

**TOWN OF KENT**  
**PLANNING AND ZONING COMMISSION**  
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BY *Donna Hayes*  
TOWN CLERK

**AUGUST 25, 2016 SPECIAL MEETING MINUTES**

The Town of Kent Planning and Zoning Commission held a special meeting on **Thursday, August 25, 2016 at 7:00 p.m.** in the Kent Town Hall.

**1. CALL TO ORDER**

Mr. Johnson called the meeting to order at 7:06 p.m.

**2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED**

Commissioners Present: John Johnson, Chairman; Karen Casey, Darrell Cherniske, Alice Hicks, Adam Manes, Matt Winter

Staff Present: Donna Hayes, Land Use Administrator

Guest Present: Glenn Chalder, Planimetrics

**3. READING AND APPROVAL OF MINUTES:**

No action taken.

**4. PUBLIC COMMUNICATIONS (ORAL):**

No action taken.

**5. OLD BUSINESS:**

**5.A. PUBLIC HEARINGS (Possibility of closure, discussion and decision on the following):**

**5.B. DISCUSSION AND POSSIBLE DECISION**

**5.B.1. Regulation Re-write: Review of incorporated changes proposed by Planning & Zoning Attorney.**

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Mr. Chalder advised the Commission that he had incorporated Attorney Zizka's comments into his version of the proposed regulations. He explained that some had to do with grammar, some were policy related and a few were legal related. Signage was one of the legal related issues. Mr. Chalder said that the signage regulations that are in the new draft were taken from the existing regulations. Based on budget constraints he will not be able to make any changes based on the Reed v Gilbert Supreme Court case. He continued that he did not think it was a huge issue and said that out of the towns in the State of Connecticut only 3 have created new sign regulations based on the new case law. Mr. Chalder suggested that the Commission keep an eye on what other towns are doing and to be sensitive to content based signage.

With regard to the budget, Mr. Chalder said that the most recent version before them contains all the changes discussed. He feels that they are close to setting a public hearing date. Mr. Chalder said that he would be able to attend the public hearing and possibly one additional meeting if there are any changes that need to be done as a result of the public hearing.

Mr. Manes suggested that the Commission discuss with Mr. Chalder the comments made by Attorney Zizka that were not incorporated into the regulations. Mr. Chalder said that all he had with him was Attorney Zizka's scanned copies with the changes in the margins. He continued that the issues had to do with the sign regulation and content based approvals and that the Commission can regulate the size and location of the signs but cannot regulate anything that is on the sign. If a question comes up with regard to the content of the sign, Mr. Chalder suggested that Ms. Hayes contact Attorney Zizka for guidance. Ms. Hayes said that she had attended a seminar through CAZEO where the last statement made by the presenting attorney is that things are now "clear as mud". She continued that the State of Connecticut has overturned the Supreme Court ruling in a couple of cases. Mr. Manes asked if any changes need to be made to the regulations and Mr. Chalder said that he did not think so as long as they are always aware of whether or not any decisions of approval/non-approval are based on the content of the sign.

Mr. Winter asked if the Commission could regulate temporary signs as long as the ARB approves them based on style and design and not content. Ms. Hayes replied that the ARB does not normally see temporary signs because no one comes to the Land Use Office for a permit. Mr. Winter said that would be the same for the A-frames. Ms. Hayes agreed and said that she does not regulate political signs but there is a time limit for when they can go up. Mr. Chalder said that if there is any question regarding the content of a sign, Ms. Hayes should contact Attorney Zizka. Mr. Cherniske said that he did not believe that the Supreme Court ruling was about the content of the sign and does not understand how it could have ended up with that interpretation. Mr. Chalder agreed.

Mr. Winter asked about the temporary parking signs at the Village Barns. Ms. Hayes explained that she had a conversation with Mr. Williams regarding their placement. She is allowing them on a temporary basis during the approved construction and Mr. Williams knows that they will have to be removed once the construction is completed. Mr. Chalder thought that was a good way of handling the situation.

