** The timing of applications falls under the rule of 65-35-65 which means that 65 days from the date of acceptance the item has to go to Public Hearing; then there are 35 days to complete the Public Hearing and 65 days from that to render a decision. A request for extension can be requested but can't go over 65 days. Any block can be extended up to 65 days regardless of original length. Attorney Neil Marcus stated that these dates and times need to be codified for the Planning Commission.
- 2) **Disqualification:** Attorney Neil Marcus went over different situations of when a board member should or should not disqualify themselves. The appearance of impropriety as well as impropriety itself should be taken into consideration by a board member when considering disqualifying one's self. If you have a personal relationship or feel that you cannot fairly make a decision then the board member should seriously consider disqualifying one's self. The decision is a personal decision and not to be made by anyone else. An applicant can raise the issue and have it on the record that they think a board member should have disqualified himself.
- 3) **Meeting Conduct during Meetings and Public Hearings:** A board member should not debate with the person making the public comment. The purpose of the public hearing is fact finding. The debate should occur when the board members are talking amongst themselves. The board is a debating club and all should always be courteous to each other. If a meeting gets out of hand the Chair should make an announcement to all attendees of what will happen if things get out of control again and follow through if it does happen. Keeping control is key in all of these meetings. If you know you have to act in a meeting it is okay to come prepared to act in the meeting. Take notes and hold your judgment for when you are debating.

Cynthia Ross-Zweig questioned Attorney Neil Marcus about whether the town moving a playground, leasing a parcel of land to someone other than the town, building or knocking down a structure, or the changing of a tenant should come before the Planning Commission is an 8-24 Referral. Attorney Neil Marcus stated that these items would fall under the 8-24 Referral process.

Cynthia Ross-Zweig inquired about the guidelines for the 8-24 Referral being posted with access for all to refer to. Attorney Neil Marcus stated that it is in the statutes and does not need to be posted.

Attorney Neil Marcus stated that the Planning Commission does not have an obligation to challenge whether an 8-24 Referral should or should not have been done. An applicant can challenge the action.

A discussion was held between Kristen Bennett O'Rourke and Attorney Neil Marcus clarifying the 8-24 Referral process and the positive or negative referral result and potential vote by the town majority. Attorney Neil Marcus stated that any town can sell property without the approval of the legislative body, which is the town meeting.

Attorney Neil Marcus stated that the better process for any commission is: when in doubt, stop and ask the question first.

OLD BUSINESS

Discussion - discussion of Plan of Conservation and Development, recommendations and letter from selectman regarding costs and budget

Cynthia Ross-Zweig stated that the Planning Commission should go to the Selectmen and request additional funds. She stated that there is only \$10,000 in the budget and the proposal was considerably more. The First Selectmen had suggested that the Planning Commission ask if the payments could be made over a couple of years. Khris Hall stated that the Board of Selectmen technically can't give the Planning Commission more money. She stated there are two choices: go in front of the Board of Selectmen to state that the payments need to be done this year and request for funds from the current budget or from the surplus budget; or go in front of the Board of Finance and request funds from the surplus budget. Ernie Lehman asked if the Planning Commission could go back to the company and discuss payments over multiple years. Cynthia Ross-Zweig will contact Planimetrics to see what the options are. There is some concern regarding possible change in the price or withdrawal of the bid if things aren't moved on quickly.

ADJOURNMENT

Jeff Morrell made a motion to adjourn the meeting. Kristen Bennett O'Rourke seconded the motion. (5-0-0)

Meeting adjourned at 9:15 pm.

Received by email on 08/23/2022 @ 12:15 p.m.
by Chrystie M. Bontempo, Asst. Town Clerk, New Fairfield