

Wednesday, November 12, 2014, Town Hall, 7:00 p.m.

Regular members present: Tom Rotondo, Janet Duchaine, Mark L. Gelormino, Michael Durstin.

Alternate member present: Kevin Ferrarotti.

Absent member: Theodore W. Root.

Absent Alternate member: Jesse B. Smith.

1. Open meeting – establish quorum.

At 7:02 p.m. Chairman Tom Rotondo opens the meeting. Seated members are Tom Rotondo, Janet Duchaine, Mark Gelormino and Michael Durstin. New alternate member Kevin Ferrarotti is present, has been sworn in and has read through materials provided to him, but has not had the chance to listen to audio tapes from the hearings. Mr. Ferrarotti is not seated. ZBA Clerk Christine Neal is present and proceedings are recorded on audio tape.

2. Approve minutes of previous meeting: 10/8/14.

Motion Mrs. Duchaine, second Mr. Gelormino to approve the minutes as submitted. The motion passes unanimously with four affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino and Michael Durstin.

3. Discussion/possible decision - Don Truskauskas – appeal from July 29, 2014, Notice of Violation Order to Cease & Desist by ZEO David Perkins, served as per the Memorandum of Decision of the Zoning Board of Appeals, for running a contracting business in a residential zone, Zoning Regulations Sections 4.1 and 1.3.1, 99 Scoville Hill Road.

Town Attorney Michael Rybak, appellant Don Truskauskas, former ZBA alternate member Tim Wyllie and other interested persons are present.

Atty. Rybak and members discuss the overnight parking of the dump truck versus the running of a contracting business. Atty. Rybak mentions that Sections 6.19 and 9.4 dovetail with the two Sections of the regulations being considered. He reminds the board that they are acting as the ZEO in this decision which is based on their decision as to what the facts are in this case.

Mrs. Duchaine reads aloud a motion she has drafted of a decision which would sustain the ruling of violation and Cease & Desist Order. This draft motion becomes the final motion with a slight amendment as explained below, but only after the members discuss the draft motion as follows.

Mr. Gelormino expresses that Exhibits #20 and #21 constitute circumstantial evidence since Mr. Truskauskas could be using the gravel and pipe on his own property. He reminds that there was no testimony or evidence of signs posted of a business being located on the property. He indicates that there is a problem in that there is no definition as to what a “reasonable neighbor” is.

It is mentioned that Section 9.4.4 of the Zoning Regulations speaks about a home occupation only being permitted if there is not an increase in vehicular traffic or changes to vehicular traffic to the point of changing the residential character of the neighborhood. It is mentioned that there was testimony/evidence of a lot of coming and going of large vehicles. Mrs. Duchaine expresses that the board did make a ruling in July that the evidence was such that a reasonable neighbor would conclude that a business was being conducted from the property. Mr. Gelormino expresses that the amount of traffic was not directly discussed and that a lot of testimony was from the public, and that testimony from individuals is not necessarily factual. Mr. Rotondo concedes that there were a lot of opinions from the public that were irrelevant. Mr.

Gelormino expresses that he is not saying that the public was being dishonest, mentioning that for this hearing, the testimony has been from one neighbor that a business is being run. Mrs. Duchaine expresses that there has been nothing new offered to support that the activity at the property has ceased, there are two new written complaints and activity log and there is no other address for the business. Mr. Gelormino expresses that even if there was another address, people use their home address for their LLC and for tax purposes. It is stated that, taken alone, a business being an LLC and using the home address as the mailing address for that business, does not necessarily constitute running a business from that home. Mrs. Duchaine expresses that if you take any one item alone, perhaps one would not be able to conclude that a business is being conducted, but there are several pieces of evidence which altogether lead a reasonable person to conclude as such. Mr. Gelormino concedes that there has been a lot of evidence. Mrs. Duchaine expresses that it is difficult to conclude that there is not a business. Chairman Rotondo offers that one of the major changes since the first appeal is the number of vehicles listed on the Assessor's vehicle listing (Exhibit #18-M shows three (3) vehicles registered to Autumn Contracting, LLC), plus fewer people testifying and less testimony. Mr. Durstin expresses that if Mr. Truskauskas leased property for his contracting business then it would be proof that he is trying to conform. Mrs. Duchaine states that we are not talking about a brief case or a quiet home occupation.