Mr. Chalder said that Attorney Zizka also brought up the McKenzie case regarding the types of decisions that the Commission can make vs decisions that should have been made by the Zoning Board of Appeals. He continued that the Santarsiero decision, which was decided in May of this year, added another dimension to this issue by stating that the Commission can approve a modification or a waiver as long as it is allowed in the regulations. Mr. Chalder said that he did a McKenzie analysis of the regulations and feels that there should not be any issues in this regard. Mr. Cherniske asked if Mr. Chalder was able to

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maintain the flexibility the Commission wanted and Mr. Chalder said that he was. He continued that there are two situations which allows the flexibility. One is: the regulation shall be uniform in its district, except that the Commission may, by special permit, allow different uses. The other situation says you don't need to do a special permit unless your regulations specify otherwise.

The last issue that was raised by Attorney Zizka had to do with conservation type subdivision and re-categorized soil types. The Commission may allow the split of a lot via a special permit if the lot soil types do not meet the new categorization. Attorney Zizka said that he did not think that was permissible; Mr. Chalder does not agree. Mr. Chalder also said that he did forward the latest revision to Attorney Zizka for his final review.

Mr. Winter asked how the Commission settled on the soil based zoning. Mr. Chalder said that the new categorized system has been created based on the current system that is in place in the State. The new designations are now 2, 3 and 5 acre minimums based on soil types. Mr. Winter said that the new categorization does not help the subdivision of a larger piece of property. Mr. Chalder replied that there is an overlay district which would be applied to 20 acres or more and requires a conservation subdivision lot. The new system allows a more flexible approach. Mr. Winter said that even if you have the conservation subdivision at 1, 2 and 5 acres, there would be more lots. Mr. Chalder said that is not necessarily the case. It all depends on the configuration of the lot and the flexibility given to the Commission allowing the applicant to create an environmentally friendly subdivision. Mr. Chalder said that the regulation has been set up to be environmentally friendly. Mr. Winter said that he does not want to diminish the opportunity for a subdivision and feels that this new system will work. To confirm, Mr. Winter said that the soil classifications have been updated and the Town still has soil based zoning. Mr. Chalder said that was correct and added that a conservation subdivision is now the default for a subdivision.

Mr. Johnson asked why §8151 was left blank. Mr. Chalder said that it was done on purpose in order to keep the numbering system intact for future use.

Mr. Johnson said that the maps will need to be updated. Ms. Hayes agreed and added that the Commission will need to figure out what to do with the rural district side of Maple Street Extension since they are now on Town sewer and water. She asked if that area should be made Village District R-3, R-2 or R-1 because soil based zoning no longer applies. Mr. Manes asked if it should be made mixed residential/commercial. Mr. Winter said that it makes sense to allow higher density development in that area. Mr. Chalder said that he put together a list of map changes with Planimetrics as the driver. He pointed out that Mr. Spelbos suggested that the Town Garage and Transfer Station be put in another district. Mr. Chalder also said that there is Industrial I and II which needs to be straightened out. Before the regulations can be adopted, the map will need to be changed and adopted first. He suggested working with HVA to make the changes. Most of the changes are pretty straight forward and easy to do based on the list that Mr. Chalder put together. Mr. Cherniske asked if the Commission was looking for a higher residential district and suggested that the Commission make their decision at this time to eliminate the need for additional meetings. Mr. Manes again suggested making it a mixed use of industrial and residential thereby enlarging the industrial zone. Mr. Johnson said that he did not think that would be a good idea. Ms. Hicks asked if Mr. Manes felt that the industrial needs to expand. Mr. Manes said yes and Mr. Winter said that he thought the industrial zone should expand but does not agree that the creation of a mixed residential/industrial zone was a good idea. Mr. Johnson agreed with Mr. Winter. Mr. Cherniske said that the area is not very flat and that the topography would probably prevent that from

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happening. Mr. Chalder advised the Commission that they should be careful about allowing the mixed use as that would open the industrial district to affordable housing. By not allowing residential in the industrial district, you protect the industrial district. Mr. Winter said that he would be in favor of allowing the industrial zone to spread out to the Town Garage and Transfer Station. A question was raised as to whether or not the Fire House was in the industrial zone. Mr. Johnson asked if this should be decided tonight. Ms. Hayes suggested that she pull together a history of what is there now so that the Commission could figure out where to go. Mr. Winter agreed and suggested that another meeting be held. Ms. Hicks said that she would also be interested in how the area evolved.

Mr. Chalder said that all the changes had been incorporated into the regulations with the exception of one suggested change recommended by Attorney Zizka. Mr. Manes said that over the past couple of months, additional items have been pointed out as items that should be added. Ms. Hayes said one was the definition of "shopping center". Mr. Chalder said that the parking ratio is in there, but there is no definition. Mr. Winter said that he did not think that "shopping center" should be added to the regulations. Ms. Casey asked what would happen to the shopping centers that the Town currently has. Mr. Winter said that they could not have been approved as "shopping centers" because that use is not a permitted use in the regulations so they cannot be regulated for parking or signage. Mr. Johnson asked if the Commission wanted to eliminate the shopping center parking requirement and go back to the regular parking regulation or somehow adopt a definition of what they are. Mr. Winter agreed with Mr. Johnson. Mr. Manes said that what was originally permitted as medical offices with some retail has evolved into a retail area with offices and large restaurants. He asked Mr. Chalder what the Commission could do to not allow the change of use for something that was never supposed to be like that. Mr. Winter said that it was approved with a certain amount of parking which was determined by parking that was allowed under "shopping center". Ms. Hicks said that it developed into an interpretation of a word which allowed the applicant to get what they wanted. The word "shopping center" is the wrong word and should never have been in the regulations. Ms. Hicks feels that if the Town wanted that use, it would have been defined in the regulations.

Mr. Chalder said that he would recommend that the Commission not go to public hearing with this issue unresolved. He said that you do need to be able to adapt based on the market. Some communities will define that any modification/extension/change would require a traffic study. The Commission's decision would be based on that study. Mr. Chalder also suggested that a shared parking agreement would be beneficial. Wethersfield has a regulation that says that if the applicant has 80% of the parking spaces required, approval will be given. Mr. Chalder feels that can work if the lots are small and the Town is trying to keep the space full. He did not think that would apply to the Kent Barns.

Mr. Johnson said that a definition needs to be created. Ms. Hayes said that the Commission would not approve the use as a "shopping center", but as either "retail", "office" or "restaurant". She believes that the shopping center parking designation was used during the initial approval because the applicant had no idea who would be occupying the space. Mr. Chalder said that there is also a consolidated parking arrangement which could be used as a strong parking incentive by reducing the number of driveway cuts. Agreeing to this arrangement, could increase the number of parking spaces allowed per parcel. Mr. Johnson said that he would like to see something in writing in order to figure out where to go. Mr. Johnson asked if the arrangements can be on one parcel or adjoining parcels. Ms. Hicks asked if it would be a definition of shopping center or shopping center parking. By allowing a threshold for the parking usage you could be allowing multiple uses which would help to eliminate empty buildings.

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Mr. Winter said that it would take some thought on how to set this up. He continued that you are not approving a site as a shopping center you are just allowing them to use a different parking standard for their uses. But if 50% of the building use is going to be a restaurant which typically requires more parking than retail, how do you realize that without going through the parking study. Mr. Chalder said that restaurants have intense peaking and that requiring a parking study would be the way to go. Residential/office or office/theater would require less intense parking use. He said that the regulations as they are currently crafted have a little glitch. Mr. Chalder said that he will find the Avon regulation and send that along for consideration. Ms. Hicks said that during a conversation regarding a change of use, the first thing they consider is the parking impact. She said that this discussion seems to be opposite of that. Mr. Chalder said that the philosophy use to be that villages did not want a use where the parking would overflow onto on-street parking; that has changed now with the incorporation of shared parking agreements. He continued that many towns have come up with very creative parking requirements and used Avon, Wethersfield and Meriden as examples. Mr. Manes said that shared parking would be preferable so that the Town would not end up with exceptionally large parking lots. Mr. Winter said that there are plenty of parking spaces in the Town. Mr. Chalder said that downtown New Canaan does not have any parking requirements but there is municipal parking nearby.

Ms. Hayes asked who could do a parking study. Mr. Chalder said that Goman + York might do it and suggested speaking with Ms. Ayer. Mr. Chalder said that it is not the number of spaces but their location. The Commission agreed and said that most businesses want their customers to park in front of their establishments.

Mr. Winter said that in terms of the regulations, he asked if Mr. Chalder would provide some additional information. Mr. Chalder said that he did not think that "shopping center" is right term and recommended leaving the standard in there but changing the requirement and defining it or they could take it out. He felt that a long term parking approach for the Village District would be important. Ms. Hicks asked if a parking analysis was done during the streetscape research. Ms. Hayes said that she did not think so.

Ms. Hicks asked about the yellow blocks in the regulations. Mr. Chalder said that they are items that Attorney Zizka pointed out. There was a question regarding the numbering format and Mr. Chalder said that you will have to be careful with the number of subsets as only 10 are allowed. Mr. Chalder said that he could change it if the Commission wanted to go to another type of system.

Mr. Winter suggested that the Commission work on what needs to be worked on and get to public hearing. Mr. Chalder agreed but said that the maps need to be updated first. The Commission should work on the shopping center issue. He continued that looking at the end of October would be a realistic timeframe for adoption.

Ms. Hicks asked if the public hearing would be handled the same way as the public informational meeting. Mr. Chalder said that he committed to two additional meetings; one being the public hearing and the other one would be any follow-up. Mr. Manes said that the Commission needs to have a meeting to discuss these two issues before we do the updated maps. Ms. Hayes agreed. The Commission needs to meet to decide how to handle the rural district of Maple Street Extension. Mr. Chalder said that there should be two separate public hearings; one for the mapping changes and one for the new regulations. They could be approved together or separately. Ms. Hayes asked what would happen if there is no public comment. Mr. Chalder said that you would just close the public hearing and the Commission would vote on the adoption.

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Ms. Hayes said that she would put together a Doodle poll to set up a meeting to discuss the mapping and the shopping center issue. Ms. Hayes said that she will send out something to Ms. Ayer regarding a parking study. Mr. Winter said that during this time, Ms. Hayes should ask Attorney Zizka to review the changes that were incorporated by Mr. Chalder. Mr. Chalder said that he felt that Attorney Zizka did a very comprehensive review and that Attorney Zizka should review the changes. Ms. Hayes said that she will also keep Mr. Chalder advised of the scheduling of the public hearing. She will also put together a small history of Maple Street Extension. Ms. Hayes will also do a calendar backing into a date for the public hearing. Mr. Johnson said that HVA's schedule will also need to be taken into consideration. Mr. Chalder said that HVA is an excellent resource, but he could recommend someone else if needed. He also said that it would be best to wait for Attorney Zizka's comments before scheduling the public hearing.

**6. NEW BUSINESS:**

**6.A. PUBLIC HEARINGS (Possibility of closure, discussion and decision on the following):**

No action taken.

**6.B. DISCUSSION AND POSSIBLE DECISION**

No action taken.

**7. STAFF REPORT:**

No action taken.

**8. REPORT OF OFFICERS AND COMMITTEES:**

No action taken.


**9. OTHER COMMUNICATIONS AND CORRESPONDENCE:**


No action taken.

**10. ADJOURNMENT**

*Mr. Winter moved to adjourn at 8:33 p.m. Ms. Casey seconded and the motion carried unanimously.*

Respectfully submitted,

  
Donna M. Hayes, CZEO  
Land Use Administrator

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