

Wednesday, June 18, 2014, Town Hall, 7:00 p.m.

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

Alternate members present: Jesse Smith, Timothy Wyllie.

**PUBLIC HEARING – Continued from June 11, 2014**

**1. Open hearing – establish quorum.**

At 7:02 p.m. Chairman Tom Rotondo opens the continued hearing. Each member of the board introduces him/herself. Seated members are Tom Rotondo, Janet Duchaine, Mark Gelormino, Theodore Root and Michael Durstin. ZBA Clerk Christine Neal is present and proceedings are recorded on audio tape.

**2. Don Truskauskas – appeal from Notice of Violation by ZEO David Perkins regarding use of a home for personal business and overnight parking of commercial vehicles in a residential zone, Zoning Regulations Sections 6.19 and 6.20, 99 Scoville Hill Road.**

Town Attorney Michael Rybak, Harwinton Zoning Enforcement Officer David Perkins, Atty. Steven Byrne (counsel for Mr. Perkins), appellant Don Truskauskas, Atty. John Febbrioriello (counsel for Mr. Truskauskas) and other interested persons are present.

Clerk Neal reads the following list of exhibits into the record:

**EXHIBIT LIST**

1. Harwinton Zoning Regulations, effective 9/17/12.
2. April 14, 2014 minutes - Harwinton Zoning Commission regular meeting with attachment:
  - a. Complaint, April 9, 2014, Jessica Genovese, 109 Scoville Hill Road.
3. April 28, 2014 minutes - Harwinton Zoning Commission regular meeting with attachments:
  - a. Complaint, April 21, 2014, Ronald & Jessica Genovese, 109 Scoville Hill Road.
  - b. Complaint & activity log, 2007, Larry & Judith Mareane, 92 Scoville Hill Road.
  - c. 2007 & 2008 excerpts of Zoning minutes regarding complaints against Truskauskas, includes Francis Regalye, 95 Scoville Hill Road.
  - d. ZEO Report, April 28, 2014.
4. May 12, 2014 minutes - Harwinton Zoning Commission regular meeting with attachment:
  - a. May 5, 2014 letter from Don Truskauskas to ZEO David Perkins.
5. May 27, 2014 minutes – Harwinton Zoning Commission regular meeting with attachments:
  - a. Complaint, May 9, 2014, Georgia Buettner, 79 Scoville Hill Road.
  - b. May 27, 2014 letter from ZEO David Perkins to Georgia Buettner.
6. NOV - Request for Voluntary Compliance Notice of Violation, April 29, 2014 issued by ZEO David Perkins.
7. Appeal dated May 21, 2014 – Don Truskauskas, 99 Scoville Hill Road, property owner appealing from the action of the ZEO.
8. Legal notice of this hearing: published in the Waterbury Republican American May 31 and June 7, 2014 and mailed certified, return receipt requested to neighbors within 200' of Truskauskas property and to appellant Don Truskauskas, 99 Scoville Hill Road.
9. List of abutters noticed certified, return receipt requested: name, address and Assessors Map No. of neighbors within 200' of the Truskauskas property.
10. Assessors Map showing Truskauskas property, 99 Scoville Hill Road, Assessors Map No. A7-02-8A, and neighbors noticed.

11. Proof of mailing: certified mail receipts from noticing abutters and appellant.
12. Assessors Street Card, 99 Scoville Hill Road.
13. Deed to property, 99 Scoville Hill Road.

Chairman Rotondo gives the floor to Atty. Steven Byrne, representing ZEO David Perkins.

Atty. Byrne presents his letter of opinion, dated June 11, 2014 (**Exhibit #14**), providing copies for members of the board, ZBA Clerk and the appellant's counsel. Mr. Byrne first explains that based on state statute, the ZEO is allowed to issue a NOV even without a motion of the Zoning Board directing him to do so and that this board has jurisdiction to hear and decide on this matter even though the action of the ZEO was not a Cease & Desist Order, but a NOV and Request for Voluntary Compliance.

Atty. Byrne explains that the board's task is to make their decision "De Novo": to "find the facts and apply the pertinent zoning regulations to those facts", essentially acting as the zoning enforcement officer. The decision is to be based upon the record and testimony of this public hearing. Mr. Byrne summarizes the allegations of the ZEO, citing Section 4.1 of the Zoning Regulations regarding allowed uses in the Country Residential Zone, and Sections 6.19 and 6.20, both the subject of the Notice of Violation (NOV), calling special attention to those portions of these regulations, reproduced below, that are **in bold**. Sections 6.19 and 6.20 of the current Zoning Regulations (page 38):

6.19 **USE OF HOME FOR PERSONAL BUSINESS.** Nothing in these regulations shall restrict the use of a private home for personal business by the owner or occupant where there are no employees other than the occupants, no signs indicating a non-residential use, no clients coming to the house **and a reasonable neighbor would not know that such an operation is taking place.**

6.20 **OVERNIGHT PARKING OF COMMERCIAL VEHICLES IN A RESIDENTIAL DISTRICT.** Commercially operated or commercially registered vehicles having a gross vehicle weight in excess of 19,500 pounds or greater than two axles are not allowed to park or be stored on private property in a residential zone overnight except when:

They are providing a **service related to the property** where they are parked or kept overnight.  
They are in conjunction with the need for an emergency repair, but only on an occasional basis.

On-call vehicles (Municipal, Water Co., CL&P, Gas Co., Service Vans, etc.) shall be exempt from this regulation. Farm vehicles, as listed as Code 4 with the Harwinton Assessor's office, in conjunction with a farm are also exempt.

In accordance with the above three exceptions the following shall apply:

- One commercial vehicle shall be permitted per property.
- The commercial vehicle must be operated only by owner of the vehicle who derives his livelihood from the operation of the vehicle and not family members or employees.
- The number of trips permitted in a 24-hour period is six (6) which means no more than three (3) round trips to the residential home where the vehicle is permitted to be parked onsite.
- Commercial vehicles **cannot idle for more than 15 minutes.**

Mr. Byrne states that "the Board should follow the established rules of statutory construction as set forth by the courts of this state." He explains that "the interpretation of zoning regulations, being governed by the same principles that apply to the construction of statutes, must be interpreted in accordance with the principle that a reasonable and rational result was intended."

Mr. Byrne refers to Exhibit 3d, ZEO Report dated April 28, 2014. Atty. Byrne offers that the question to ask Mr. Truskauskas is where he stores his company vehicles when they are not being used. He states that most contractors would have a staging area in an industrial zone or business zone where these vehicles

would be parked when they are not at a job site. He expresses that the large dump truck in question would not be considered a farm vehicle or a vehicle used in service to the property as intended by these regulations.

Chairman Rotondo asks ZEO Dave Perkins to provide a verbal summary of his report (Exhibit #3d), which he does. Mr. Perkins' states that:

The home is being used as a personal business.

Reasonable neighbors have complained that Mr. Truskauskas is using his home as a personal business.

Section 6.19 speaks of use of the "home" for personal business, such as with an accountant or attorney. Having a large construction truck at the property is not using the home.

He saw the large dump truck parked overnight twice. Mr. Truskauskas told him that he does park it overnight. It's definitely over the weight limit.

Chairman Rotondo gives Atty. Febroriello, counsel for the appellant, the opportunity to question ZEO Perkins. Atty. Febroriello asks several questions relating to Mr. Perkins' interpretation of Section 6.20, particularly with regard to what it means for a vehicle to be providing a service to the property and if Mr. Perkins knew if the truck in question was providing a service to the property when he saw it parked there. Mr. Perkins states that he does not know, but he knows of at least 3 occasions when it was parked overnight on the property.

Atty. Febroriello asks questions relating to the use of this truck in 2007 at the property and Zoning minutes that reflect such use. He asks if Mr. Perkins would say that the use of this large truck would be a "non-conforming use" since it was used in service to the property before Section 6.20 was added to the Zoning Regulations in 2008. Mr. Perkins states that in 2007, Mr. Truskauskas was using the truck in relation to the building of his house and that the use of the truck at his property today is a new use. Mr. Febroriello mentions that there was a motion made, but not seconded, at a recent Zoning meeting, that Mr. Perkins issue a Cease & Desist Order. The motion did not carry and Mr. Perkins was instructed by Zoning to investigate the complaints.

Atty. Febroriello follows a line of questioning with relation to Section 6.19, with Mr. Perkins stating that he has not seen a business sign on the property (only on the side of the large dump truck) or evidence of clients coming to the property and that he believes Mr. Truskauskas does not have any employees. Mr. Perkins expresses his belief based on testimony from the neighbors and his own observations that Mr. Truskauskas is running a personal business on his property in the form of the staging of various construction trucks on his residential property in between times when they are not parked on a construction site and that he is bringing them on and off his property due to sometimes needing them or having them at a work site and sometimes not.

Mr. Febroriello asks about farm related use of vehicles at the property. Mr. Perkins states that he believes Mr. Truskauskas does some agricultural operations on the property, but he doesn't know if the property would be considered a farm. Mr. Perkins indicates that Mr. Truskauskas had told him that he has used the large dump truck for bringing in manure and firewood to the property. Mr. Perkins states that Mr. Truskauskas does own a farm vehicle and has a farm stand.

Chairman Rotondo gives the floor to Atty. Febroriello and Mr. Truskauskas for their presentation of the appeal. Atty. Febroriello questions his client. Mr. Truskauskas responds:

The property consists of 20.24 acres with a couple of agricultural fields and the house, with 490 farm exemption status through the Town Assessor's office.

The same large dump truck of the current complaint was parked overnight on the property in 2007 when there was complaint(s) by a neighbor across the street. The ZEO at that time, Karen Nelson, found no violations.

The dump truck has an idle control as required by emission regulations and will not idle longer than five (5) to seven (7) minutes, as it will automatically shut down after that period of time, with no way to bypass it.

It is a diesel, but since it is a model year 2000 truck and computer controlled, there are fumes, but no soot in the exhaust.

The dump truck is used to haul fire wood to the property as it becomes available throughout each year (since 2005), and also, since 2007/2008, for hauling manure to the property to establish the fields.

Autumn Contracting, LLC, is primarily excavation, septic system repairs, sewer and water lines, anything digging in the dirt.

The property is not used as a staging area. When the construction equipment is not being used, it stays at the job sites.

**Exhibit #15** submitted by Mr. Truskauskas: Two (2) photos of Autumn Contracting vehicles staged on work sites: one is in Harwinton from project being done last fall, parked three (3) days and from there it went to West Hartford; the other is from a couple years ago in Watertown, for a road extension project, being parked on site for weeks before hand and then afterward that project it left for a short time to haul some snow and then from there was left at West Farms Mall where it was used for hauling snow for a majority of that winter.

He has an excavator that he is not using currently, on a property in Litchfield that is owned by a trucking company, stored there for about four (4) months, then out to New Hartford and then brought back to that Litchfield location. His smaller excavator and bulldozer are at a job site in New Hartford although that job is finished. He is leaving the equipment there until the next job starts.

The dump truck only comes to the house for service to the house, to haul manure or firewood to the house, otherwise it remains on the job site, is parked elsewhere. The dump truck only gets 5 miles per gallon so he doesn't drive it any more than he has to.

There are no employees and no signs and he is the one who drives the dump truck. Nobody comes to the property except for farm purposes. He does not have an office in the home specifically. The phone number he uses for business is his cell phone. He does invoicing occasionally at home and stores business records in the attic.

The property has 100' of frontage and the house is about 600' back from the road.

**Exhibit #16** submitted by Mr. Truskauskas: CT Dept of Revenue Services Farmer's Tax Exemption Permit, issued 11/20/2012, expires 9/30/2014, to Don & Dawn Truskauskas, Autumn Acres Farm, 99 Scoville Hill Road.

Chairman Rotondo gives Atty. Byrne the opportunity to question appellant Don Truskauskas. Atty. Byrne asks several questions. Mr. Truskauskas responds: He purchased the property in November 2005 and obtained a Certificate of Occupancy and moved in in November 2006. Additional improvements were made to the property after moving in, including the planting of a field of Christmas trees at some point, creation of an agricultural pond at some point, and some installation of lawn and landscaping in 2007.

Atty. Byrne indicates that ZEO Karen Nelson investigated the complaints which began in 2007 and concluded in 2008 there were no violations at the property because it was an ongoing work site, you were still making substantial improvements to the property, such as bringing in loads of material for a driveway.

Mr. Truskauskas states that the only time the large dump truck has been at his property in the last 6 months is to bring firewood or manure. The truck holds about 2 cords of wood and Mr. Truskauskas burns about seven (7) to nine (9) cords of wood per year. He brought in 5 loads of manure this year. Atty. Byrne states that this amounts to about 8 times per year that the dump truck provides service to the property. Mr. Truskauskas states that if it's not at an active job site, he leaves it at the road extension project in Watertown, which is still ongoing. He never leaves it idling in the driveway and starts it down by his house. It takes at least a minute for him to be able to move the truck when it is first turned on, because the air pressure has to build up before he can move it. There is never any soot/smoke, even when it first starts on a cold morning. He himself replaced the air brake cylinders in 2006 and any more elaborate repairs would be done by someone else. The truck is used for both the business and the farm. For tax purposes, the truck is a business/construction vehicle.

Member Jesse Smith asks some questions of Mr. Truskauskas, with the following responses:  
Mr. Truskauskas would guess that the dump truck is parked when not in use at most probably 30 days out of the year.

Business is through referrals, no advertising.

Mr. Truskauskas operates his business out of his pocket, not out of his home, all through his cell phone. The business is operated more out of his truck during the day then out of his home.

If a person needs to send a retainer or remittance for a job that wasn't provided in person, it is mailed to his house.

Mr. Truskauskas states that 99 Scoville Hill Road is his business address, but that is not where he operates his business from.

When asked if he ever was given an exception for a home business, Mr. Truskauskas said he did not and that he never had to.

Chairman Rotondo asks what other equipment Mr. Truskauskas has besides a dump truck, 2 excavators and a bulldozer and how often is it at the property. The last time the big excavator was there was when he excavated the ponds in 2011. The bulldozer was there when he excavated the ponds and hasn't been there since. The last time the little excavator was at home was earlier in the spring when it was brought home on a trailer for a repair (hydraulic hose), because what he needed for the repair was not at the job site. He has a backhoe that he uses primarily for farm use and to operate his log splitter which needs the hydraulics of the backhoe to operate. The backhoe leaves the property two (2) or three (3) times per year and generally to help people out.

The public participation portion of the hearing begins at 8:07 p.m.

Atty. Perley Grimes, counsel for neighbors Mr. & Mrs. Genovese, 109 Scoville Hill Road, distributes packet of materials for members of the board, including the following table of contents.

**Exhibit #17 – Genovese Exhibits**

- 17-1 Secretary of State – Recording Division
- 17-2 Registration of Home Improvement Contractor
- 17-3 Survey of Property Map #1293
- 17-4 2010 Assessor's Motor Vehicle Listing – 11 units
- 17-5 2011 Assessor's Motor Vehicle Listing – 9 units
- 17-6 2012 Assessor's Motor Vehicle Listing – 11 units
- 17-7 2010, 2011 & 2012 Assessor's Personal Property Listing
- 17-8 Genovese Observed Vehicles List
- 17-9 Certain record Exhibits Highlighted
- 17-10 Mrs. Genovese's Notes – 3/30/12 through 5/6/14
- 17-11 Blackline Reg. 6.19 and 6.20
- 17-12\* Client Photos from CD – 19 (still photos made from video 17-17)
- 17-13\* Neighborhood Photos – 6
- 17-14\* Google Earth Photos March 2012 (20 109 Scoville Hill Rd.
- 17-15\* Google Earth Photos September 2013 (2) 99 Scoville Hill Rd.
- 17-16 Connecticut General Statutes 8-11

\*One set of photos only to Chairman, viewed by all members, filed in the records of the hearing

17-17 DVD of video taken by The Genoveses throughout April 2014, submitted for the file after Atty. Grimes goes through the list of exhibits 17-1 through 17-16.

Atty. Grimes goes through the list of exhibits.

17-1 is from the State of CT, dated Last Report Filed year 2012 lists Don Truskauskas and Dawn Truskauskas as principals of Autumn Contracting, LLC, with business address, mailing address and residence address at 99 Scoville Hill Road.

17-2 is from the State of CT, listing Autumn Contracting, LLC, as having address at 99 Scoville Hill Rd, effective 5/6/13, expiring 11/30/13.

17-3 is a survey map of property at 99 Scoville Hill Rd owned by the appellant and that of the Genoveses. The Truskauskas property may be viewed by the Genovese property along the side and rear property lines.

17-4, 5, and 6 – Atty. Grimes asks where these vehicles are located; the various trucks, trailers, triaxles.

17-7 lists personal property that is equipment not otherwise listed as a unit (vehicle or trailer) on the Motor Vehicle Listing, 2010 valued at \$9180, 2011 valued at \$3290 and 2012 valued at \$4113.

17-8 Ronald Genovese, 109 Scoville Hill Rd, testifies that he prepared this list and that he has observed at various times over the last eight years since he has lived at 109, the following list of equipment: tri-axle dump truck, backhoe/front loader, excavator, bulldozer, bobcat, heavy equipment trailer, landscaping trailer, white pick-up truck with Autumn Contracting stenciled on doors, yellow dual wheel box utility truck.

17-9 Consists of the following items already part of the record, but with portions highlighted: Exhibits 3b, 3d, 5a and 5b.

Highlighted 3b: Atty. Grimes reads the highlighted portions of the 2007 complaint by neighbors Judith & Larry Mareane, minus the 2 ½ pages of log entries listing comings and goings of equipment and trucks various 30 different days dating from June 7, 2007 through August 30, 2007.

Highlighted 3d: Atty. Grimes reads from the 4-28-14 ZEO report, pointing out that although Section 6.20 of the regulations was not in the Zoning Regulations until 2008, Section 6.19 regarding use of home for personal business has been in the Zoning Regulations throughout the time Mr. Truskauskas has owned the property. Atty. Grimes submits the video taken by the Genoveses and viewed by Mr. Perkins and referred to in his report, which becomes Exhibit #17-17 as noted above.

Highlighted 5a and 5b: Atty. Grimes reads from the May 9, 2014 complaint letter of neighbor Georgia Buettner and May 27, 2014 letter from ZEO Perkins to Ms. Buettner in response.

17-10 Jessica Genovese testifies that this is a list of comings and goings at 99 Scoville Hill Rd that she has observed from inside her home at 109 Scoville Hill Rd, looking out her window and has written down. The list consists of four (4) dates in March 2012, six (6) dates in April 2012, three (3) dates in September 2012, one date in October 2012, seven (7) dates in December 2013, four (4) dates in January 2014, three (3) dates in March 2014, fifteen (15) dates in April 2014 and one date in May 2014. Ms. Genovese states that this list does not include every observation she made, only the ones she not only observed, but wrote down. She states that it is a small sampling, that she works and is raising her family so would not be writing down every time a truck or piece of equipment left or came to the property.

17-11 Atty. Grimes points out that Section 6.19 of the regulations does not speak about service to the property. He indicates that 6.19 refers to use of *home* for personal business, not use of *property* for personal business. Atty. Grimes states that the vehicles listed in Exhibits 17-4, 5 and 6 are not stored or used inside the home, but outside on the property.

17-12 Mr. Genovese and Atty. Grimes describe what is seen in each of 19 still photos taken from the video which was recorded over various days in April 2014. The photos show the dump truck parked, leaving or returning to the property. Other equipment and vehicles are shown parked on the property such as a heavy duty trailer, a small trailer, a closed trailer, a backhoe and a couple of different pick-up trucks. The photos are not individually dated, but are from various days in April 2014.

17-13 Mr. Genovese and Atty. Grimes describe what is seen in each photo of the neighborhood: photo taken by Atty. Grimes from back yard of Genovese property showing barn and horses at the Genovese property with yellow utility vehicle parked behind fence on the Truskauskas property, photo taken from the road at the beginning of the driveway at 99 Scoville Hill Road with yellow utility vehicle seen parked behind Genovese fence in the background, view of neighbor Regalye's home along Truskauskas driveway, Scoville Hill Road running northward, home across the street from 99 Scoville Hill Road and a photo of another home across the street.

17-14 Mr. Genovese and Atty. Grimes describe what is seen in the two (2) Google Earth photos from March 2012. The photos are described as showing a large gravel area with various pieces of equipment parked. Atty. Grimes states that this looks very much like a contractor's yard and Mr. Genovese agrees. Mr. Genovese states that the Truskauskas property "looks like this most of the time until after that Zoning meeting in March when he pulled everything off his property." The truck, backhoe loader and trailer and other equipment then came back and this is stated as typical of what has been going on over the last eight (8) years.

17-15 Google Earth photos from September 2013 are described as showing construction vehicles and equipment on the property.

Mr. Genovese answers Atty. Grimes that he would say that the dump truck was parked overnight on the property hundreds of times over the last eight years, "constantly coming in and out". He answers that the dump truck was removed from the property after the Notice of Violation was issued.

17-16 Atty. Grimes explains that CT Statute 8-11 does not allow a member of any ZBA to participate in a hearing or decision upon any matter in which he is directly or indirectly interested in a personal or financial sense. He states that member Mr. Root is a consultant for Ambit Energy and that Mr. Truskauskas is also a consultant for Ambit Energy. Atty. Grimes asks that Mr. Root recuse himself as there is at least an appearance of a conflict of interest.

Atty. Grimes concludes that what matters is that the neighbors in this room find it reasonable to conclude that a business is being run and you can't keep equipment there. Atty. Grimes asks that the board uphold the NOV issued by ZEO Perkins and deny the appeal.

Member Mr. Gelormino asks for clarification on what truck left and came back in the first few items of the log (Exhibit 17-10). Mrs. Genovese does not recall, expressing that it could have been any of the construction vehicles.

Member Mrs. Duchaine asks Mrs. Genovese to clarify how she came to doing the logging of activity. Mrs. Genovese explains that the then ZEO Karen Nelson and also LUC Polly Redmond suggested that she keep a log, write a complaint, document it, video tape it.

Member Mr. Root asks Atty. Rybak if and how the board may use evidence submitted during the public participation portion of the hearing in making its decision. Atty. Rybak answers that you can and that is why this is a public hearing. The purpose of the hearing is to develop a record of documents and testimony. You are the finder of fact, weighing the evidence, applying the regulation to those facts. You should consider public testimony and you should ask questions.

James Pabilonia expresses concern over conflict of interest. He explains that he knows something about the 490 farm tax exemption. He would like to know what crops are grown on the property. He believes there are no crops and that there is no income derived from any crops. He expresses that there may be a "normal garden". In conclusion, he questions the 490 status. He asks if the home is taken as a business deduction for tax purposes and if it is, then he would say that is evidence that this is a business location.

Joe Campoli, 111 Shingle Mill Road, indicates he is a superintendent for a large construction company. He believes that Mr. Truskauskas is not being truthful when he says that his dump truck doesn't smoke. Mr. Campoli explains that any diesel when it is cold and first starts up, burns rich and emits black smoke. He says that it is very rare that a truck wouldn't, adding that the truck has some miles on it. Mr. Campoli expresses that service to the property means things like: you have to drill a new well or your boiler goes. The required truck or piece of equipment is at the property where the work needs to be done for the day or two or three that is required to complete the job. He adds that fixing the brakes doesn't count, because the truck shouldn't be there in the first place. He indicates that the regulations allow for the exception of one (1) commercial vehicle and asks whether Mr. Truskauskas' pick up is also registered as a commercial vehicle. Mr. Campoli explains that the complaints in 2011 were for the traffic in and out of a backhoe on the trailer and the trailer by itself being hauled off and on the property by the dump truck, not just the parking. He alleges that although Mr. Truskauskas explains that he is working on his property and he has the proper permits, at least sometimes, these permits are taken out after work has begun.

Shawn Pace, 186 Scoville Hill Rd, mentions that Mr. Truskauskas is the Chairman of Zoning. He expresses that Mr. Truskauskas "has cost the town a lot of money, because he does not want to rent a place" for his business. He alleges that Mr. Truskauskas was denied farm status originally, offering that this could be confirmed by the Assessor. He alleges that Mr. Truskauskas built a pond in the flagged area



of the wetlands on his property and that this was not checked by the Town. He alleges that Mr. Truskauskas was not being taxed on his barn as there was no building permit pulled for it. He explains that these things were discovered upon researching Town records when recent Zoning Regulations changes were being proposed.

Chris Wall, 84 Shingle Mill Rd, explains that he is an attorney, but not a land use attorney. He has lived in Town for 18 years. He thanks the Genovese family for compiling all the evidence and Atty. Grimes for his presentation. Mr. Wall expresses that Atty. Grimes made points that he had planned to make, but that he would add the following points. Section 6.19 requires 4 conditions to be met in order to be able to use a home for personal business. Exhibits 2, 3 and 5 contain complaints from neighbors Genovese, Regalye, Mareane and Buettner all who conclude from what they have seen that a business is being run out of the property.

