

BOARD OF SELECTMEN REGULAR MEETING
March 4, 2014

A regular meeting of the Board of Selectmen was held on Tuesday, March 4, 2014 in the Assembly Hall.

Members present: First Selectman Michael Criss, Selectman Jon Truskauskas, and Selectman Nancy Schnyer.

Attendees: Town Attorney Michael Rybak, Shawn Pace, Myrna Watanabe, Peter Brazaitis, Mike McGoff, Victoria Elliott, Alysén Almand, Town Clerk Nancy Eldridge, and other town residents.

Call to Order

Mr. Criss called the meeting to order at 7:00 p.m.

Minutes from the Previous Meeting

Mr. Truskauskas moved to approve the minutes from the meeting held on February 18, 2014. Ms. Schnyer seconded. All were in favor.

Appointments and Resignations

At the meeting held on February 18, 2014 the Board of Selectmen appointed the Bridge Committee but one more person is to be added. Mr. Truskauskas moved to approve Sal Bonola as a member of the Bridge Committee. Ms. Schnyer seconded. All were in favor.

New Business

Ms. Schnyer moved to add "Petition" and "Letter to Zoning" to the agenda. Mr. Truskauskas seconded. All were in favor.

Set Date and Time for Selectmen's Budget Workshop

Mr. Criss is still waiting for some budgets to be turned in; therefore, the budget books for the Selectmen are not yet available. Mr. Criss suggested the Selectmen to meet on Monday, March 10, 2014 at 6:00 p.m. Mr. Truskauskas moved to meet on Monday, March 10, 2014 at 6:00 p.m. Ms. Schnyer seconded. All were in favor.

Approve Memorandum of Agreement with Homeland Security

The Town received radios for Emergency Management from a Homeland Security grant. The signing of the memorandum acknowledges receipt of the radios. Ms. Schnyer moved to have First Selectman Criss sign the memorandum from Homeland Security. Mr. Truskauskas seconded. All were in favor.

Request for Refund of Property Tax

Mr. Truskauskas moved to approve the following tax refund. Ency Richardson, \$10. Ms. Schnyer seconded. All were in favor.

Mr. Criss stated a petition was received today by the Town Clerk with 118 signatures and it reads as follows:

We, the undersigned persons qualified to vote in Harwinton Town Meetings, pursuant to CGS 7-1, hereby petition the Harwinton Board of Selectmen to convene a Special Town Meeting, and request that the item on the call to the Town Meeting to be submitted to those persons qualified to vote in such meeting is for referendum, to be held according to law on a date set by such Town Meeting. The question shall be presented that an elector may vote to 1) accept the following or 2) reject the following: Should the proposed Zoning Code regulations (proposed changes to Town of Harwinton, CT, Zoning Commission, Zoning Regulations, Approved 9-10-12, Published 9-16-12, Effective 9-17-12) Sections 2.3, 4.1, 4.3, 4.42-4.4.12 (inclusive), 4.5.2, 4.5.4, 4.5.9., 4.5.12b, 4.5.13, 4.7.4e, 4.8.2e, 4.9.2e, 5, 6.4-6.21 (inclusive), 8.1, 8.5.16, 8.6.1d, 9.1, 9.3, 9.6 (old, replaced by old 9.7), new 9.6-9.6 (inclusive), 11.1.3, 11.1.5, 12.1, 13.3.2, 14.1, 14.2.1, 14.4.5 to be adopted by the Town of Harwinton? The hours of voting shall be as provided in the General Statutes. We hereby further certify, under penalties of false statement, that the addresses set forth after our respective signatures are true and complete and that we have not signed this petition more than once.

Mr. Criss explained this is the first time the Town has received a petition like this so he requested Attorney Rybak be present as legal counsel to discuss this particular petition.

Public Participation

Mr. Criss opened the meeting to receive questions/comments from the audience. Shawn Pace stated it took three (3) hours to obtain all the signatures. He realizes the proposed changes have not been enacted yet but that could take place next Monday because those changes have yet to be tabled. Mr. Pace informed that Board that he has spoken with many other residents and everyone is very upset. Harwinton's Zoning Board has its residents terrified about what may happen. Mr. Pace wants the Board to know that three (3) parcels of land at the bottom of Route 118 were purchased around December 9, 2013 by a corporation, Mountain Top Trucking, owned by Danny Stoughton. Within two (2) weeks after the purchase a Zoning Board member proposed a change in the regulations to allow rock crushing in residential neighborhoods. Mountain Top Trucking currently owns a rock quarry in Winsted. Mr. Pace doubts that Mr. Stoughton purchased 60 acres for \$630,000 just to build a house. Mr. Pace noted that rock crushing is currently allowed in town through a special permit that regulates how and when you may do the rock crushing. If the Zoning Board changes the regulations it will allow rock crushing anywhere, anytime. He reiterated that people are afraid, they want answers, and they're not going away. It's devastating to the Town. Mr. Pace would like Mr. Criss to put the brakes on these changes. Mr. Pace is asking that the gentleman (who is in the construction business) on the Zoning Commission who made the motion to allow rock crushing be investigated and he would like to know the nature of his relationship with Mountain Top Trucking. He feels the Zoning Commission is not looking out for the people of this town.

Mike McGoff spoke about the inevitable decline in property values if these regulations were to pass. He's concerned that the mil rate will go up and everyone will end up paying and it's all because everyone has their own agenda. The Zoning Commission member who supports rock crushing owns an excavation business. The Zoning

Commission member in support of selling alcohol in town has a wife who owns a liquor store. Everyone can see that this is a conflict of interest. Mr. McGoff explained that the petition was started because it appears that the Zoning Commission can do whatever they want. Who wants to hear ATV's all hours of the day? The people have spoken and someone should be listening.

Anthony Storti spoke and stated he signed the petition. From his house he can hear noise from O & G's operations as well as Supreme Industries. He moved from New Milford, which was a farming town that has since been built up, to Harwinton. He is concerned that the same thing will happen in Harwinton. He agrees and supports those that are against the proposed regulations. He has put his faith in the officials of this town and these proposed changes are affecting the community. It seems that a core group of people have decided what they think is best for the town and they're not listening to the residents. Mr. Storti would like to retire here but if these regulations pass, he won't hesitate to move before property values decline.

Another resident spoke about collecting 120 signatures in a few hours and stated he can come back with 1,500 signatures without a problem because people are upset.

Victoria Elliot stated that the current administration's campaign was to "keep Harwinton, Harwinton. She is not against small businesses in town but rock crushing is not the type of business wanted in town. The sale of alcohol along Route 4 and 118 is not a good idea either when you consider the possibility of more accidents happening.

Myrna Watanabe stated she stood in 14 degree temperatures obtaining signatures for the petition and it was as easy as selling candy because people are furious. She requested a ruling on setting a town meeting or a determination of whether or not the petition is lawful, frivolous, or improper.

Attorney Rybak explained that he has already given the Zoning Commission his opinion regarding the regulations. He cautioned the Commission about proceeding as many of the regulations could prove troublesome to the town. He will not get into the specifics of the regulations now but he thinks the Zoning Commission would be well advised to withdraw the regulations, get professional advice from a planner, and start over from there. Mr. Criss stated he was in agreement with that advice.

Attorney Rybak noted that he has 35 years of experience and issues like this have come up before so the research was readily available. He then distributed a letter of his opinion on the Petition. He explained that Harwinton follows state statutes and does not have a charter.

Attorney Rybak read his letter. The letter is attached and made part of these minutes.

Mr. McGoff asked if the Zoning Commission has been given so much power, can't the town take it away. Attorney Rybak replied the town can by repealing Zoning.

Mr. McGoff asked that since the Zoning Commission has not made a final decision, can they be stopped. Attorney Rybak replied they cannot because the power to zone rests solely with the Zoning Commission and you cannot preemptively stop them from doing something.

Attorney Rybak stated that there are three (3) ways to attack this problem and none of them are very satisfactory. One is to change the commission over time. Two is to repeal zoning but any use that gets in while zoning has been repealed becomes a grandfathered non-conforming use that the town would not be able to change. The third option is a court challenge which would end up costing the town and taxpayers a lot of money.

Mr. Pace brought up ethics stating it's very clear that members or their families cannot benefit from decisions and that they should recuse themselves from voting in the event it does benefit them in some way. He continued by pointing out that an individual on the commission has a wife who owns a liquor store and that individual has not recused himself from voting. He would like an investigation into the relationships Zoning members may have with anyone who would benefit from their decision. He also noted that they may have attacked this issue in the wrong way but they won't make that mistake again and they will be back.

Ms. Elliot agreed with Mr. Pace regarding investigating these relationships further but asked if there's anything else the citizens of Harwinton can do and what rights do they have.

Attorney Rybak responded to Mr. Pace's remarks as follows: Section 8-11 of the Connecticut State Statutes clearly states that no member of any Zoning Commission or Board and no member of any Zoning Board of Appeals shall participate in the hearing or decision of the Board or Commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. Attorney Rybak gives cautionary instructions to boards and commissions before they vote on a matter that each member examine his conscience and examine their personal or business relationships to make sure they are not going to impair the commission's decision. Attorney Rybak added that if they participate in a decision in which a court later says they should not have participated, its grounds for reversal of that decision.

Mr. Pace recommends giving the Zoning Commission a copy of C.G.S. §8-11. Disqualification of members of zoning authorities.

Ms. Schnyer stated that she thinks it's a good suggestion to investigate ethics on boards and commissions. Mr. Criss agreed.

Attorney Rybak stated that if anyone has any evidence about impropriety on the commission, he should bring that information forward.

Mr. Criss stated that based on Attorney Rybak's opinion it does not appear that the Board of Selectmen can take any action based on the petition.

Letter to Zoning Commission from Board of Selectmen:

Mr. Criss stated that he has spoken out against the proposed regulations at the public hearing held by the Zoning Commission. Based on the public's opinion, he feels the Board of Selectmen should write a letter to the Zoning Commission requesting that they listen to the public and consider their comments expressed at the public hearings, retract all current proposed regulations, and start from scratch with a professional planner after they follow the RFP process and include the legal opinion, a copy of the petition, and the statutes referred to in these minutes as well as a copy of the minutes from tonight's meeting.

Mr. Truskauskas stated that the Zoning Commission and Board of Selectmen are separate and there are already allegations of bullying so the last thing he wants to do is to have some sort of inference that the Selectmen are bullying Zoning Commission into a decision that has no bearing on the Selectmen whatsoever. He does not want to force their views on Zoning.

Attorney Rybak noted that the Board of Selectmen, under §7-12, with superintending the concerns of the town and while he appreciates Jon's feelings that each board is separate, the First Selectman is an ex-officio member of each board/commission in town. The Board of Selectmen is responsible for overall expenditures represents the voice of the people. If you want the Zoning Commission to know how you feel, he does not see writing the letter as a problem.

Mr. Truskauskas moved to approve letter to the Zoning Commission from the Board of Selectmen. Ms. Schnyer seconded. All were in favor.

At this time, the Zoning Board has not approached the Board of Selectmen with a formal RFP, therefore, the Selectmen cannot ask the Board of Finance for any appropriation of funds for an RFP. Once a request is made, Mr. Criss will bring it before the Board of Selectmen for review.

Mr. McGoff questioned if the Zoning Commission withdraws the proposed regulations, why would there be a need for a Planner. Mr. Criss stated he does not want to hire a Planner to review the proposed regulations that no one wants. He explained that the existing regulations should be looked at as a whole to make sure the town is compliant. If a Planner is hired, the meetings are public so residents may attend.

Peter Brazaitis wanted to point out for the record that Selectman Jon Truskaukas is the brother of Zoning Commission member Don Truskauskas and both are engaged in similar professions and occupations and Selectman Truskaukas should recuse himself from voting on matters related to the Zoning Commission.

First Selectman's Report

Super Saturday will be held on May 17, 2014. Mr. Criss urges everyone to attend.

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The town has received confirmation that CL&P will pay 40% of the installation of the Municipal Lighting Project. The town is awaiting final quotes. Once received, Mr. Criss will bring them before the Board.

The Municipal Parking Lot has been bid. The Lighting and Parking Lot projects are LoCIP projects and have been approved at town meeting.

The town is at the next stage on the Shingle Mill Road Bridge Project. An RFP will be issue soon for an engineer.

The town is waiting for quotes on the Tennis Courts which need repairs soon.

The town received a \$3,500 grant from Thomaston Savings Bank to fix up the recreation area and install a concrete floor in the pavilion.

Correspondence

The Selectmen reviewed February monthly reports from the Fire Marshal and the Animal Control Officer.

Adjournment

Mr. Truskauskas made a motion to adjourn at 8:17 p.m. Ms. Schnyer seconded. All were in favor.

Minutes submitted by _____
Melissa Santoro

GUION, STEVENS & RYBAK, LLP

ATTORNEYS AT LAW

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PARALEGALS
LAURA THRELFALL
SUSAN LONGO

Dated: March 4, 2014
To: Harwinton Board of Selectmen
From: Michael D. Rybak, Town Attorney
Re: Petition re proposed zoning regulation amendments

You asked me to review six pages of a petition concerning the proposed zoning regulation amendments signed by approximately one hundred (100) electors and taxpayers of the Town. The town clerk is verifying the signatures. Unfortunately, we were not asked to review the petition in advance of its circulation to determine whether the form and purpose are valid under state law. Had the petition organizers done so, they would have been advised as follows:

1. Under Connecticut law, only the Zoning Commission is authorized to adopt and amend zoning regulations under C.G.S. §§8-2 and 8-3. Once a town adopts the zoning authority of Chapter 124 of the General Statutes, only the Zoning Commission has the authority to zone. Its decisions are not subject to review by the Board of Selectmen, a town meeting or a referendum. *Olson v. Avon*, 143 Conn. 448, 451 (1956); *State ex rel. Bezzini v. Hines*, 133 Conn. 592, 596, (1947); Fuller, Connecticut Land Use Law and Practice (3rd ed. 2007) Section 3:2.
2. Under C.G.S. § 7 -1, twenty (20) inhabitants qualified to vote in town meetings may petition the Board of Selectmen to call a special town meeting. The subject of the petition must be a lawful and proper purpose for a town meeting. *State ex rel. Feigl v. Raacke*, 32 Conn. Supp. 237, 240, (1975); *Morris v. Congdon*, 277 Conn. 565, 570-72 (2006). Since a town meeting cannot overrule the decisions of a Zoning Commission, the subject of this petition is not a lawful and proper purpose for a town meeting.
3. The petition abridges two statutory procedural requirements which are separate and distinct. First, the Board of Selectmen must warn a special town meeting pursuant to C.G.S. § 7-1. Once the town meeting is properly warned, then either the Board of Selectmen or two-hundred (200) residents may, by a separate petition, call for a referendum under C.G.S. § 7-7. The two petitions cannot be combined into one. Refer to C.G.S. § 7-9.

The Zoning Commission has heard testimony from the public over the course of three nights of public hearings which attracted more residents than any other meetings in recent history in Harwinton. Several of the subjects, such as alcoholic beverages, rock crushers and ATV's are controversial. The Zoning Commission has not acted on the regulation amendments and may in fact withdraw some or all of them, rendering the petition moot. If the Zoning Commission acts in a manner contrary to public opinion, it runs the risk of a court challenge to the regulations. A recent challenge lasted several years and cost the town thousands of dollars in legal fees. We should give the Zoning Commission time to do its work properly.

RECEIVED FOR RECORD AT HARWINTON CT

ON 3-11-14 AT 3:47pm

ATTEST NANCY E. ELDRIDGE TOWN CLERK