Atty. Rybak reminds the board that they are not compelled to limit their decision to the Cease & Desist Order.

Members decide to include the listing of Exhibit #18-M in the motion. Clerk Neal reads into the record the motion as amended to include this additional exhibit, with Mr. Gelormino seconding the motion:

Motion Mrs. Duchaine, second Mr. Gelormino to sustain the Ruling of Violation of Sections 4.1 and 1.3.1 and the issuance of a Cease & Desist, unanimously voted by the Board on July 16, 2014. A contracting business is not permitted under Section 4.1, and therefore, as per Section 1.3.1, is prohibited.

Reasons cited:

- Exhibits 17-1, Secretary of State Commercial Recording Division, and 17-2, State of CT registration number and registration type, home improvement contractor, both indicating 99 Scoville Hill Road as a business address.
- Exhibits 17-4, 17-5, 17-6 and 18-M, Harwinton Assessor's Motor Vehicle Listing, 11 units 2010, 9 units 2011, 11 units 2012, 3 units 2013 and Exhibit 17-7, 2010, 2011, and 2012 Harwinton Assessor's Personal Property Listing, all indicating 99 Scoville Hill Road as the address. All of the items noted above are taxed in the place where they are stored.
- According to testimony of the appellant and evidence submitted, there is no other place of business, no other address, for Autumn Contracting, LLC, other than the 99 Scoville Hill Road address.
- The preponderance of evidence submitted by neighbors, in writing, in photo form, and in oral testimony leads to a reasonable person concluding that a contracting business has been operated (conducted) on the property for a number of years, down to and including the board's ruling on Wednesday, July 16, 2014.
- Furthermore, additional evidence submitted subsequent to July 16, 2014, by neighbors, in writing and in oral testimony, continues to lead a reasonable person to conclude that a contracting business is being operated (conducted) on the property. Examples of this additional evidence includes, but is not limited to, Exhibit #20 and Exhibit #21.
- **Exhibit #20:** A written complaint received by Land Use Officer of neighbor Genovese, 109 Scoville Hill Road, dated 9/11/14, of dump truck leaving property on 9/10/14 empty and returning with stone/gravel on 9/10/14 and leaving property with the stone/gravel on 9/11/14, also of yellow utility truck loaded with pipes arriving at property on 9/10/14.

- **Exhibit #21:** Written complaint received by Land Use Office of neighbor Genovese, 109 Scoville Hill Road, dated 9/22/14, of dump truck leaving property at 6:35 am on Monday, 9/22/14, with back covering on and of dump truck leaving on 9/18/14 and then returning on 9/19/14 with stone/gravel and cover on.

Taking all of the above into account, the conclusion is that a contracting business has been operating at 99 Scoville Hill Road, and continues to be operated, which is in violation of Section 4.1 and Section 1.3.1. This decision shall become enforceable immediately.

The motion passes unanimously with four affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino and Michael Durstin.

4. Vacant alternate member position.

Since the open alternate member position has been vacant for more than 30 days, the Board of Selectmen is to appoint someone to fill this position. Previous alternate member Tim Wyllie has expressed his interest in the position. Mrs. Duchaine mentions that she may know of someone else who may be interested in the position as well. The Board of Selectmen will be discussing and voting on the filling of the position soon.

5. 2015 Meeting Schedule.

Draft submitted by Clerk Neal approved.

6. Annual Report to Board of Finance.

Draft submitted by Clerk Neal approved.

7. Any other business – ZBA Clerk position.

ZBA Clerk Christine Neal explains that once she finds full time employment elsewhere, she will be resigning from her part-time position as ZBA Clerk and that this is estimated to be sometime during the spring or summer of 2015.

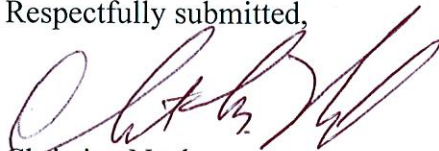
8. Correspondence. None.

9. Invoices. None.

10. Adjourn.

Motion Mr. Gelormino, second Mrs. Duchaine at 8:00 p.m. to adjourn. The motion passes unanimously with four affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino and Michael Durstin.

Respectfully submitted,



Christine Neal
ZBA Clerk

RECEIVED FOR RECORD AT HARWINTON CT
ON 11-19-2014 AT 6:00 PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK