

Wednesday, July 2, 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.

1. Open meeting – establish quorum.

At 7:02 p.m. Chairman Tom Rotondo opens the special meeting. Seated members are Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Jesse Smith. ZBA Clerk Christine Neal is present and proceedings are recorded on audio tape.

2. Approve minutes of previous meeting: 6/18/14.

Motion Mr. Gelormino, second Mrs. Duchaine to approve the 6/18/14 meeting minutes as submitted. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Jesse Smith.

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.

Town Attorney Michael Rybak, Harwinton Zoning Enforcement Officer David Perkins, appellant Don Truskauskas and other interested persons are present.

Chairman Rotondo explains that members have not had the opportunity to view the video footage (Exhibit #17-17, video taken by the Genoveses throughout April 2014) which was submitted into the record as a disc during the public hearing 6/18/14. Therefore it will be shown this evening.

Don Truskauskas states that, as a point of order, since nobody can comment or rebut, it should not be shown. Chairman Rotondo explains that since it was entered into the record and was not able to be viewed at the public hearing and members have not seen it, it should be viewed.

The video footage is shown in its entirety via projector onto a screen, in view and audible to those present, which takes about fifteen (15) minutes.

Attorney Michael Rybak states that it is not his task to weigh the facts or make the decision on the appeal, but to provide guidance to the board with regard to principles of law governing procedures and the issues raised and draw the board's attention to certain things to consider in the board's deliberations. Under State Statute 8-6, the ZBA is charged with "hearing an appeal of any order, requirement or decision of the ZEO, where it is alleged there has been an error". Under State Statute 8-7, the ZBA is charged with the authority to "reverse or affirm, wholly or partly or may modify any order, requirement or decision appealed from". Under State Statute 8-7, "The ZBA shall make such order, requirement or decision in its opinion should be made in the premises and shall have all the powers of the official (ZEO) appealed from". Under state statute, the ZBA shall state upon its records the reasons for its decision and notice of the decision shall be published in the newspaper and mailed to the appellant by certified mail.

Atty. Rybak reads excerpts from Fuller's "CT Land Use Law & Practice", Section 21:8:

The ZEO necessarily has to make an interpretation of the Zoning Regulations in deciding whether there has been a violation. The ZBA, in making its decision in an appeal of the ZEO's decision, has the authority to interpret the Zoning Regulation(s) and decide whether it applies to the situation. The ZBA

can make any ruling that should be made concerning the premises involved in the appeal, but must state reasons if the decision is anything but wholly upholding the decision of the ZEO. Atty. Rybak advises that no matter what the decision, the board should state its reasons so the court does not have to search the record to find the reasons. The board should make factual findings relevant to the claimed Zoning violation on the subject property and indicate its interpretation of the regulation(s). It is not the municipal attorney's role to find facts or make the decision.

Atty. Rybak advises the board to read the NOV carefully, compare it by reading the regulations, read the appeal and consider the evidence submitted at the hearing. The board stands in the shoes of the ZEO in making its decision, but only to the extent that the regulations and the law allow.

Atty. Rybak offers that regarding the issue raised at the hearing of a legally non-conforming use, the Zoning regulations and state statutes address this. A legal non-conforming use is a use that lawfully existed before a regulation or an amendment to the regulations was adopted which made it unlawful. If that use was not abandoned, but continuous, then it is constitutionally protected (by the State of CT Constitution).

Atty. Rybak reads aloud Sections 6.19 and 6.20 of the Zoning Regulations, noting that Section 6.20 regarding the parking of commercial vehicles in a residential zone came into effect October 2008.

Members review the Notice of Violation and the Appeal and discuss testimony and documents entered into the record at the public hearing. Members come to consensus that there is a preponderance of evidence that commercial vehicles have been coming and going from the property for some time. Referring to the wording of Section 6.19, it is noted that these trucks could not possibly fit inside a home. Mr. Gelormino indicates that bringing a truck load of dirt onto the property is not an issue. Mr. Durstin indicates that farmers drive their trucks on and off their property. Mr. Rotondo mentions the forth condition of Section 6.19, that a reasonable neighbor would not know that there is business being conducted.

Atty. Rybak refers to case law. In one case it was found that the bringing home of your work truck and parking it there is not considered conducting of your business if all you are doing is bringing your truck home at night and parking it there. In the other case, it was found that a business was being conducted at the residence where a home improvement type business, an LLC, was registered to the home address, the tax records were listed with that address and there was no other business location for the LLC. It is noted that Mr. Truskauskas has no other business address for Autumn Contracting, LLC. Atty. Rybak explains that Section 6.19 is the exception for home occupations which are allowed within certain limits in a residential zone through special permit. He explains that the board should actually be looking at Section 4.1 – Permitted Uses in Residential Zones.

It is discussed that the evidence shows that the 2000 Mack dump truck was stored and parked overnight at 99 Scoville Hill Road before Section 6.20 came into effect in October 2008. It is also noted that the business address is the home address according to Exhibits 17-1 and 17-2 (State of CT records for registration of Autumn Contracting, LLC). According to testimony of the appellant and the evidence submitted, there is no other place of business, no other address, for Autumn Contracting, LLC. The personal property taxes for 2010, 2011 and 2012 for the business equipment (Exhibit 17-7) and motor vehicle taxes for the commercial vehicles for these same three years (Exhibits 17-4, 5 and 6) all show the 99 Scoville Hill Road address. These items are taxed in the place where they are stored. Based on this evidence and photos, testimony and written logs all submitted during the public hearing, the board comes to consensus that Mr. Truskauskas is using his residential property as a contractor's yard.

Members refer to the Zoning Regulations, particularly Sections 1.3.1, introduction to Section 4 and Section 4.1. The members work on wording for a possible motion on a decision, but decide that more time is needed to finalize this wording and vote on a motion. The members come to consensus that the dump truck was being parked on the property before Section 6.20 was added to the regulations to disallow it.

The board concludes that a motion would state reasons for the conclusion that Mr. Truskauskas is running a contractor's yard at his home and that this is a violation of Zoning. The board concludes that a motion would state that the dump truck has to be allowed to continue to be parked overnight on the property since it has been parked overnight since before Section 6.20 came into effect, that it is a legal non-conforming use. The board discusses issuing a Cease & Desist Order for the operating of a contractor's yard at the home.

Motion Mr. Gelormino, second Mrs. Duchaine to set a special meeting to July 16, 2014, 7:00 pm, Town Hall, to continue discussion and make possible decision regarding the appeal. At that meeting, a draft motion will be reviewed, discussed and possibly voted on. The motion passes unanimously with five affirmative votes, all seated members: Tom Rotondo, Janet Duchaine, Mark Gelormino, Michael Durstin and Jesse Smith.

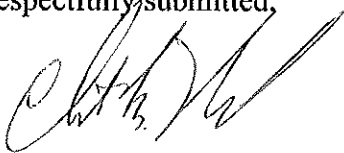
5. Correspondence. None.

6. Invoices. None.

7. Adjourn.

Motion Mr. Gelormino, second Mrs. Duchaine at 9:26 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 7-11-2014 AT 12:25 PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK