

PLANNING & ZONING COMMISSION
TOLLAND, CONNECTICUT
REGULAR MEETING MINUTES OF MAY 23, 2011

MEMBERS PRESENT: Michael Cardin, Chair
Marilee Beebe, Vice Chair
Sue Errickson, Secretary
Jack Scavone, Regular
Dave Barrow, Regular
John Hughes, Alternate

MEMBERS ABSENT: Benjamin Stanford, Alternate

OTHERS PRESENT: Linda Farmer, Director of Planning & Community Development
Applicants and their representatives
Public

1. **Call to Order:** Michael Cardin, Chair called the meeting to order at 7:35p.m. in Council Chambers.
2. **Public Comment:** None
3. **Public Hearing(s):** Mr. Cardin noted that the three Public Hearings listed below are interwoven in nature and for that reason they should be opened simultaneously. Ms. Errickson read the legal notice. Jack Scavone/Marilee Beebe motion to open P&Z App. #807, P&Z App. #808, and P&Z App. #810. Motion was unanimously approved.

P&Z App. #807 – Tolland Planning & Zoning Commission – Proposed amendments to the Plan of Conservation and Development to include more specific information on the Tolland Village Area (TVA).

P&Z App. #808 – Tolland Planning & Zoning Commission – Proposed revisions to the Zoning Regulations, addition of Design Guidelines and revisions to the Zoning Map for the Tolland Village Area and other minor revisions.

P&Z App. #810 – Tolland Planning & Zoning Commission – Proposed revisions to the Low Impact Development and Road Design Manual to incorporate stormwater treatment standards for the Tolland Village Area, revisions to some road standards and other minor revisions.

Ms. Errickson read Linda Farmer's May 19, 2011 memo into the record. Mr. Cardin introduced Heidi Samokar of Planimetrics, LLC, who has been working with the PZC on the TVA for the past 18 months. Ms. Samokar provided an overview Powerpoint presentation on the nature of the three Applications describing the components of the Village vision; potential economic, community and planning benefits of the TVA, and reviewing the community input received over the 2007-2011 process.

Ms. Samokar said that over the past 18 months the PZC worked on the specifics of the Plan of Conservation and Development (POCD) amendment and the proposed regulation revisions. She said the plan is to have commercial development step down in a transition to residential as you move toward the Green. The TVA would be its own district. In the TVA, development would require submitting an Area Development Plan and development would be a Special Permit application. The TVA will also include 1/5 of its residential housing to be workforce housing,

and would include detailed design guidelines and provisions for existing uses to make modifications. The TVA would also implement LID practices and would encourage green technology.

Mr. Cardin noted that the Town Council in its May 10, 2011 meeting unanimously voted to support the amendment to the POCD, with the comment that on Page 59, the bullet “maximize density levels to create optimal nodes of activity” should have added after it “**without creating public safety issues.**” Ms. Errickson said she would like to discuss this as she is not sure what public safety issues the Town Council was referring to. Mr. Cardin said he was in attendance at the May 10 Town Council meeting and the meeting before it at the high school and said there was talk at both meetings about the possibility of density on the southerly side of Route 195 posing safety issues with regard to increased traffic. He said the traffic engineer discussed traffic calming measures on the proposed connector road at the May 10 meeting as ways to diminish such potential problems. Such measures include a narrow boulevard, bringing the landscaping closer to the road, and possibly including medians. He said the discussions reminded him of Robert Orr’s presentation when he explained how the creation of village type districts with their pedestrian-friendly development tend to enhance pedestrian safety. Mr. Cardin said he felt satisfied that the Commission has done due diligence in addressing potential safety issues.

Ms. Beebe noted a typo on Page 59 in Create a Town Center, that the third bullet should say “greenhouse **gas** emissions.”

Attorney Tim Hollister of Shipman and Goodwin, LLP in Hartford representing Steve Williams, who owns 159 Merrow Road, provided a presentation in opposition to the TVA. He provided handout booklets to members of the PZC. Mr. Williams’ property is 13.4 acres and what is most of Area E on the proposed POCD amendment. Attorney Hollister had three questions for the PZC. He asked if a referral from regional agencies had been requested. Ms. Errickson said yes, from both WINCOG and CRCOG, and those referrals will be read into the record this evening. He also noted that the Statutes require the exact language of the regulations being considered tonight to have been on file with the town clerk’s office at least ten days prior to this Public Hearing, and he said there needs to be a statement on the record that that has happened. Lastly, he asked if the March 2010 contract for services with Planimetrics included a market overview. Ms. Farmer said it was not done. Mr. Cardin agreed, noting that the decision to not follow through with a market overview was done at the direction of the PZC.

Attorney Hollister said Mr. Williams is not opposed to development in the proposed TVA or its concept. He is, however, opposed to the regulations, which he and his client feel are illegal, unworkable, and will freeze up development of his property and scare away developers. He said the horizon for the TVA has often been stated as 20, 30, or 40 years and what the property owners and developers need is clarity and certainty. He said they need to know what is allowed without discretion. He said the use of the word “should” rather than “shall” throughout the document adds layers of uncertainty for property owners and developers. He added that the TVA looks like it involves a multi-layered process where there are no permitted or as-of-right uses. Mr. Cardin asked Attorney Hollister if he was aware that the Gateway Design District as it now stands requires a Special Permit for all uses. Attorney Hollister said he is aware and that there are problems with the Gateway Design District itself, but the fact that the TVA is not being proposed as an overlay zone compounds the problem. Attorney Hollister also said development in the TVA requires coordination with other landowners.

Attorney Hollister said Mr. Williams is very concerned because the legal justification for the TVA regulations—Section 8-2j of the Connecticut General Statutes—only applies to an *existing* district. He outlined their objections, claiming:

- Section 8-2j of the Connecticut General Statutes, what he believes the PZC is saying is the legal justification for the TVA regulations, does not authorize the type of regulations proposed for the TVA. He said 8-2j only applies to an *existing* Village District.
- The TVA regulations violate the Zoning Enabling Act by incorporating the Design Guidelines.
- Everything is set up as a Special Permit use, and the PZC gets to condition the uses.
- Tabs 3A and 3B in the booklet Attorney Hollister provided shows that in multiple places the standards don't inform the property owner of what the PZC's criteria is for approval. He said there are no established standards.
- 7A-7 is in Attorney Hollister's opinion, illegal, as he feels it is a backdoor version of eminent domain
- The regulations only give property owners an option to either be part of an assemblage or to arrange an assemblage themselves, and that property owners are prohibited from doing any development on their own.
- Attorney Hollister said the workforce housing wording is not in line with affordable housing laws, and he recommends the Commission review the legal issues with regard to such housing. He recommends making the TVA regulations an overlay and making the design guidelines voluntary. He recommends that to make the housing legal and attractive to developers, the PZC follow the HOMEACT model with clear as-of-right uses and clear design standards.

Ms. Farmer said the PZC is not proceeding with a Village District as provided under 8-2j of the CGS. However, Attorney Hollister said the PZC is not using best practices in their proposal.

Ms. Errickson asked why in his handout Mr. Hollister suggests that 12 percent workforce housing is administratively unworkable. Attorney Hollister said that in best practices the smaller the number of workforce housing units, the harder it is to administer due to the high transaction cost of doing all the paperwork. He said when you have a lot of units, you can justify hiring a part time or full time person to handle the administration, but if you are only turning over a workforce housing unit once every year or two, that's when the cost of doing the paperwork becomes unworkable. Ms. Beebe asked what number of units is administratively workable. Attorney Hollister said typically a minimum of 30 to 50 units. Ms. Farmer said that Tolland, being a small town, does not have a large number of rental units.

Ms. Farmer clarified that the Commission, staff, and consultants are all aware that they cannot simply deny a use in the TVA and developers have the ability to come in with a viable proposal even if they are not working with their neighbors.

Mike Taylor of Storrs, who owns property in the proposed TVA referred to a May 17 letter from him in Commissioners' packets that he says is now moot. He said several years ago he was approached by a group in Boston that was interested in a hotel/restaurant concept on his property as well as some commercial and residential development. He said that interest evaporated with the economic downturn and, as a result, Mr. Taylor decided to consider a larger residential component. He said there was also talk of a possible land swap to add a hotel. However, just recently he has received a number of inquiries about adding a hotel and restaurant on the site. CVS has also expressed interest in putting a pharmacy on the roadside portion of his property, and a representative from a hotel operator wants to look at his property. Mr. Taylor

says he feels the market is starting to loosen up, possibly related to the UConn area planned development that is also commencing.

Mr. Taylor said he met today with Economic Development Chair George Mantak, Linda Farmer, and Mark Peterson of Gardner and Peterson. He said there was consensus that his interest for a hotel and pharmacy on his property was in line with the overall plan for the TVA, even though the locations of the development he would like to do would shift from the concept plan. He asked that the PZC consider flexibility of locations of development in terms of the overall development and that they be allowed to come forward with their design if the PZC is interested. Mr. Peterson said Mr. Taylor is asking if the potential development Mr. Taylor is discussing is in line with the proposed POCD amendment and regulations or if they can be modified to accommodate Mr. Taylor's request.

Ms. Beebe asked Mr. Taylor if he still sees a portion of his property as including residential development. Mr. Taylor said he does and that he would be willing to stipulate that the rear area of his property behind the watercourse would be dedicated to residential. He said at the roadside with access to a signalized intersection, there would be a viable market for a pharmacy. However, he can see no commercial value to anything behind that. He said there is potential with the town's cooperation to combine his land with town land in the rear part of the property for residential development.

Ms. Farmer said the POCD includes a conceptual use diagram that proscribes certain uses in certain places in the TVA. She said they want to be sure they have good guidance in the POCD but also that if there are modifications made in the regulations, that they don't include too much specificity in the POCD that they need to amend it again. She said they don't want to paint themselves into a corner.

Ms. Beebe asked for clarification if Mr. Taylor now no longer endorses the TVA concept. Mr. Taylor said he endorses the overall concept of a pedestrian friendly development but is asking for flexibility in where various types of development might be allowed. He is asking the PZC to leave discretion for the location of different uses if they fit the overall concept.

Mr. Cardin said it is important for everyone to keep in mind that the concept plan is not a site plan.

Dale Clayton of 108 Williams Way asked if the town owns any of the land indicated by the large green dot on the map. Ms. Farmer said the town owns property with about three upland acres including a link to Cider Mill Road. The rest is marshland. There was discussion whether the town-owned land is more than 1000 feet from property fronting on Route 195. Ms. Farmer had a map showing the distance, which appeared to be less than 1,000'. Mr. Taylor said representatives for a Marriott Hotel were interested about five years ago in building a hotel on his property but after visiting the site and noting its proximity to the adult-oriented business nearby, they pulled out.

Mr. Clayton is a member of the Town Council but was speaking as a private citizen. He said he was not at the May 10 meeting where the Town Council endorsed the POCD amendment, nor was fellow Council member April Teveris, and he was not sure if he would have endorsed the amendment himself if he was at the meeting. He said he has concerns about restricting and inhibiting development. He said if existing businesses want to make a change that impacts more than 10 percent of their property, which would trigger a review by the PZC, that might scare people away from expanding. He also said he felt the traffic study prepared for the proposed

intersection was results oriented and cursory in his view. He said it requires the taking of residential land to align the intersection.

Mr. Cardin said he does not believe the report from the traffic engineer states that land would need to be taken. Ms. Farmer said the signalized intersection was conceptual as they were looking at the potential for creating a 4-way intersection that meets head on. Ms. Beebe said the suggestion that creating such an intersection by “taking” land is inaccurate and such a term can be deemed inflammatory. She said for the record that there would need to be either a negotiation or sale of land involved that could be beneficial to the property owner. Mr. Scavone said he attended the meeting with the traffic engineer and that the engineer said it would require some jockeying on one side of the road or the other at the time of development. Mr. Clayton said the way the signalized intersection is drawn now suggests there will be an impediment to development and that additional traffic would be dumped into an already congested area.

Ms. Beebe said it should be made clear that the only way to retain the status quo on traffic is to do nothing, which will not happen as development will happen one way or the other, unless the town buys the land as Open Space. Mr. Clayton said he feels the traffic study did not take into account the true impact of added traffic. He said he feels the POCD amendment will limit what developers can do with their property. Mr. Cardin said there are trade offs in the proposal. The landowners would get greater flexibility in the use of their land, but by working with their neighbors could achieve greater density.

Mary Anne Delaney Tuttle, a member of the Town Council, said she needed to clarify Mr. Scavone’s earlier comment about the jockeying of land. She said she had asked at the May 10, 2011 Town Council meeting what needed to happen with the west and east sides of Mellow Road to make a traffic signal intersection. She said she was told there would need to be some manipulation of the land. She said that she was told by the traffic engineer that due to the brook on the property, some land would need to be taken in a sale of property to make a 90 degree intersection. Ms. Beebe said it needs to be clear that it has never been the intent of the PZC to promote or endorse the concept of taking private property and that the wording has a negative connotation. She said negotiations or sales of property would have to be made that would be in the best financial interests of the property owners. Mr. Clayton said he did not mean to imply that land would be taken from a private landowner.

Mr. Cardin read the portion of the May 10, 2011 Town Council minutes related to this issue. Ms. Farmer clarified that the whole concept of the TVA plan came about because of the desire to create increased density in areas where there is already existing infrastructure in order to preserve natural resources in other parts of town. The plan proposes to reduce setback requirements and cross utilize parking lots, but in order to do so, it would require some coordination between property owners. Development in the TVA would require property owners or developers to show how those connections could be made in the future in order to fully utilize the land. This concept would increase the developability of the land for property owners.

Tom Gotta, owner of the Subway Restaurant in town, said he feels because the Special Permit process determines how the land can be developed, any gains in developability are lost. He said the buildings will have to look how the PZC wants them to look. Mr. Cardin explained that some of the challenges before the PZC came about because residents who participated in the process made clear the building designs they did not want to see in the Tolland Village Area. Mr. Gotta agreed but said the PZC already has a lot of control. Mr. Cardin said the Design Guidelines evolved from the Visual Preference Survey where townspeople told the PZC what

building styles and look they wanted for the TVA. These Guidelines came directly out of the results of town forum input.

Mr. Gotta said his concern is that the Special Permit requirement allows the PZC to decide where types of businesses will go in the TVA. Ms. Farmer said there is no prescription exactly where certain businesses must be.

Mr. Peterson asked if this is the case, could Mike Taylor put a commercial business, such as a pharmacy fronting on his property. Ms. Beebe asked if there is anything written in the proposed regulations that would preclude the citing of commercial businesses north of the red circle area on the map. Ms. Farmer said under the POCD, there is not, and Section 7-7B gives the PZC flexibility in uses.

Mr. Barrow said when he looks at the POCD and Design Guidelines, he infers that the yellow area on the map is restricted to residential areas and the zoning regulations say they cannot have commercial development in the residential areas without getting approval from the PZC. Mr. Cardin said a property owner could make a proposal for commercial development in such area explaining that it would fit with the overall plan because of "X, Y, and Z" reasons.

Ms. Farmer asked Mr. Barrow if it would help to be more clear in qualifying flexibility. Mr. Barrow said it would. Ms. Beebe suggested they might want to show dual shading on the map in some areas that would show flexibility. Mr. Taylor thanked the PZC for understanding and considering his concerns. Ms. Farmer said in talking with Mike Taylor and George Mantak, they could see that developers might see businesses as being viable in the TVA but not in certain locations, and there may be a need to loosen up the regulations while still maintaining the overall goals. She said they could look at the proposed regulations and get some input from Heidi Samokar as well as the commercial community to take a more flexible approach.

Ms. Errickson said that in the proposed regulations, the map no longer includes the word "conceptual" and she feels this should be added back in. Mr. Scavone said they need to stress that the plan is conceptual and is meant to be flexible.

Bob Stewart of 79 Candlewood Drive said the November 30 concept plan shows the proposed road, a main concept in the TVA, as going into Mike Taylor's property and cutting through the back of Pete Anderson's property. He said he just appraised Mr. Anderson's property. He said the TVA calls for a village type of development to come in on each side of Route 195 with a mix of commercial, residential, open space and trails and it appears that Mr. Anderson could not expand his business to add a small building in the back of his property if this is approved.

Ms. Beebe asked Mr. Stewart what Mr. Anderson would be able to do with his property under the existing regulations. She said she would expect he could not build behind him and that if he did he would have to make a designated travel way. Ms. Farmer said it might be possible for him to build a small building in back. Mr. Stewart said Mr. Anderson might want to build a small repair building in the back but if the applications being presented tonight are approved, he won't be able to, because the tree line in the back of his property is where the proposed road would be located. Ms. Farmer noted that a vehicle repair business is not included right now as a use in the Gateway Design District. Ms. Beebe noted that the concept sketch is not meant to preclude property owners from doing something else and if someone can show a way to do something comparable, it would not be precluded. Mr. Stewart asked about the design standards Mr. Anderson would have to meet if he wanted to convert his building to a convenience store and gas station.

Mr. Cardin said the founding principal for the TVA has always been flexibility and it is something they have been consistently saying throughout the entire process.

Attorney Hollister said in P&Z App. #808, the discussion missed the point. He said the POCD amendment is conceptual, but the proposed regulations make it binding. He said the term “in its sole discretion” in the regulations means that no one can challenge the Commission’s decisions. The Commission had a discussion with Attorney Hollister on the difference between the terms “consistency” and “conformity” and his suggestion that the regulations not include language that say they must be consistent with the POCD. Attorney Hollister said the term “conformity” meets a broader standard, while the term “consistency” is more stringent. He said that according to Connecticut law, zoning regulations are binding, while a POCD is not. Ms. Farmer said in all her years as a Planner, she has always seen the term “consistent” with the POCD used.

Mr. Gotta said the earlier suggestion of using multi-shading would solve a lot of the flexibility issues.

Mr. Peterson referred to Page 3 of the Design Guidelines. He said they call for a minimum two-story height of buildings, noting that most CVS pharmacies are single-story. He said while a developer could create an appearance of two-stories, the minimum height requirement is too restrictive. He added that in developments where there are larger buildings in back, it is desirable to see lower buildings in front. Ms. Beebe said they will need to consider height flexibility and consistency between the regulations and the Design Guidelines.

The Commission looked at the Zoning Map and LID and road design manual. There were no comments on this topic. Ms. Errickson read several items of correspondence into the record:

- The March 18, 2011 CRCOG Report on POCD Referral POCD-2011-1
- The April 26, 2011 CRCOG Report on Zoning Referral Z-2011-29
- The May 4, 2011 WINCOG Report on Zoning Referral 11-04-18-TD
- The May 17, 2011 letter from Michael Taylor of Taylor Management
- The May 23, 2011 letter from George Mantak, EDC Chair to Mike Cardin

The Commission made a list of items to review or obtain prior to the next PZC meeting regarding P&Z App. #807. Ms. Farmer noted that Attorney Conti is expecting he will be reviewing material submitted by Attorney Hollister:

- Modifying the conceptual use diagram using multiple use shadings to show greater flexibility, being sensitive to existing businesses.
- Comments from Attorney Conti regarding CGS 8-2j as referenced under Village Districts in Create a Town Center in the sidebar on Page 58. If CGS 8-2j refers only to existing Village Districts and if that item needs to be eliminated from the sidebar.
- Add language requested by the Town Council on Page 59 of Create a Town Center.
- Whether it matters where the Main Street is located in the TVA and if they can incorporate mixed use and residential on both sides of Route 195.
- Consider if the third paragraph in the proposed POCD amendment is too definitive and if the conceptual use diagram is softened, if the language can also be softened to be more open to suggestions.

The Commission made a list of items to review regarding P&Z App. #808:

- The final draft on Zoning Regulation changes should reflect Linda Farmer’s memo and Heidi Samokar’s recommended changes.
- Ensure that the proposed regulations are consistent with the Design Guidelines.
- Section 7-7B under Special Permit Uses needs to be modified to reflect the modified use diagram.
- Section 7-10-9a requires a fix of a typo—“Buildings should **be** no more than 10 feet...” The wording also should be reviewed in this Section to explain how setbacks are figured so that there are no ADA violations.
- Request that Attorney Conti review Attorney Hollister’s comments on easement language.

Ms. Samokar said there are a couple of typo errors that need to be corrected. In Section 7-10, Residential, the word “least” was dropped from the wording and needs to be added back. Also in Section 9c with regard to building width, there needs to be a caveat added that this does not apply to hotels.

- Ms. Beebe also said Ms. Farmer and Attorney Conti need to review and evaluate Page 3 of Attorney Hollister’s submission regarding workforce housing and the suggestion about the use of the term “consistency.”

The Commission made a list of items to review regarding Design Guidelines:

- Remove the fifth bullet on Page 6, under 2D “Windows should be taller than wide.”
- The third bullet on Page 8 should be reworded as “ Lettering or logos applied onto windows are encouraged not to exceed 25 percent of the glass area and should not block views.”
- Clarification needs to be made on the use of “should” vs. “shall” in the Guidelines.
- The traffic study is not part of the POCD and there was consensus that it should be referenced or acknowledged in some way. Ms. Beebe noted that the traffic study referred to a concept buildout and if only development happens on the west side of the road with residential development and a hotel, should they get input from the town engineer if the intersection would still require signalization. Mr. Scavone said from the discussion with the traffic engineer, it was suggested that if development only happens on one side of the road, then it would be unlikely a signalized intersection would be required. Ms. Beebe said she would want to get a brief evaluation of the proposed intersection under discussion if new flexibility resulted in a different type of development.

Marilee Beebe/Jack Scavone motion to continue the Public Hearings for P&Z Apps. #807, 808, and 810. Motion was unanimously approved.

4. **Action on Public Hearings.** The three Public Hearings were continued.

5. **Other Agenda Items**

5.1 **Open Space** – Requests for designation as Public Act 490 Open Space. Commission to set Public Hearing date for June 13, 2011. Sue Errickson/Marilee Beebe motion to set the Public Hearing for June 13, 2011. Motion was unanimously approved.

5.2 **Town of Tolland** – Request to modify a drainage easement in the Willow Creek Subdivision and extend into a Conservation Easement area for a repair. Location: 47 Willow Creek Drive. Ms. Farmer said this conservation easement is under the purview

of the PZC. She said the town worked with Gardner and Peterson to design a fix, infiltrate water, and keep the sediment out of the creek. The Inland/Wetlands Committee has not yet approved this. Jack Scavone/Sue Errickson motion to allow a drainage easement area to be extended into a conservation easement and allow a repair of drainage structures as designed by Gardner and Peterson and to be approved by the Inland Wetlands Commission. Motion was unanimously approved.

- 5.3 **Economic Development Action Plan Update** – EDC workshop June 7, 2011 at 7:00pm in the Council Chambers. This workshop will be with Brian Miller. Jack Scavone and Dave Barrow plan to attend.
6. **Approval of Minutes** – Approve minutes of April 11, 2011 Regular Meeting. Sue Errickson/Marilee Beebe motion to approve the minutes. Ms. Errickson said in Item 3.2, the third paragraph, it should be clarified that she was asking only about parking for staff at the facility, not staff and clients. Michael Cardin, Marilee Beebe, Sue Errickson, and John Hughes voted to approve. Jack Scavone and Dave Barrow abstained. Motion passed.
7. **Activities and Updates**
- 7.1 Update on Page Property – Gehring & Cedar Swam Roads. The Commission reviewed the May 19, 2011 letter from Steve Lowrey in their packets.
8. **Town Staff Comments** – Ms. Farmer requested the Commission go into a brief executive session regarding litigation at the end of the meeting.
9. **Announcements – Upcoming Meetings**. No announcements.
10. **Reading of Correspondence**: Ms. Farmer noted Steve Lowrey has asked Senator Guglielmo to address pending legislation regarding stormwater plans under the DEP.
11. **Communications and Petitions from Commission Members**
- 11.1 **CRCOG Report** – Sue Errickson.- Ms. Errickson said the last meeting included an interesting presentation on the Hop River Trail and plans for the four towns along the trail—Bolton, Andover, Coventry and Hebron. The plans call for one set of regulations that will include economic development, a business park in Coventry, and nodes. All four towns will share in the development and they are developing a logo that will incorporate the four-town venture. She said they are not looking to develop a retail corridor.
12. **Public Participation**: None.
13. **Adjournment**: Jack Scavone/Marilee Beebe motion to go into Executive Session at 10:55pm and upon its completion to adjourn the meeting and pay the clerk. Motion was unanimously approved. The Commission exited the Executive Session at 11:04pm.

Respectfully submitted,

Annie Gentile
Clerk