**Exhibit #18** – Mr. Wall submits Zoning minutes from February 23, 2004 when Mr. Truskauskas lived at 40 Bull Road and the Zoning Commission was questioning whether the property in the residential zone was being used for commercial purposes. Mr. Wall reads from the minutes that Mr. Truskauskas had a sign in the front yard in November and said that he would remove it. Mr. Wall expresses that Mr. Truskauskas has simply learned to not put up a sign. He adds that although it has nothing to do with 99 Scoville Hill Road, it does show a pattern of conduct. The Zoning minutes read, “Mr. Brazaitis questions the sign in the front yard. Mr. Truskauskas states that he did work on his property and put the sign out in November and will remove it soon.”

Mr. Wall asks the board to review Section 1.1 of the Zoning Regulations which outlines the purpose of the regulations which include the preservation of property values and the promotion of the health, safety and welfare of the inhabitants. He expresses that the Genoveses have spent significant time and legal expense to assist the board. He belies that 99 Scoville Hill Rd is “a blight in our Town”, Mr. Truskauskas has a “blatant disregard for our Zoning Regulations”, has “trampled on the fundamental purpose of the Zoning Regulations” and this is made even worse with Mr. Truskauskas being the Chairman of Zoning. He expresses he is thankful to have considerate neighbors and that he enjoys his property and the quiet. He asks that the board “protect our Town and enforce these regulations.”

Althea Stowe, 4 Timber Lane, expresses that if the board does not know the laws in this Town, the members should learn them before making a decision. She adds that two (2) years ago the ZBA denied her the permit for a garage. She explains that she had to bring in an attorney and that the board was proven wrong. She states that it is clear to her in going over these regulations that Mr. Truskauskas is wrong.

Cheryl Sherlock, 49 Harmony Hill Road, “directly asks Mr. Root to recuse himself”. She also asks him to state why or why not he would do so. She asks that Mr. Truskauskas provide specifications for his truck. She recalls that Mr. Truskauskas stated he has no employees, but she recalls that he used the word ‘we’ when referring to his business. She asks who is this “we”. She questions how he could do all of this work all by himself. She asks how many Christmas trees are on the property. She wonders where Mr. Truskauskas conducts his business if he doesn’t conduct it in his home. Ms. Sherlock states that he must walk up and down the road on his cell phone. She thanks the Genovese for their efforts stating that their actions help protect everyone in Town.

Faye Richards, Scoville Hill Rd, speaking for Mr. Regalye of 95 Scoville Hill Rd, explains that the trucks going in and out kick up a lot of dirt that comes into Mr. Regalye’s house, which is located right next to the dirt driveway. She explains that Mr. Regalye is 88 years old and just back from the hospital a few days ago. Ms. Richards recalls that the Town helped out the Truskauskas family when they needed help

and asks that Mr. Truskauskas “be considerate of his neighbors, use a little common sense and show a little compassion.”

Stephanie Chiappa, 106 Scoville Hill Rd, directly across from 99 Scoville Hill Rd, explains that Mr. Regalye is her uncle. She has seen a lot of what the Genoveses have explained and documented. She explains that her dog barks each time a large truck or the school bus, any large vehicle, is heard by her dog. This would be a regular morning occurrence, but over the last month it has been relatively quiet and she has been able to sleep in. The windows rattle from the comings and goings as well. She expresses that there usually is a lot of large truck traffic coming and going. The side of her uncle’s house (Mr. Regalye’s house) had to be power washed from the dust, grit and dirt that is kicked up from the traffic and ends up on the siding. This was done back at the time when ZEO Karen Nelson held the neighborhood meeting(s) and is now due for another cleaning.

Joe Campoli, 111 Shingle Mill Rd, states that the documents regarding farm status speak of income from a Christmas Tree Farm and the raising of cattle. Mr. Campoli asks where the Christmas trees and cattle are. He questions the validity of the farm status.

Lynn Steincamp, 160 Plymouth Rd, indicates that she is a member of the Zoning board. She speaks to clarify that she was the Zoning member who made the motion to issue a Cease & Desist order, but being new on the board she did not realize the proper order of dealing with a complaint. She expresses that she is still learning the procedures of the board and she made her motion out of sequence. She expresses that she never should have made the motion. The ZEO had not even visited the property at that point and it would have been improper, a mistake, for a Cease & Desist to be issued before the ZEO had gone out to address the issue.

Susan Galgano, 100 Scoville Hill Rd, directly across from the driveway of Mr. Truskauskas, moved out of her upstairs master bedroom and converted the downstairs den to a bedroom, back when ZEO Nelson was responding to complaints by neighbors. She has not been able to move back in to her bedroom since. The traffic in and out is not only noisy, but the headlights shine directly into that upper room that used to be her bedroom. She expresses her support of the Genoveses, Mr. Regalye and the Chiappas, adding that Mr. Regalye’s laundry hanging on the line gets dirty from the traffic in and out. Ms. Galgano testifies that she was witness to Mr. Truskauskas driving some sort of vehicle up to the Genovese’s horse that was in their fenced in area. She explains that the machine kept going up to the horse and the horse kept rearing up and Mr. Truskauskas kept doing it and to her it seemed purposeful.

Debbie Kovall, 789 Hill Road, recalls when farm ponds were to be created a few houses down from her. She explains that for two (2) years, gravel was mined and that animals do not go to this pond. She expresses that loopholes are found in the regulations by those who wish to make a lot of money. The trucks at the time would do a lot of beeping to back up, be noisy grinding up the winding hill from the pond and would be noisy with the Jake brake as they went down the hill to the pond for another load. There were no regulations at that time to prohibit the activity. She believes that her neighbor who was a stay at home mom living closer to the activity found that they had to move out because of it. She questions farm status at the Truskauskas property when there are no farm products, nothing growing there. She adds that the improvements and services mentioned are quick jobs. She asks the board to consider the quality of life in Harwinton. She would like the board to realize how important these regulations are.

At 9:20 pm, with no further public comment, Chairman Rotondo gives Atty. Byrne the floor.

Atty. Byrne refers to Exhibit 3c, Zoning minutes from 2007 and 2008 regarding complaints that Mr. Truskauskas was operating his business out of his home. Karen Nelson, the ZEO at the time, concluded that the trucks coming and going and being parked on the property were being used to continue to work on the site to complete the driveway, do the grading and establish lawn over the septic field, all site work in relation to the new home Mr. Truskauskas had built and was residing in on his property. Since this involved truck traffic coming and going to bring in fill, this lead to questions by the neighbors. The conclusion drawn by the ZEO at that time was based on what she saw and the explanation provided by Mr. Truskauskas at that time. She did not find that he was violating Section 6.19, use of home for personal business. Section 6.20 was not in the regulations yet. Ms. Nelson concluded that use in 2007 and 2008 was site work in relation to the new house. Mr. Perkins concludes that the use today is operating a business. The site work in relation to the home is complete. Although the scope is the same, the use in 2007/2008 is different than the use today, therefore the argument of existing non-conforming use does not apply. The burden of proof rests on those claiming an existing legal non-conforming use and there has been no proof this evening.

Atty. Byrne expresses that it is common to request documentation/proof of the neighbors upon their complaint of a Zoning violation. Mr. Perkins is a part-time employee working in this small town and appreciates the time spent by responsible neighbors, which is indispensable. It's not a negative and you really shouldn't hold it against Mr. Perkins that the evidence was brought in by the neighbors. The ZBA acts as the ZEO tonight and is not limited to what the ZEO saw and wrote in his violation letter.

Atty. Byrne states that the law, Section 6.19 and Section 6.20, is simple and the evidence is overwhelming. Mr. Truskauskas is violating the Zoning regulations.

Atty. Byrne advises that Mr. Root recuse himself to avoid the possibility that whatever decision made by this board be thrown out in court due to the possible conflict of interest of one of the board's seated members at these proceedings.

Atty. Byrne asks that the motion made by Atty. Febroriello to disqualify these proceedings be addressed. There are four attorneys here and this is money being spent.

With nothing further from Atty. Byrne, Atty. Febroriello is given the floor.

Atty. Febroriello asks that he have the opportunity to question his client at this time in order to rebut accusations brought forth this evening, as they are "unfounded and untrue." Although not part of the procedure, in the interest of due process, Chairman Rotondo honors the request.

Mr. Truskauskas explains that he was in fact issued a wetlands permit by the Wetlands Commission two (2) to three (3) weeks before he built the pond.

Mr. Truskauskas answers that it is not true that he was denied farm status. He explains that the first year they applied for farm status, they were issued 2 acres of farm status. His "interpretation of the law as directed by the attorney of the farm bureau is that forest land on your farm is part of the farm and that it is classified and should be classified as farm land." Through their advice, they applied each and every year for more and more farm land. Each year that they applied, they did get more farm land through the Assessor's office.

Mr. Truskauskas explains that at this point they have about four (4) Christmas trees left out of the 250 planted the first year. He indicates that the trees didn't survive because of the soil. As time went by, Christmas trees would die and when he refiled for farm status, he would re-classify the land, re-file the trees out.

Mr. Truskauskas explains that he only has one truck over the weight limit of 19,500 pounds and that is the one that he has for his own use and that is the one he has parked overnight on his property since he purchased the land in 2005.

Mr. Truskauskas states that he has a vehicle that is registered with farm plates and he has a trailer. The only yellow truck he owns is a farm registered vehicle.

Atty. Febroriello expresses that he is still uncertain as to whether the appeal is any good since what was issued by the ZEO was an invitation to remove a vehicle and not a Cease & Desist Order. He expresses that perhaps this should go back to Zoning and they can decide whether or not to file a Cease & Desist Order.

Mr. Febroriello mentions that he was involved with the appeal back in 2007 regarding complaints of use of Mr. Hock's home on Hill Rd. At that time, there was no regulation about parking commercial vehicles overnight. In 2008, Section 6.20 came into effect. Mr. Truskauskas has been parking his dump truck overnight on the property since 2005, before the regulation. Section 6.20 only talks about one type of vehicle, that with a weight over 19,500 pounds. Mr. Truskauskas' one truck that is over the weight limit is used to service the property to bring in manure for the farm.

Atty. Febroriello explains that you have to have a business address for tax purposes, that Mr. Truskauskas' vehicles are "all over the place", that he is not conducting a business on the property as defined by the Zoning Regulations. Mr. Febroriello explains that you have to have a sign and you have to have employees to be actively engaged in business. Doing billing and using the phone to conduct business is "hardly the definition of running a business out of your home". He adds that there has to be some outward manifestation that you are running a business. Having a truck that has your business name on the side that is parked on your property is not running a business out of your property. A doctor or a lawyer's office has a sign, people coming and going, there may be an employee there: that's the definition of conducting a business on the property. Mr. Truskauskas is allowed to park his big truck overnight on his property, because he has been doing it since before the regulation and it provides a service to the property. He has no staging area anywhere, the equipment and vehicles move around. The town taxes his trucks even though a lot of them aren't even there. There is no other way to do it. He has to write down an address for his business. Being an LLC, the mail has to be sent somewhere if there is no office anywhere, so registration with the State of CT goes to the residence. He explains that people with an LLC use their home address to receive mail. He refers to the survey map and that it shows that Mr. Truskauskas has a lot of land and a lot of neighbors and although he understands what the neighbors have gone through, Mr. Truskauskas has a right to use his land as long as he is not violating any Zoning Regulations. Atty. Febroriello requests that the appeal be sustained.

Atty. Grimes is allowed to speak. He expresses that under Section 6.19, four (4) conditions must be met in order to be allowed to use a home for personal business. He express that although Mr. Truskauskas meets three (3) of there, he does not meet the forth. Although Mr. Truskauskas has no signs, no employees and no clients, a reasonable neighbor would know that such an operation is taking place. He states that it has been proven this evening that these reasonable neighbors know that such an operation is taking place by

the traffic that is going in and out on a daily basis. He states that he "got a free pass in 2007 and 2008" because the ZEO at the time said he was still working on his house and site improvements related to it. There has been no testimony that he is still improving the site, but the trucks are still rolling in and out and the equipment is still on the property as can be seen by the Google Earth photos (Exhibits 17-14 & 17-15).

Faye Richards, Scoville Hill Rd, wishes to speak for herself and Chairman Rotondo gives her the floor. Ms. Richards expresses that she has lived on Scoville Hill Road for 43 years and has known Mr. Truskauskas since he was a child and her children graduated with him. She expresses that there is a conflict of interest. In addition, she asks where the equipment when Mr. Truskauskas doesn't have a job. She asks where the nine (9) to eleven (11) vehicles are when he doesn't have a job. She asks if it is in a barn. She states that if it is on the property when it is not on the job, then she believes that he is running a business out of that area. She states that his business *is* a business, it is a construction business.

Atty. Bryne is given the floor. He states that the complaint and enforcement brought against Mr. Peter Hock in 2008 and then appealed to this board was a Notice of Violation. The minutes at that time read that the NOV was taken as a Cease & Desist Order by this board.

Atty. Rybak explains that once the hearing is closed, no testimony, no letters, no email can be brought forth to this board regarding this matter. The only thing that can come to this board is advice from staff which consists of legal counsel (Atty. Rybak) and the ZBA Clerk.

### **3. Continue or close hearing.**

**Motion** Mr. Gelormino, second Mrs. Duchaine at 9:48 pm to **close the public hearing.** The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Theodore Root and Michael Durstin.

## **REGULAR MEETING**

### **1. Open meeting – establish quorum.**

Chairman Rotondo opens the regular meeting at 7:48 pm. All regular members present are seated: Tom Rotondo, Janet Duchaine, Mark Gelormino, Theodore Root and Michael Durstin. Clerk Neal is present and all proceedings are recorded on audio tape.

### **2. Approve minutes of previous meeting: 6/11/14.**

**Motion** Mr. Gelormino, second Mrs. Duchaine to approve the 4/9/14 meeting minutes as submitted. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Theodore Root and Michael Durstin.

Seated regular member Theodore Root recuses himself. Chairman Rotondo seats alternate Jesse Smith for Mr. Root. Mr. Smith has been present throughout all the proceedings. Mr. Root remains at the table of the board, no longer seated.

**3. Discussion/possible decision – Don Truskauskas – appeal from Notice of Violation by ZEO David Perkins regarding use of a home for personal business and overnight parking of commercial vehicles in a residential zone, Zoning Regulations Sections 6.19 and 6.20, 99 Scoville Hill Road.**

Members discuss tabling this item to allow time for members to individually, thoroughly review the materials and testimony provided this evening. This main assembly hall is unavailable for the board's next regular meeting night of July 9, 2014.

**Motion** Mr. Gelormino, second Mrs. Duchaine to table this agenda item of discussion/possible decision to a special meeting to be held July 2, 2014, 7:00 pm, Town Hall, in this same room (main assembly hall). The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Jesse Smith.

4. Any other business. None.

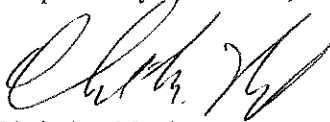
5. Correspondence. None.

6. Invoices. None.

7. Adjourn.

**Motion** Mr. Gelormino, second Mrs. Duchaine at 9:55 p.m. to adjourn. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Jesse Smith.

Respectfully submitted,



Christine Neal  
ZBA Clerk

RECEIVED FOR RECORD AT HARWINTON CT  
ON 6-27-2014 AT 12:30 PM  
ATTEST NANCY E. ELDRIDGE TOWN CLERK