

Wednesday, July 11, 2012, Town Hall, 7:00 p.m.

Members Present: Tom Rotondo, John Bigos, Janet Duchaine, Mark Gelormino, Theodore Root.

Alternate Members Present: Nancy Shanley-Schnyer, John (Jay) Christian.

(Alternate member Jesse Smith present as a member of the public throughout most of the proceedings.)

PUBLIC HEARING #1 – continued VARIANCE

1. Open hearing – establish quorum.

Chairman Tom Rotondo opens the public hearing at 7:05 p.m. He explains hearing and meeting procedures and members of the board introduce themselves. Mr. Gelormino recuses himself and alternate Mr. Christian is seated. All other regular members are seated and a quorum is established. ZBA Clerk Christine Neal is present, with all proceedings recorded on audio tape.

2. Tony Rizzi – application for 9' side yard variance for an open deck, Section 5 (Country Residential Zone) Zoning Regulations, 378 Clearview Avenue.

ZBA Clerk Mrs. Neal reads the public notice into the record as published in the Waterbury Republican American 6/2/12 and 6/9/12. Applicant Mr. Rizzi presents his application for variance. Seated members discuss the application, referring to the sketch drawn to scale by the applicant. The proposed 12' x 16' open deck is to be attached to the rear of the existing home. Mr. Rizzi explains that the deck will not encroach any closer to the side property line than the existing home. He states it will be one foot further away from the side line. Members have reviewed file contents including application (accepted 5/15/12), legal notice of hearing, Assessors map of property B8-02-0006 and abutters, list of abutters noticed, Assessors street card and copy of deed (vol. 225, p. 558). The lot is 80' wide at the street and slightly over 70' wide at the rear and about 255' deep. Portions of the house and garage exist in the side yard setback. Applicant requests the above stated variance on the 0.46 acre lot. Members ask questions of the applicant, with Mr. Rizzi answering. Chairman Rotondo opens the floor for public comment. Mark Gelormino, 372 Clearview Avenue, abutting neighbor on two sides, indicates that he has no problems with the deck going in as applied for. Although the deed and Assessor's street card are correct, Mr. Gelormino notes that the Assessor's map shows only the front portion of Mr. Rizzi's property and should be corrected to show the correct southerly and easterly boundary lines.

Motion Mr. Root, second Mr. Bigos at 7:10 p.m. to close the public hearing, passing unanimously.

PUBLIC HEARING #2 – continued APPEAL

1. Open hearing – establish quorum.

Chairman Tom Rotondo opens the public hearing at 7:11 p.m. Alternate member Mr. Christian is no longer seated. All regular members are seated, with a quorum established. ZBA Clerk Christine Neal is present and all proceedings are recorded on audio tape.

2. Mountain Meadows Corporation, Route 4 and Johnnycake Mountain Road, Burlington, Richard A. Miller, its President; and Harwinton Square, LLC, 520 Burlington Road, Harwinton, Richard A. Miller, its Manager - appeal from the Harwinton Zoning Commission determination of March 12, 2012, that upon the consensus of the commission, a heliport at 529 Burlington Road (Harwinton, CT) is a legal non-conforming use of this property owned by Johnnycake Airport Property, LLC, agent Fred Pesce.

ZBA Clerk Mrs. Neal reads the public notice into the record as published in the Waterbury Republican American 6/2/12 and 6/9/12. Town Attorney Michael Rybak reads aloud portions of various sections of state statute outlining powers and duties of boards of appeals (Section 8.6), appeal period/procedure and minimum vote and statement of reasons required in decision of boards of appeals (Section 8.7) and time frames and noticing requirements for hearings and decisions (Section 8-7d.). Atty. Rybak explains that the board is not bound in any way by the Zoning Commission's determination, but bases its decision on the record and testimony of this hearing "de novo" (as new) and that this public hearing is conducted in a quasi-judicial fashion. Chairman Rotondo outlines the order of hearing proceedings. Clerk Mrs. Neal reads the following list of exhibits, #1 through #12 (with #12.1 through #12.9), into the record.

Exhibits #1 through #12:

1. Harwinton **Zoning Regulations**, approved 1/24/11, published 1/29/11, effective 3/1/11.
2. **Appeal**, dated April 10, 2012, of Mountain Meadows Corp. and Harwinton Square LLC, submitted by Atty. Perley H. Grimes, Jr., to Harwinton Zoning Board of Appeals (ZBA) from the March 12, 2012, determination of the Harwinton Zoning Commission (Zoning) that a heliport at 529 Burlington Road is a legal non-conforming use, which is submitted with cover letter dated April 10, 2012, fee and the following three (3) attachments:
 - 2.1 **Opinion letter**, dated April 9, 2007 by **Attorney Perley H. Grimes, Jr.**, of Cramer & Anderson LLP Law Offices, Litchfield, CT;
 - 2.2 **Minutes of May 14, 2007 meeting of the Harwinton Zoning Commission**; and
 - 2.3 Assessors map of property of the appeal and surrounding properties, including abutting property of appellant Mountain Meadows Corp. and property of appellant Harwinton Square LLC located across the street.
3. Harwinton **Zoning Commission March 12, 2012 determination** "that upon consensus of the commission, a heliport at 529 Burlington Road is a legal non-conforming use" of the property owned by Johnnycake Airport Property, LLC, Frederick Pesce its agent, which is in the form of Zoning meeting agenda and minutes from the March 12, 2012 meeting of the Harwinton Zoning Commission.
4. Harwinton Zoning Commission February 27, 2012 meeting agenda and minutes.
5. Transcription of March 12, 2012 Harwinton Zoning Commission meeting.
6. Transcription of February 27, 2012 Harwinton Zoning Commission meeting.
7. Legal notice of this hearing: published in the Waterbury Republican American June 2 and June 9 2012; mailed certified, return receipt requested to neighbors within 200' of Pesce property, 529 Burlington Road and appellants Mountain Meadows Corp. and Harwinton Square LLC and their representative Atty. Perley Grimes and owner of subject property Mr. Frederick Pesce. (Each member of Harwinton Zoning Commission notified via regular mail.)
8. Letter of notification of this hearing mailed certified, return receipt requested to the Town Clerk of the Town of Burlington.
9. List of abutters noticed certified, return receipt requested: name, address and Assessors Map No. of neighbors within 200' of the Pesce property.
10. Assessors Map showing Pesce property, 529 Burlington Road, Assessors Map No. E6-4-10, neighbors noticed and property of appellants.
11. Proof of mailing: certified mail receipts from noticing abutters, appellants and their representative, Mr. Pesce and Burlington Town Clerk.

12. Zoning Commission Record: Items Harwinton Zoning Commission had in its file for their March 12, 2012 determination. Note that in addition to the nine items listed below, the Commission also had the May 14, 2007 Zoning Commission meeting minutes (listed as Exhibit #2.2) and Atty. Perley Grimes' opinion letter dated 4/9/07 (listed as Exhibit #2.1). Also note that at least the Zoning Commission Chairman reviewed three airport licenses at the March 12, 2012 Zoning Commission meeting (listed as Exhibit #14.20).

- 12.1** Correspondence/Application submitted by Mr. Pesce, dated 10/4/11, incomplete, no fees collected, no Zoning or other approval or notations marked.
- 12.2** Letter from Kaman Aerospace Corp., Bloomfield, dated 2/29/12, to Harwinton Land Use Coordinator (LUC) from William Hart, Chief Pilot, stating that "Kaman Aerospace has used Mr. Pesce's land for (their) helicopter operations since 1995, when it was still part of Mtn. Meadow Airport and after the runway closed."
- 12.3** Opinion letter, dated April 24, 2006 by Town Atty. Michael D. Rybak, of Guion, Stevens & Rybak, LLP, Litchfield, with enclosure: excerpt from Fuller, Land Use Law & Practices, 2nd edition, which is Section 4.45 Airport Zoning, pp. 127-129.
- 12.4** All excerpts from all Zoning minutes relating to Mr. Pesce's previous request for a heliport at 529 Burlington Road except for May 14, 2007, which are included in Exhibit 2, Appeal. (3/27/06, 4/10/06, 4/24/06, 5/8/06, 5/22/06, 6/12/06, 2/13/07, 3/12/07, 4/9/07, 4/23/07, 2/11/08, 3/24/08).
- 12.5** Letter from Richard Jaworski, Bureau Chief, Bureau of Aviation and Port, CT DOT, dated 5/11/06, to First Selectman Chiaramonte, requesting comments from Harwinton regarding Mr. Pesce's proposed heliport.
- 12.6** Letter from Kaman Aerospace International Corp, Bloomfield, dated 5/16/06, to Mr. Pesce from George Haliscak, stating that KMax Helicopter training was conducted at Johnnycake Heliport on 16 different dates in 2004, 2005 and 2006 (specific dates listed).
- 12.7** Letter from LUC Polly Redmond to Burlington First Selectman Theodore Scheidel, dated 3/20/07, per Zoning's "request that the Town of Burlington be notified of the application before them and that any comments be sent to them" regarding Mr. Pesce's proposal for a heliport.
- 12.8** Letter from Burlington First Selectman Theodore Scheidel to Zoning Chairman Clarence Caldwell, dated 4/9/07, in response to 3/20/07 request (exhibit 19), stating that there is not a consensus of the Board of Selectman on the matter, that he does not have a problem with the helicopter operations continuing as they have been, that he personally believes that helicopters have been landing there since before the airport closed, and that he would suggest considering limiting their use to weekdays only and between 8 am and 5 pm.
- 12.9** Copy of excerpt from publication in LUC office referencing Helicopter Associates, Inc. V. Stamford, 1986 regarding intensification of nonconforming use of a heliport.

Town Atty. Rybak submits the following:

Exhibit #13: Decision of the Supreme Court of Connecticut in the case of Helicopter Associates, Inc., et al. v. City of Stamford, 1986.

Chairman Rotondo opens the floor to the appellants.

Attorney Grimes explains that his clients, Mr. & Mrs. Miller, were unaware that the Zoning Commission was again discussing the proposal of a commercial heliport on Mr. Pesce's property and they were not present at any of the meetings. He states that the hearing this evening provides opportunity for his clients to explain why they believe that the Zoning decision of March 12, 2012 was erroneous. He points out that according to the FAA and the state, any private property owner can have up to 36 helicopter operations

per year, with each take off considered a single operation and each landing considered a single operation. Atty. Grimes explains that for a commercial heliport there is no limitation on the number of flights per year and his clients are concerned that 529 Burlington Road not become a commercial heliport. Atty. Grimes represented the Millers in 2007 when Mr. Pesce made the same request for a commercial heliport and at that hearing where both sides were heard, Mr. Pesce was denied. Atty. Grimes would like the ZBA to deny Mr. Pesce's request for a commercial heliport. Mr. Grimes states that (1) nothing has changed since the Zoning Commission denial of the application on May 14, 2007 and (2) Mr. Pesce had a right to appeal to the ZBA in 2007 after he was denied and he did not. Atty. Grimes indicates that there is no new evidence, facts or law to change the outcome. Atty. Grimes states that he and his clients are asking the board to overturn the Zoning Commission's March 12, 2012 decision that the heliport is a legal non-conforming use of 529 Burlington Road.

Atty. Perley Grimes submits the following, with a copy provided to each seated member of the board, to Town Atty. Rybak and to Clerk Mrs. Neal:

Exhibit #14: Package of materials, consisting of 19 items (#14.1 - #14.19), with highlighted and/or underlined portions pertinent to presenting of the appellants' case. The 19 items are as follows:

Exhibit #14

14.1 Legal Notice of the ZBA Appeal

14.2 Attorney Grimes letter dated April 10, 2012 to ZBA Clerk

14.2a. \$215.00 check to Town of Harwinton

14.2b. Appeal to ZBA

14.2c. April 9, 2007 Grimes letter to Zoning Commission

14.2d. May 14, 2007 Zoning Commission Decision

14.2e. Assessors location map

14.3 Pesce Application dated October 4, 2011

14.4 Johnnycake Airport Property LLC Secretary of State information

14.5 Pesce Application dated May 8, 2006

14.6 Grimes letter dated April 9, 2007 with attached Exhibit 1 and Exhibit 2 (Pesce Deed) and Exhibit 3 May 18, 2006 letter Ms. Redmond to Richard J. Jaworski

14.7 Burden of Proof Treatise

14.8 May 18, 2006 letter from Ms. Redmond to Richard J. Jaworski

14.9 Kaman letter dated February 29, 2012

14.10 Assessors Card of 579 Burlington Rd.

14.11 Zoning Commission Agenda February 27, 2012

14.12 Zoning Commission Minutes February 27, 2012

14.13 Zoning Commission Agenda March 12, 2012

14.14 Zoning Commission Minutes March 12, 2012

14.15 Zoning Commission Agenda November 28, 2012

14.16 Zoning Commission Minutes November 28, 2012

14.17 Excerpts from March 27, 2006 to April 23, 2007 Zoning Commission Minutes

14.18 Annotated Transcript February 27, 2012 Zoning Meeting

14.19 Annotated Transcript March 12, 2012 Zoning Meeting

Atty. Grimes reads through various portions of Exhibit #14, particularly: the appeal, the 5/14/07 meeting minutes, the 10/4/11 and 5/8/06 Pesce applications, Atty. Grimes' 4/9/07 opinion letter and transcripts of the 2/27/12 and 3/12/12 Zoning meetings.

Atty. Grimes refers to the following, provided this evening to members of the board:

Exhibit #14.20: Airport licenses referred to by Zoning Chairman Brazaitis in the transcript of the March 12, 2012 Zoning meeting: (1) Airport License No. 42 for Johnnycake Heliport, Burlington for a commercial heliport, expired 1/4/1963; (2) Airport License No. 42 for Johnnycake Airport, Burlington for a commercial airport, unsigned, expired 8/24/1961; and (3) Airport License No. 42 for Johnnycake Airport, Burlington for a restricted landing area (non-commercial), unsigned, expired 8/24/1957.

Atty. Grimes states that there is no substantial record to justify the Zoning Commission's decision, that any licenses for any airport are all for Johnnycake Airport or Mountain Meadows Airport and are in Burlington. He explains that the heliport is not noted on any maps that have been filed, submitting the following (oversized) exhibits for the record:

Exhibit #15: Map #1298 filed in the Town, sale of portion of Pesce property to Martin Peabody for Self Storage units, 2003

Exhibit #16: Map of portion of Pesce property sold to George Pelletier for Courtside Sports Center, 2009

Exhibit #17: Map showing use of 529 Burlington Road for Mulch Processing by Supreme Industries, 2012

Atty. Grimes asks Mr. Richard Miller to come forward.

Atty. Grimes asks Mr. Miller if he had any advanced notice of the 2/27/12 or 3/12/12 Zoning meetings to which Mr. Miller answers no, he did not. Atty. Grimes asks if Mr. Miller is a member of any commissions or boards to which Mr. Miller answers that he is on the Burlington Inland Wetlands and Watercourses Commission, Burlington Planning & Zoning Commission and Burlington Conservation Commission. He states that he also used to be a Selectman for the Town of Burlington.

Atty. Grimes outlines the board's options, explaining that the process does not allow an applicant to come in repeatedly for the same application. He asks that the board sustain the appeal and overturn the Zoning Commission's March 12th decision.

Chairman Rotondo opens the floor to Mr. Pesce at 8:39 p.m.

Mr. Pesce tells of the history of the airport. He talks about his initial conversations with Mr. Hogan over a 10 or 12 year period when he would ask Mr. Hogan about something that he wanted to do on the land and Mr. Hogan would tell him to "go ahead, not asking for anything". He explains that there was a time when "we built a runway" and that there are pictures and newspaper articles of things happening over the years and that these are missing. He indicates that he believes that these provide proof about the airport. He goes on to say that through verbal agreement with Mr. Hogan, he kept improving the runway and after awhile lights were added and cables run underground. He states that it is documented in the papers that Mr. Hogan liked the airport and he wanted it to stay.

Mr. Pesce recalls speaking with Mr. Miller before Mr. Miller bought the airport property. He states that he remembers Mr. Miller "liking" the airport, but then there were some disagreements between the pilots and the airport manager at the time or between the airport manager and Mr. Miller or some other similar situation. He states that after that, Mr. Miller shut the airport down. Mr. Pesce explains that he went to Mr. Miller to talk to him about it and Mr. Miller said he'd think about it.

Mr. Pesce explains that there are three levels to obtaining a commercial airport or heliport license. First the Town has to approve it, but they have nothing to do with the location of the approaches. Then the state approves the site and approaches for the state license. The FAA controls the air over the land, with no control over the land itself. They have all the records of the maps, approaches, telephone and various other services. Mr. Pesce states that Johnnycake Airport is listed in every country as an airport.

Mr. Pesce expresses his belief that "there is a lot of misunderstanding". He indicates that he was told to make sure that helicopters do not fly over Mr. Miller's land and so he has made sure of that and they never have. He states that the helicopter operations involve important testing, unmanned tests, instrumental government testing and that they have the records. He indicates that Kaman has records and that he does not keep the records himself.

Mr. Pesce asks Atty. Rybak to read aloud from a 1987 US DOT federal publication, expressing that he finds it very difficult or impossible to do so himself. Atty. Rybak reads aloud a section on page five of the publication, which Atty. Rybak indicates agrees with state statute, that states that an airport automatically includes a heliport.

Chairman Rotondo opens the floor to members of the board. Mrs. Duchaine asks where the heliport is, with Mr. Pesce stating that Lifestar has landed in the parking lot and that Kaman takes off and lands in the area in the back, in the same general area of the mulch piles. He states that even while the airport was still open, helicopters took off and landed on his property. Mr. Pesce conveys his belief that a heliport is an asset to Mr. Miller. He recalls that in the past, executives would land at the field when traveling to nearby attractions like Limerock and parts of Litchfield.

Mr. Pesce is asked what he would need to do to his land in order to operate a commercial heliport. Mr. Pesce explains that he would need to build a pad about the size of the assembly room in Town Hall, put up a windsock, and modernize communications. He indicates that the construction of a pad keeps sand and other small debris from being a problem during take-offs and landings.

Atty. Rybak asks when Mr. Pesce built the runway. Mr. Pesce states that it was about 1956 when there was a grass strip used for take offs and landings. He explains that the war was on and there was strong demand. He was hired to improve the runway. The grass strip was graded and stumps were removed. A few years later it was improved. There were no buildings yet and you had to open and close the gates to access the area. The first building was "The Pilot's Building" with a phone, at the head of the runway. Mr. Pesce explains that he rented land from Mr. Fenn and on this land he parked several planes. He recalls that it was the late 50's, early 60's. Mr. Pesce is asked when helicopters started landing on his side of the airport. Mr. Pesce states that he owned a helicopter. It is recalled that a mailman named Charlie Barber owned a Cessna and flew Mr. Pesce's helicopter and that his wife kept Mr. Barber's logbooks. In 1965, Mr. Pesce bought the land on the Harwinton side from Mr. Fenn (deed as part of Exhibit #14.6). Mr. Pesce talks about a big, thick book of pictures of the airport, a lot of History, that is now missing. He expresses that he would like to know where all his pictures went. He recalls that at one point, Mr. Chiaramonte had the book.

Mr. Pesce asks the board what they want from him. Chairman Rotondo explains that it is not up to the board to ask Mr. Pesce for a specific item or items, but up to Mr. Pesce to present his side of the issue and to present it at this hearing. Mr. Pesce expresses that he will bring in whatever the board wants. Atty. Rybak explains to Mr. Pesce that if he wants more time to find something to present to the board, that he needs to express that. Mr. Pesce states that he just wants it to be "over and done". He "just wants it to be settled, either way". To further clarify, Clerk Mrs. Neal explains to Mr. Pesce that if the hearing closes this evening, there will be no further opportunity for testimony or evidence for or against the appeal.

Chairman Rotondo polls the members for their opinion as to whether to request from the appellants an extension to continue the hearing to another night or to close the hearing this evening. There is not a consensus and although an official motion is not made at this time, the poll of regular members shows three in favor of closing and two in favor of continuing. Atty. Grimes indicates that if the board would be asking to continue the hearing to another night, that he would reserve his closing arguments until that night, otherwise he would present his closing this evening. Chairman Rotondo indicates that he would like to hear what Atty. Grimes has to say and then have the board make a decision as to whether to request an extension to continue the hearing.

Atty. Grimes presents his closing arguments, entering the following two exhibits into the record.

Exhibit #14.21 – Letter from CT DOT to Mr. Miller, dated 4/4/1994, acknowledging receipt of Mr. Miller's letter requesting renewal of License No. 42 in the name of Mountain Meadows Corp. The letter states that the license is renewed with certain stipulations, one being that the license only covers property owned and controlled by Mr. Miller. An agreement between Mr. Pesce and Mr. Miller would need to be submitted to CT DOT in order to continue use of both properties under the commercial license no. 42.

Exhibit #14.22 – Letter from US DOT FAA to Mr. Miller, dated 3/30/2004, confirming receipt of FAA Form 7480-1, for the deactivation of Mountain Meadow Airstrip in Burlington.

Atty. Grimes asks Mr. Miller to come forward. Mr. Miller indicates that he has invested much in the purchase and development of the airport property and in the 1803 Libby-Fenn house across the street. He explains that there was some disagreement or problem in the past with the 22 pilots he leased to, having to do with an insurance policy, saying that it is "all in the past". Although he could not say what the future holds for the property, he explains that today, of the 231 acres, 33 acres consist of fields of hay and corn. Some of the property is now the site of an over age 55 adult community. He talks about how at one point he could have sold a large piece of the land for the building of a new school back when Region 10 was looking to solve the overcrowding problem at the schools. Region 10 has since moved the 5th grades to the middle school and renovated the middle and high schools instead. He expresses that he hasn't "sold out", but rather loves the property. He expresses that a commercial heliport is not a prudent use in the area of a school, Senior community or Senior care facility or near the numerous, large piles of mulch. He asks that the board base their decision on the Zoning Regulations. Mr. Miller indicates that he is "somewhat sorry that the airport will never be".

Motion Mr. Gelormino, second Mrs. Duchaine at 9:43 p.m. to close the public hearing. The motion passes unanimously. Alternate member Nancy Shanley-Schnyer exits the meeting room.

REGULAR MEETING

1. Open meeting – establish quorum.

Chairman Tom Rotondo opens the regular meeting at 7:45 p.m. All regular members are present and seated, with a quorum established. Clerk Christine Neal is present and proceedings are recorded on audio tape.

2. Approve minutes of previous meeting: 6/13/12.

Members note that April 11, 2012 meeting minutes are yet to be approved. **Motion** Mr. Gelormino, second Mr. Root to approve the 4/11/12 meeting minutes as submitted, passing unanimously. Alternate member Mr. Christian is seated for approval of the June 13, 2012 meeting minutes. **Motion** Mr. Christian, second Mr. Gelormino to approve the 6/13/12 meeting minutes as submitted, passing unanimously.

3. Discussion/possible decision – Tony Rizzi – application for 9' side yard variance for an open deck, Section 5 (Country Residential Zone) Zoning Regulations, 378 Clearview Avenue.

Mr. Gelormino recuses himself and Mr. Christian is seated. All other regular members are seated. Seated members discuss the application. **Motion** Mr. Bigos, second Mrs. Duchaine to grant the variance as applied for as the house is non-conforming in that it is located in the side setback and the deck would be less non-conforming built further away from the side yard property line, hardship being the small size of the lot. The motion passes unanimously. Clerk Mrs. Neal is to inform the Land Use Coordinator of the decision and to inform the applicant of procedures in recording the variance in the land records.

4. Discussion/possible decision - Mountain Meadows Corporation, Route 4 and Johnnycake Mountain Road, Burlington, Richard A. Miller, its President; and Harwinton Square, LLC, 520

Burlington Road, Harwinton, Richard A. Miller, its Manager - appeal from the Harwinton Zoning Commission determination of March 12, 2012, that upon the consensus of the commission, a heliport at 529 Burlington Road (Harwinton, CT) is a legal non-conforming use of this property owned by Johnnycake Airport Property, LLC, agent Fred Pesce.

Mr. Christian is no longer seated. Mr. Gelormino and the four other regular members are seated.

Chairman Rotondo requests written legal opinion be submitted by Town Atty. Rybak. Members discuss taking time to review materials presented this evening. **Motion** Mr. Gelormino, second Mr. Root, to set a special meeting to Wednesday, July 25, 2012, 7:00 p.m. to discuss and possibly decide on the appeal. The motion passes unanimously.

5. Any other business.

None.

6. Correspondence.

None.

7. Invoices.

None.

8. Adjourn.

Motion Mr. Root, second Mrs. Duchaine at 9:52 p.m. to adjourn, passing unanimously.

Respectfully submitted,



Christine Neal
ZBA Clerk

RECEIVED

JUL 17 2012

TOWN CLERK