

**TOWN OF GREENWICH, CT – Representative Town Meeting**

ITEM NO.: *Entered by Town Clerk*

DEPARTMENT: Selectmen

CONTACT: Edward Gomeau 618-7683  
Diane W. Fox 622-7894

REFERRED TO: *Entered by Town Clerk*

VOTES: Board of Selectmen 3-0-0

To consider and act upon the following resolutions for Home Rule action under the Charter to amend the Town Charter, Special Act and Municipal Code as follows:

**RESOLVED, that the following amendment to Section 1 of the Special Act 469 of 1951 (as amended) and Article 9, Section 82 of the Town Charter, be adopted as follows:**

**DEFINITIONS.**

**(a) (7) SUBDIVISION** – Revision (words in brackets to be deleted; **words bolded to be added.**)

“*Subdivision* means the division of a tract or parcel of land into [three (3)] **two (2)** or more parcels or lots for the purpose, whether immediate or future, of sale or building development expressly excluding development for agricultural purposes, and includes re-subdivision.”

**FURTHER RESOLVED, that pursuant to the Special Act 469 of 1951 (as amended), that the Town Code Article 4, Subdivisions, Section 6-261(15) be amended as follows:**

**-Section 6-261(15) DEFINITIONS (SUBDIVISION)** – Revision (words in brackets to be deleted; **words in bold to be added.**)

“Subdivision shall mean the division of a tract or parcel of land into [three (3)] **two (2)** or more parcels or lots for the purpose, whether immediate or future, of sale or building development expressly excluding development for agricultural purposes, and includes re-subdivision.”

**EXPLANATORY COMMENTS**

The Board of Selectmen on February 17, 2005 unanimously approved the above resolutions to amend the Town Charter, Special Acts and Municipal Code to change the definition of subdivision from 3 parcels to 2 parcels, and to forward said resolutions to the RTM .

The Planning and Zoning Commission also approved these resolutions at their January 25, 2005 Regular Meeting.

# **Explanatory material pertaining to the amendment adopted by the Planning and Zoning Commission to amend the Greenwich subdivision regulations to include two lot subdivision**

## 1. Some history.

Subdivision Regulation Sec. 6-261 (a) (15) presently defines a subdivision as "...the division of a tract or parcel of land into three (3) or more parcels or lots..." The division of a tract or parcel into only two parcels does not meet this definition. Therefore, depending upon the facts, the division of a lot into two parcels may avoid the Town regulations relating to the creation of subdivisions. This is what is popularly known as a "free cut".

(This event is also sometimes referred to as a "free throw" or as a "lot split." However, the term "lot split" is also used to refer to various other lot divisions. The term "free cut" is well understood to mean the division of a lot into two lots which escapes compliance with the subdivision regulations.)

The Town's first adopted subdivision regulations in 1933. The regulations were revised in 1954. Both versions considered a subdivision to be the division of a lot into two or more parcels (with various exceptions and defined pre-approvals). In 1958 the State Legislature amended CGS Sec. 8-18 to define a subdivision as "...the division of a tract or parcel of land into three or more parts or lots..." However, this did not affect the Town's subdivision regulations as Greenwich was, and is, a special act community. The definition of a subdivision in Greenwich continued to be the division of a lot into two or more parcels. There is no legislative history or other recorded policy objective that caused the state legislature to adopt the "three lot" definition. It appears to be a state law that just happened.

In 1970 the Town again revised its subdivision regulations and the "three lot" subdivision definition was adopted. We are not aware of any stated policy objective which caused Greenwich to adopt the definition. Greenwich simply followed the state statute's definition. This is the regulation we have today.

## 2. How is a free cut determined?

As is indicated above, a free cut is the division of one lot into two lots that does not require compliance with the Town's subdivision regulations. Determining whether a particular lot is entitled to a free cut can be a complicated question

A useful rule of thumb is this: if there has been no division of the lot since the revision of the subdivision regulations on September 4, 1970 and all divisions, if any, which occurred prior thereto were either done prior to the adoption of subdivision regulations or were done in accordance with the then prevailing subdivision regulations, then the lot qualifies for a free cut. One clear rule is that a particular lot is only entitled to one free cut.

(Applications to the PZC to review a proposed two lot division are also routinely examined as possible resubdivisions. However, a resubdivision involves a change in an approved or recorded map. The typical free cut application does not involve such a map.)

Under procedures set up by the Planning and Zoning Commission and the Building Department, a property owner seeking to divide an existing lot as a free cut must provide documentation to the Commission demonstrating that the lot in question qualifies. This means submitting evidence of the lot's title history and how it has been configured and transferred down the years, together with property surveys showing past transactions which

involve the lot. This is then reviewed in the light of the Town's subdivision regulations as the same have been amended from time to time.

It has been the policy of the Building Department since the early 1990s not to issue building permits allowing the development of lots created by free cuts unless the PZC has reviewed the matter and determined that the lot that is proposed to be divided, qualifies. The decision of the PZC regarding a free cut is a negative finding. That is, a finding that the lot to be cut qualifies and therefore the PZC has no jurisdiction. The result is the familiar statement that the proposed lot division "does not constitute a subdivision or a resubdivision". A substantial amount of PZC staff and PZC members' time is consumed making these free cut analyses.

### 3. Why the proposed amendment should be adopted.

The purposes of the subdivision regulations are stated in Sec. 2-260 of the regulations which provide, in part, as follows:

The purposes of this Article shall be to:

- (1) Further the orderly development of the Town in accordance with the Plan of Development.
- (2) Insure that any land subdivided can be used for building purposes without danger to health or public safety.
- (3) Regulate the layout of street in accordance with sound engineering principles...
- (4) Control the layout of lots to protect the environment.
- (5) Regulate the layout, design and construction of drains...
- (6) Provide for protective control measures in areas subject to flooding.
- (7) Secure the preservation of natural features of the landscape...
- (8) Control the placement of utilities.

In order to achieve these purposes, the regulations require a detailed subdivision plan and layout to be submitted showing what the subdivider proposes to do and how he plans to do it. Engineering and design standards must be met. A report from the Department of Health regarding sewage disposal is required. Adjoining neighbors must be notified and the documents are open to public inspection. The proposed subdivision is reviewed by the PZC in a public meeting.

Two lot divisions which qualify as free cuts totally escape these requirements and procedure. No subdivision plan and layout is submitted or reviewed by the PZC staff, the PZC or the public. Free cuts subvert the objective of the Town's subdivision regulations which is to cause the Town to be developed in an orderly way. There is nothing inherent in the division of a lot into two lots that entitles it to special treatment or distinguishes it from a three lot subdivision, or, for that matter, a ten lot subdivision. We believe the absence of such reviews has been particularly detrimental to the R-6 zone

It is important to understand that if a lot is entitled to a free cut, the right is absolute. It overrides all other considerations such as lot size and shape, open space preservation, potential effect of development on physical conditions (slopes, wetlands, tree preservation), suitability for on-site septic and water supply, road access and impact on surrounding properties. In short, it overrides all of the purposes of the Town's subdivision regulations.

Lots eligible for a free cut vary in size. Some are double or even more than double the minimum lot size of their zone. Many are less than double. Some are even less than the minimum lot size of their zone. When such lots are split, the result is at least one and possibly two lots that are undersized. It is common for subdividers to go to the Planning and

Zoning Board of Appeals (ZBA) and seek variances to allow the undersized lot or lots to be developed. The question before the ZBA is whether the subdivider has a hardship. The purposes stated in the subdivision regulations are irrelevant.

#### 4. How big is the problem?

It is the experience of the P&Z that the properties in the commercial zones and properties holding large developments such as apartments and condominiums do not seek free cuts. It is the improved and vacant residential properties which typically seek a free cut.

There are currently about 15,447 improved residential properties in Greenwich (with single, two family, three family or four family dwellings) and about 714 vacant properties. To know exactly how many of these properties would be eligible for a free cut would require an analysis of the deed history of each lot, obviously a very difficult task. Based on past experience, however, a significant number would be eligible.

During the period January 1, 1999 through June 30, 2004, the PZC heard 95 free cut applications. In all of these cases the PZC found it had no jurisdiction and the applicant was entitled to the free cut. We believe the ever increasing value of land in Greenwich has, and will continue to encourage these applications. Lots which ten years ago, or even five years ago, would not have been considered for a free cut, are now being split. The result is the development of undersized lots, the crowding together of dwellings with attendant pressure on the Town's infrastructure, excavation, blasting, filling and clear cutting of sites, an increase in impervious surfaces with attendant loss of vegetative cover and adverse effects on the water quality of streams which enter Long Island Sound.

#### 5. The "15% setaside" question.

Developers have expressed concern that if free cuts are eliminated the PZC will use the "15% setaside" in the subdivision regulations to unreasonably stop development. This is an unreasonable concern.

Sec. 6-297 of the subdivision regulations provides in part,

(a) The Commission shall require that land, open space or easements, be reserved for park, playground or open space use, where such reservations are shown in the Plan of "Development, or where the Commission deems such reservations appropriate. Each reservation shall be of suitable size, location, topography and general character and shall have adequate road access to serve the particular purposes deemed proper by the Commission.

(b) The required open space reservation shall not exceed fifteen percent (15%) of the total area of the subdivision but this Subsection shall not prevent additional voluntary reservations being made by the subdivider....

As a result of this section developers commonly include in their subdivision applications, a proposal regarding the quantity of open space they intend to preserve and how they intend to preserve it. Probably the most frequent proposal is to set aside 15% in fee to be held by a non-profit corporation controlled by the residents of the subdivision. However, the proposal can be for anything from zero to 15%. It can be in whole or in part an easement. Sec. 6-297 gives the PZC flexibility when applying the set aside requirement.

As a result of Sec. 6-297, open space has been preserved in subdivisions throughout Greenwich. The long term benefit to the quality of life in the Town is incalculable.

The development of lots created as a result of a free cut totally escapes any obligation to set aside any portion of the lots as open space. If, as proposed, the definition of a subdivision is amended to mean the division of a lot into two or more parcels, this will no longer be true. Developers of two lot subdivisions will have to propose some form of setback or explain why in their particular situation no setback is warranted. It is this fact which has caused developers concern, namely, that the PZC will unreasonably insist on some form of setback which will make particular lot commercially undevelopable.

Open space setbacks on lots which are equal to the minimum lot size of their zone are rarely a problem. However, lots created by a free cut are often undersized, sometimes substantially so. By definition there is limited space on an undersized lot to construct a dwelling. In theory, a 15% setback could so reduce the available space for construction as to make the lot undevelopable.

History indicates the PZC does not act unreasonably in these situations. During the period January 1, 1999 through June 30, 2004 the PZC reviewed 6 two lot subdivisions and 9 two lot resubdivisions. All of these applications were approved, although the size of the setback and the method used (conveyance in fee or easement) varied. In no case was it ever claimed that the setback made the subdivision undevelopable.

Apart from the foregoing, we suggest that developers have an obligation to use their best efforts to develop lots which meet the purposes of the Town's subdivision regulations. We believe adopting the proposed two lot subdivision definition will encourage developers to do so.

#### 6. Conclusion.

The PZC requests the Board of Selectmen to submit the above stated amendment of the Town's subdivision regulations and the Town Charter, Code and Special Act to the Representative Town Meeting for its consideration.

#### **The following resolution was adopted by the Planning and Zoning Commission on January 25, 2005 to amend the Greenwich Subdivision Regulations and Town Charter to include two lot subdivision**

**Whereas**, applications to the Planning and Zoning Commission seeking confirmation that a proposed division of a lot into two lots does not have to comply with the Town's subdivision regulations, and thereby qualifies as a "free cut," are being made with increasing frequency, and

**Whereas**, a lot that qualifies for a free cut avoids compliance with the Town's subdivision regulations which, with this single exception, apply to all subdivisions in Greenwich, and are intended to cause the orderly development of Greenwich, and

**Whereas**, Free cuts are possible because the definition of a subdivision in the Town's subdivision regulations is the division of a lot into three (3) or more parcels, which may allow the division of a lot into two (2) parcels and thereby avoid compliance with the regulations, and

**Whereas**, Free cuts are enabling two lot subdivisions to be developed totally outside the Town's subdivision regulations and without the PZC and town departments' review and the public scrutiny the subdivision regulations were enacted to achieve,

**It is therefore resolved,** that the Board of Selectmen be requested to submit to the Representative Town Meeting a proposal to amend the Special Acts, the Town Charter, and the Municipal Code to change the definition of subdivision per Sec. 6-261 (a) (15) of the Greenwich Municipal Code from 3 parcels to 2 parcels.

**ATTACHMENTS- SEE ATTACHED ITEMS #1 AND #2**