

**TOWN OF SOMERS  
ZONING COMMISSION  
P.O. BOX 308  
SOMERS, CT 06071**

**ZONING MINUTES  
SPECIAL MEETING  
APRIL 6, 2011  
TOWN HALL - 7:00 p.m.**

**I. CALL TO ORDER:**

Chair Jill Conklin called the regular Zoning Commission to order at 7:10 pm. Members: Sam Smith, Karl Walton, Dan Fraro (showed up 30 minutes late), Robert Martin, and alternate Paige Rasid seated for the vacant seat, were present and constituted a quorum. Also present, John Collins, Zoning Liaison, Carl Landolina, Town Attorney, Glenn Chalder, Planimetrics, Mike Mocko, Ward Engineering, Attorney John Parks on behalf of Robert Smyth, Attorney George Schober on behalf of Jason Avery, and 5 citizens.

**II. PUBLIC HEARING:**

**Continuation of the following Public Hearings from March 21, 2011**

**a. Public Hearing for the application of Jason Avery for twenty unit (10 duplex) Affordable Housing (C.G.S. 8-30g) at 225 Field Road, Somers, CT.**

**b. Public Hearing for the application of Robert Smyth for twenty unit (10 duplex) Affordable Housing (C.G.S. 8-30g) at 251 Field Road, Somers, CT.**

Chair Jill Conklin read the 2 applications into the record and reminded members and audience present, this was a continuation of the March 21, 2011 Public Hearing on these applications. She then took a roll call of the Zoning Commission members. Ms. Conklin then asked the Attorney Schober to come forward and resume the presentation to the Commission and the newly revised plans for the property. He only brought 4 copies of the plans and 2 copies of his affirmative affordable housing plans to share between 6 members.

Attorney Parks spoke first, on behalf of Robert Smyth. On page 2 of the property line, he cleared up the confusion with the change of the property line and it's a different development plan because it's set back from the residential area. Prior to this, the zone line and the desire of Rob caused him to file against the board in 2008 and he had it changed to an industrial zone in May of 2008 and the board denied it and Attorney Parks appealed the commission's decision. The appeal was around for a few years. They came across a lot of conflicting issues during the appeal process. Affordable housing cannot be in an industrial zone. The commission recommended denial of the appeal if it was still pending and Attorney Parks withdrew the application in October of 2010. Nothing was still pending in court and it removed the conflict and paved the way for this new application to be created with a new plan of action. John Parks handed Jill Conklin the exhibit of record that the appeal was withdrawn and wishes it to be on record that he gave the letter of withdrawal to her. The only way he can be sure that everything is on the record, is to go through all of the exhibits and read it on the record and it's been handed over for further observation. He handed over a huge file folder of documents to be

observed and there were indexes in there as well. He gave the Commission the entire history of the development from 2008 road block to the appeal that was withdrawn, all the way to the new application. June 23, 2010 they did an application with zoning evaluation and a text amendment and was a precursor to this application that they are presenting tonight. October 2010 the zoning line was granted. June 23, 2010 wasn't the full application, but it was the affordable housing plan in town and a development plan for 4 buildings of 20 units on each of the 2 properties. August 23, 2010 was the withdrawn text amendment but it was an application for affordable housing for this piece only and the clients have made extreme efforts to put this history in the records. He said they can give the history zero weight if they want to but they want it in the records so that the court can review this history if they need to go back to court.

Attorney Landolina said that this was not relevant to have the history on the record and that it was not necessary and that the client can always file a monetary claim if they need any of the history in this application on the record. He stated that they have been taking up a lot of time on the history of this past application and that its taking too much time to go through and that they need to focus on the new application. He also stated that they needed to just go on and present the present application.

Attorney Schober presented next and wished to withdrawal the time deadline. Glenn Chadler noted that if we had spent more time on the present application than on the past application, then they would be a lot further along than they are now. Attorney Schober added that any changes to the property can be changed by the end of the evening or by condition of approval. He noted that the problem with the water lines have been solved by the fire hydrants being added from the statute C.G.S. 8-30g). Attorney Schober submitted more documents to Ms. Conklin. Attorney Landolina requested that they need more time to review these new documents and to possibly keep this hearing open tonight. Mr. John Collins added that more people who would need to review these documents are not present at the meeting, so more time is definitely needed for review of these documents. Attorney Landolina stated that it is taking a lot of time for submitting all of these plans and documents without notice and Attorney Schober stated that he will take as much time as it takes to make sure he has everything and that everything is presented. Ms. Conklin says that they will allow him to turn those documents in but they need to review it.

Affordable Housing Appeals list to determine if the town is subject to C.S.G. 8-30g or if they are not subject to the statute. If you are above 10% of the affordable housing stock as defined by the state, you are not subject to the requirements. If you are below that, you are not subject to that statute and Somers is at 2.6% and he wants that in the record.

The next document that Attorney Schober submitted was the plan of conservation housing which Mr. Chadler had drafted in 2004 and the action plan for affordable housing. He made it known that the town needs affordable housing.

Then next document that Attorney Schober submitted was the capital region of government for development from the June 23, 2010 application, which shows the excessive need for affordable housing in this town. This July 23, 2010 letter of capital region of government increased the range of housing and the location preference. Attorney Schober submitted a draft of 2 copies of his own revised plan of action and only

submitted 2 copies for the 6 members to share. He met with Attorney Landolina on Monday and Attorney Landolina had addressed that Attorney Schober needed to make some changes. He said they don't have much to go on other than the C.S.G. 8-30g statute and what's required for the plan. He said section 7 of that statute directs the commissioner of housing to develop guidelines of affordable housing. He said that his plan complies with the guidelines of that statute and CT state agencies in section 8 (section 8-2) shows the formula for the sales and renting fees for these units. He said that they are now being forced to live with the zoning regulations of 2-4-113 has all of the information for the Zoning Commission and they have to comply with those amendments. He stated that Human Resources and the Zoning Commissions have certain powers that are delegated by the statute to adopt regulations and what can be used for sections 8-2 and 8-3 to establish or change the zoning regulations and which procedures to follow. He noted that he asked the commission to adopt Mr. Chadler's plan for his affordable housing application for his clients because it goes against section 8-7D and its wrong and does not comply with the affordable housing plans.

He wanted to make it known on the record that Mr. Chadler is not an attorney and he researched to see if there were any attorneys that shared his name and there weren't. He also noted that the information on his plan of affordable housing would not hold up in a court of law. He said it needs to be drafted by an attorney because it's a legal document. Attorney Landolina states that it's not just the statutes but the regulations as well, but they are not limited to those options and can require more if the town determines. Attorney Schober said everything that is required in the statute is in his plan and that he also has even more than that. He states that his newly revised plan does comply with the statutes and guidelines. He said it's a missed characterization unless it's shown differently. Attorney Schober gave all that was needed in order to comply with the statutes and more and he'll listen to Attorney Landolina's suggestions and make changes accordingly.

### **III. MINUTES APPROVAL: None**

### **IV. NEW BUSINESS:**

- a. Discussion/possible decision for the application of Jason Avery for twenty unit (10 duplex) Affordable Housing (C.G.S. 8-30g) at 225 Field Road, Somers, CT.**
- b. Discussion/possible decision for the application of Robert Smyth for twenty unit (10 duplex) Affordable Housing (C.G.S. 8-30g) at 251 Field Road, Somers, CT.**

Attorney Landolina wanted to make sure the records show that Attorney Schober only submitted 4 plans of the property and 2 affordable housing plans to be shared by 6 members of the commission.

Dan Fraro just entered the meeting a half an hour late.

Attorney Schober then showed them the revised plans and said the first side is Mr. Avery and the second side is Mr. Smyth. He first started with the interest rate and sales price formula and stated that you take today's rate of interest (4.76%) and add it to the 3 year average of the 30 year fixed rate mortgages (5.2 %) and then get the average of the 2, which is 5%. He said the sales price went down from the developers' pockets because the interest rate went up. He said that the CHFA rate is 3.75 or 3.78% and that isn't commercially reasonable. Attorney Landolina said that it complies with most of the regulations but not all and they have to be available for self development. He said the administrators will use this rate to determine if it's applicable when they are ready for sale. He said, as an example, when the development is at 6% and they don't use the 3 year average of the 30 year mortgage then that when they blend the 2 and they may have to sell for less than they purchased it for it and not lower than 6%. He said it could be no lower than 6 but higher than the average. If you don't build units you'll lose money and there's no way to get moving. He said blending the 2 is the best way to go.

The next document that Attorney Schober submitted was the CT Supreme Court Case from Simsbury CT in 2004. Simsbury had hired a consultant for the zoning committee and it was supposed to protect citizens from interest rate swings. He said that's not the zoning commission's job. Commission can't say that you have to use a specific rate, you just to have to have a commercially reasonable rate and it doesn't have to be the CHFSA rate. The average decrease would lose \$120,000 each and go from 4.76%-5.8% and it's too much and shouldn't be capped because it's not fair and he doesn't think it would hold up in court. Attorney Landolina said that it's not the commissions' concern because things have changed since then and there was no terminology of commercially available. Attorney Schober said that not knowing what the market will be like when the property is completely done they will have to calculate the rates for selling and renting. He said that 4 buildings have to have 2 buildings with 80% open for renting and 2 buildings with 60% for renting and selling rates because they want to be able to rent for cash flow if they can't sell. He also said that HUD housing has limits for places for renting and that his buildings will comply with the requirements. He also said that no one other than the developer can rent out any of the buildings. Attorney Landolina said there has to be something added to the rental requirements and he wants to get a condition of approval for it.

Attorney Schober then submitted the right of refusal that states that the right to purchase the land expires after 40 years and if no buyer, his client can purchase those left over houses, based on the calculation of the affordable housing buyers and the producers can only buy it 1 time after the 40 year period. Attorney Landolina stated that they will be eligible buyers after 40 years, and the developers aren't eligible purchasers after 40 years and nothing in the statutes enforce that. Zoning of the Town of Somers have people applying for 20 years for affordable housing and it is at the end 40 years and says the change is unnecessary and should be taken out. Attorney Schober says that it doesn't say it but it also doesn't not state it in there either. Karl Walton noted that they don't have to accept it either.

Attorney Schober's next issue is for expenses for the rentals and the sales prices. He gave Ms. Conklin a document with a website on it to get further information. He gave her

back-up documents. The first is the insurance quote for Farm Family for up to \$50,000.00, \$145 per year and \$11 per month. They only have a small risk since they are farm families and that they now have fire hydrants in place in the plan. He said document 2 a letter from Brook Hockins at Wood Crest for tenants' propane, electrical and water costs. \$100 per month for propane, \$75 for electric, and \$14 per month for water in developments that are similar to the ones that his clients are building. He also stated that his units will be more energy efficient as well. He also stated that condo fees will be \$100 for a 4 year cap per unit. That way expenses will stay low. Attorney Landolina stated that they have to get a master policy to have a \$200 fee to start off when they buy to be put into a reserve account for building fees and the building assessors to come out because \$100 isn't enough for that and that Attorney Schober needs to address this issue. He also pointed out that we'd have to see if the buyers will lock into signing up for owning the property for 40 years. Mr. Chadler added that this may affect the sales price of these homes, as well, to cover the building assessor expenses. Attorney Landolina added that they can't charge more than the section 8 prices for rent anyways. Attorney Schober added that this is a buying market not a selling market at this time.

Attorney Schober informed us of the change in the timing of construction. 1 building within the first 2 buildings will be developed for affordable housing and then 1 of the next 2 will be as well. There will be lots of road work and utility work being done. They need to make 30% of the buildings into affordable housing. He's asking for flexibility of where the affordable housing will go depending on who's buying and where they want to be located and they can choose which of them will be affordable. He said that he can come back to the commission and say that this plan isn't working out and they want the contractor to do it "this way". He wants to make sure you can get from Bills Road to Fields Road for emergency purposes and that it is approved by the fire marshal. Attorney Landolina said that the building specifications are going to need to measure up to the family incomes with HUD. Attorney Schober said that family incomes are in section D and E of his plan and that lists all of the additional specifications and they will all have the same air conditioning units and the same electrical units and that everything is to code. He said that they are all 1190 square feet and they will have 1 or 2 bedrooms and 1 and a half bathrooms and a dining room, kitchen, living room, and a garage. No building will contain more than one unit of affordable housing. No more than 3 affordable units will be on each side of the Brookside Drive side in each development. Buyers can say which unit they want to live in and it's based on poor real estate market right now the just want them in the units. Ms. Conklin said who is going to keep track of all the affordable units and which are designated for that purpose? Attorney Landolina Said that there should be land records in every building and it will have amendments. Mr. Chalder wants a more specific guideline for the 2 bedroom and 1 bedroom units. He wants all of them in specific areas and not randomly placed on the development site and this site is unbalanced and needs to be balanced. He said that Attorney Schober needs to re-look at that issue and he has reservations about buyers choice needs. He doesn't want the electrical to be different for each buyer or the choices in upgrades to be different. He needs more time to address this change and it's less than the minimum statute. Attorney Schober disagrees with Mr. Chalder and he thinks that the commission should listen to Attorney Landolina and that the housing department is not on record with the interest rates and that there is no evidence in the statutes for the number of electrical outlets in

each bedroom and that everything just needs to be in compliance with the building code. He wants to just get the project going for people to start buying them. He notes that this is a buying market right now and not a selling market and that his clients are taking a huge risk here. Mr. Mike Mocko said that he can identify the units with and without septic tanks and the septic design issue is not hard to overcome and it is different for the 1 bedroom and 2 bedroom units. Mr. Walton stated that the position of the septic tanks will be different for the 1 bedroom and 2 bedroom units. Mr. Mocko said that the total number of 1 and 2 bedroom units will stay the same in the declaration. Mr. Mocko also said that there is a system of checks and balances for X number of gallons per day which is equal to the number of bedrooms per project so there are no violations and someone will have to track it. Attorney Landolina stated that there should be no flexibility in choices of where to live. He said it should be stated that there are designated buildings for affordable housing and which ones are not and say, "which building? This one or this one?". That way it satisfies where to put them in the plan, otherwise they can ask for modifications to move or modify where someone can live.

Break from 9:12pm until 9:22pm.

Attorney Schober, his clients, and Attorney Parks came back in with designated affordable housing units. For the Smyth property buildings 1, 4, 6, 10, 8, and 7 will be affordable housing and buildings 6 and 10 will be 1 bedroom. Attorney Schober also stated that there is nothing in the statute that says all the buildings can't be 1 bedroom for affordable housing. For the Avery property, buildings 17, 19, 20, 16, 14, and 12 will be affordable housing.

Attorney Schober then gave Ms. Conklin the letter from CT Water for Mr. Smyth at Cedar Edge Properties is showing the extension of the water line and the contact information for him. Mr. Mocko states the original basin for seeding, mowing, and maintenance. Mr. Schober then submitted an E-mail from February 25, 2010 that he sent to the housing authority asking for them to be administrators. Attorney Parks gave Attorney Landolina the draft of segregation. Attorney Schober stated that everything complies with the statutes and that there are a few typos in the affordable housing plan. He said they aren't ready to vote yet and that they are waiting for approval. Attorney Landolina said that 2 weeks from now they can work on this that need to be done and fewer conditions that need to be discussed.

Break for clients and attorneys to discuss at 9:35 and restarted presenting at 9:53pm.

Attorney Schober stated on record that he wished to close the public hearing tonight and that anything not completed is in the condition of approval.

Mr. Chalder is concerned with how the sale price and resale prices are calculated. Attorney Landolina said that nothing further will be addressed and they came up with the direction to vote at the next meeting.

Attorney Schober said his final statement and that he agrees with most of what Attorney Landolina said and whatever imposing conditions there are. He said it is up to certain

conditions and built into budget. He said that the things in Mr. Chalder's plan wouldn't upload court. He wants the commission to think about the conditions to prevent future court. His clients do not want to go back to court. He is not opposed to suggestions, but doesn't always agree with them and considers whatever conditions that may be imposed on them. He appreciates and respects the time that the commission has spent on this application over this 3 day presentation period. Attorney Landolina stated that items of public health and safety with reasonable conditions and 40 years from when the last unit is finished and that it could total to more than 40 years if it takes many years to build. Attorney Schober says that on page 8 of his plan it shows the location of affordable units and he will modify the changes on it that they agreed upon tonight. On page 12 is the construction approval and specifics and the interiors can be different but must be to code. Attorney Landolina stated that there has to be a minimum that all the units share. Attorney Schober says they will have the same windows, same furnace, etc. Mr. Chalder asks, are the units identical? And if that is so, it has to be stated in the plan.

Attorney Landolina said that they need to have the same standards and they have to be listed in the plan. Attorney Schober states that it is in enough detail and everything is standard, but people can upgrade. For example people can choose their doors and not all the units have to match but everything will be to code. Attorney Landolina states the basic idea of what's going on in the units and he needs to state what they want to spend on each unit and what's in it for expense purposes. He needs to take a detailed approach so the money can be made up later somewhere else. Attorney Schober states that on page 16 # 2 for leasing can only be from the developer. The owners cannot lease out their properties. On page 17 he shares the duties of the administrators in detail. On page 21 he talks about the resale process of the model homes. On page 23 he talks about maximum asset limitation. On page 24 he talks about how they must be able to hire a realtor. On page 27 talks about how there will be no limit to the amount of mortgages buyers can have. Mr. Chalder notes that there are some incumbencies on this property issue with the mortgage issue on page 23. On page 28, part D talks about the issue regarding the ability to get foreclosures. Attorney Landolina and Mr. Chalder state that there needs to be a condition to protect affordability and that they disagree with Attorney Schober. Attorney Schober submitted a draft of the condition and then they can decide if his clients can live with it. There has to be a standard. Attorney Schober also questions Mr. Chalder on other jobs that he has done in Connecticut and he finds out that Mr. Chalder has worked on projects in Canton, New Hartford and Farmington and he has an issue with the job that Mr. Chalder has done in New Hartford. The issue is with foreclosures and statutes and conditions. On page 34 this shows that maximum resale price should not exceed the same purchasing guidelines of C.S.G 8-30g or the lower of the 3. Page 44 shows details on the regulated sale prices and they won't change whatever it what at for the initial sale. Page 45 shows the conditions of upgrades and for affordable housing and if you want to change the affordable housing ones, you will have to go back to the zoning commission. Page 46 permits mortgages cannot limit buyers to the 95% cap.

Mr. Chalder shares a chronology of events draft and Attorney Schober argues that the chronology is not accurate and should not be used.

**V. OLD BUSINESS: NONE**

**VI. STAFF/COMMISSION REPORTS: NONE**

**VII. CORRESPONDENCE AND BILLS: NONE**

**VIII. ADJOURNMENT:**

*Mr. Walton made a motion to close and Rob Martin seconded that motion. Mr. Walton made another motion to table the agenda until the next meeting and Rob Martin seconds that motion. Both motions are accepted unanimously to end the April 6, 2011 Zoning Commission meeting ended at 11:22pm.*

Respectfully submitted,

Danielle Martin, Recording Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING.