

HARWINTON ZONING COMMISSION
MONDAY, AUGUST 28, 2023
TOWN HALL 7:00 P.M.

Present: Chairman Daniel Thurston, Theodore Root, William Ponte, Deborah Kovall, Alternate Member Victoria Elliott, Land Use Coordinator Polly Redmond and Zoning Enforcement Officer Don Truskauskas
Absent: Secretary Cynthia Kasey, Alternate Member Michelle Whitford and Alternate Member Dave Foster

PLEDGE OF ALLEGIANCE

1. OPEN HEARING ESTABLISH QUORUM.

Chairman D. Thurston calls the meeting to order at 7:00 p.m. All regular members present are seated with Alternate Member Victoria Elliott seated for Cynthia Kasey.

2. APPROVE MINUTES OF PREVIOUS MEETING: 8/14/2023

Approval of minutes is tabled to the next Zoning meeting due to lack of a voting quorum.

3. PUBLIC COMMENT.

None.

4. JARED BRADDOCK, SUPREME INDUSTRIES, BUILDING DIVISION – APPLICATION FOR 25' X 50' ADDITION TO COMMERCIAL BUILDING, 216 BOGUE ROAD, B&R CORPORATION.

Mr. Braddock informed LUC Redmond that he is not ready to present at this time.

T. Root **motioned** to add to the agenda: **John Comporesi, 73 High View Drive, application for 12' x 24' garage**, seconded by V. Elliott. Motion passed unanimously.

Mr. Comporesi is present and has submitted a written request to waive the requirement for an engineered plan. He explains that a cover-it, measuring 32' x 12' x 11', is now located in this area and he would like to replace it with the smaller 12' x 24' x 9' Kloter Farms building that will be placed down on crushed stone. V. Elliott **motioned** to grant the waiver request for an engineered plan, seconded by T. Root. Motion passed unanimously. T. Root **motioned** to approve the application, seconded by W. Ponte. Motion passed unanimously.

5. LEONARD LOPARDO – DISCUSSION OF SUNSET RIDGE OFF MOUNTAIN VIEW DRIVE, HANNAH WAY, LAUREN LANE.

Mr. Lopardo is not present. An email received from Lillian Busse, Acting President of the unofficial Sunset Ridge Association, 15 Hannah Way, to the Land Use office dated August 28, 2023 is acknowledged. The four-page email outlines things that have been completed and things that are outstanding within Sunset Ridge. All Commissioners and ZEO Truskauskas have received a copy. A second email from Lillian Busse was received stating she has learned that Mr. Lopardo has not signed an Eversource contract for the street lights as of this morning. Mr. Lopardo attended the August 14, 2023 Zoning meeting and stated that he was still waiting on Eversource to supply the remaining lights. ZEO D. Truskauskas states that he met with Mr. Lopardo and Mr. Lopardo's contractor at the site recently and that the contractor is getting ready to take the trees down in the vicinity of the proposed swale. The swale will be where the walking path was proposed and he notes that the elevation of the walking path has to remain in order for the swale to work.

A letter from Mr. Lopardo's engineer, Todd Parsons, requested at the last Zoning meeting, is still outstanding that should state his opinion, on a stamped letter, on whether the swale is adequate to eliminate Catch Basin 18. Commissioners require that the engineer's letter also state whether the swale needs to be widened or deepened if the catch basin is to be eliminated.

Dennis Busse, 15 Hannah Way, states that the swale was on the original design plans and that Catch Basin 18 was also called for. If Mr. Lopardo's engineer designed this, how can he now say "it is not needed"?

ZEO D. Truskauskas states that WMC Consulting Engineers stated in their letter that the project would work well with just the swale. Mr. Busse states that WMC reported they would "go along" with the proposal of eliminating Catch Basin 18 but did not go as far as recommending it. Mr. Busse believes the only reason Mr. Lopardo wants to eliminate the catch basin is to save money.

William Foster, 6 Hannah Way, questions if there is a schematic drawing for the swale with ZEO Truskauskas stating it is on the original plans. Mr. Foster states that if Catch Basin 18 is eliminated all water runoff will now be directed to one catch basin. Any debris, etc., coming down the road will clog the catch basin further down the street. By installing Catch Basin 18, this problem would be eliminated. He explains that he has a catch basin in front of his house and it gets backed up so much that he has to go out there and clear it out himself. He believes there will be the same issue at the top of the development (north) with the elimination of the catch basin. He states that Mr. Lopardo has not solved any erosion problems, including the one at the Foley residence, 13 Hannah Drive, and he asks who will take responsibility if flooding occurs after Mr. Lopardo has moved on. ZEO Truskauskas states that Mr. Lopardo's engineer would.

Lillian Busse, 15 Hannah Drive, states that there are two new houses within the development that are going up that will contribute to water flowing down to her house and she states that the bank between her house and the Foleys at 13 Hannah Drive is eroding. Now Mr. Lopardo is asking for all runoff to go to one catch basin.

Anthony Mercuriano, 29 Hannah Drive, states that he is hearing tonight that there is enforcement on what is on the plans. If Catch Basin 18 is on the plan, it should be enforced. He states it is beyond his comprehension to allow the elimination of this catch basin and if it is Mr. Lopardo's engineer who will take responsibility for flooding, as ZEO Truskauskas said, what if the engineer is no longer around?

William Foster, 6 Hannah Way, states that there are now three more lots within the development that will have runoff. He has experience in building/construction and he states that the engineer only draws the plans and it is the contractor who has to make it work. He states he has no faith in engineers and there has been no field inspections at Sunset Ridge to see the failure when it rains.

Shirley Amundsen, 25 Hannah Way, states that during the last storm event water came down between 19 Hannah Way and 21 Hannah Way with such force that the water moved rocks. This is where Catch Basin 18 should be. ZEO Truskauskas states that the berm will stop some of this from happening and that he has done field inspections during rain events.

Commissioner D. Kovall proposes that the Commission receive clarification from WMC Engineers as to a more definitive response on elimination of Catch Basin 18. ZEO Truskauskas states that the design engineer should state that it would be adequate to eliminate Catch Basin 18, then the Commission can make a decision on whether to approve the modification or not. Commissioner T. Root states that the problem with the changes to the walkway (elimination of a portion of), the swale and the catch basin, he doesn't think these decisions were made thinking that the original engineer had planned for the walkway to stop the flow of water and he's not sure if any of the residents knew this. Lillian Busse states that a portion of the walking path was eliminated because it wasn't being maintained and the residents voted to eliminate two-thirds of it and take the gravel out. They never knew it was to become a swale.

Marguerite Fusco, 9 Hannah Way, agrees stating, yes, a vote was taken by the residents to eliminate a portion of the walking path but the residents didn't say they were okay with the swale.

Commissioner T. Root states the swale was for water protection but it isn't clear if the engineer was part of that discussion so he would know whether the water would be handled properly. WMC Engineering noted in their report that the walkway wasn't there on site as seen on the plans. In his opinion, Commissioner Root believes that Mr. Lopardo said at the last meeting that he would put in the catch basin if that is what the Commission wanted, so he should put it in and the walkway should also be put in. If these things are what the engineer designed, the swale, the walkway, the catch basin, they should go in as designed.

William Foster, 6 Hannah Way, reminds the Commission of the time Mr. Lopardo came before the Zoning Commission with an as built stating all work was done. Then it was found that a catch basin being shown on the as built was not there and a catch basin that was there wasn't being shown on the as built.

Chairman D. Thurston states that the change in design has caused concern and the last agreement with Mr. Lopardo was to finish the development as shown on the original plans. He believes that Catch Basin 18 should go in with Commissioner T. Root and Commissioner D. Kovall in agreement.

Commissioner T. Root **motioned** to deny the request for modification to eliminate Catch Basin 18 and that Mr. Lopardo is to follow the original design including the walking path. D. Kovall seconded the motion and it passed unanimously.

At this time, Commissioner D. Kovall recuses herself.

6. COMPLAINTS/ENFORCEMENT ACTIONS. PETER HOCK – DISCUSS COMPLAINT AGAINST HIM REGARDING KEEPING OF ANIMALS, 797 HILL ROAD.

Mr. Hock is present with his attorney, William Conti, Conti, Levy, Salerno & Antonio, Torrington, CT. A letter requested by the Zoning Commission from Atty. Kent Mancini, Cramer & Anderson, Litchfield, CT dated 8-23-2023 has been received regarding whether testimony provided by the spouse of a recused Commission Member is proper. At the last Zoning meeting Atty. Conti believed that Mr. Kovall could not speak in front of the Commission, even though he is the complainant, as it would be improper since his wife, Deborah Kovall, is a commissioner. Atty. Mancini gave his opinion that if the testimony Mr. Kovall offers is only on behalf of himself and no one else, then such testimony is proper and permitted.

William Kovall, 789 Hill Road, is present and provides the Commissioners with a list of requested actions. These requests are read by Mr. Kovall and asks they be initiated in light of the Hock property now operating as a business. This document will be an addendum to these minutes. A second document provided by Mr. Kovall is a copy of the 2020 CT General Statutes Title 22 – Agriculture. Domestic Animals. Chapter 433 – Diseases of Domestic Animals. Section 22-319b – Growers of swine. Registration. Control of Disease. Regulations. Investigation. Importation. Mr. Kovall acknowledges that this property was always a farm and Mr. Hock's father raised pigs on the property but they were kept 300 feet away from the barn. He adds that more manure was dropped closer to his property line just today by Mr. Hock and he provides photos of the manure pile. Mr. Kovall states that there should be nothing else needed to issue a Cease & Desist to Mr. Hock.

Atty. Conti informs the Commission that LUC Redmond has provided to Mr. Hock, in response to an FOIA request he made, Zoning Regulations from 1984 that permitted under Section 5 – Country Residential Area *Agricultural and horticultural uses*. 1988 Zoning Regulations were amended to permit *Agricultural and horticultural uses, provided only the slaughtering of livestock and poultry raised on the premises shall be permitted*. Atty. Conti points out that the building on Mr. Hock's property being used for agricultural purposes and keeping of animals has been there for more than three years, which makes it legal non-conforming, and the farm has been in operation since the 1940s and animals have always been imported. Atty. Conti refers to the Agriculture Committee letter of August 13, 2023 (made part of the 8/14/23 Zoning minutes) where it was said that Mr. Hock importing 7,200 to 8,400 eggs per week which he believes to be improbable.

In the matter of the manure pile at the Kovall property line, Atty. Conti states that Mr. Hock has agreed to move it away from the property line. He states that if the Commissioners looked at the property, the property has always been used as a farm and the Kovall's are asking for things the Commission has no power over. He asks that a Cease & Desist not be issued to Mr. Hock.

Chairman D. Thurston states that it is his understanding that the farm is now a business with Mr. Hock replying that he has always brought in wood to process and pigs have always been brought in also. The people who are operating the LLC business works for him but he states that the business will now close. Mr. Hock acknowledges that the 797 Hill Road property is owned by family and all members of the family make decision regarding the property. Atty. Conti points out that the use of the property is what matters, not who is doing what. He adds that if Mr. Kovall is asking that the Commission investigate through various state departments on what is happening on the Hock property, that might not be in the purview of the Zoning Commission.

Commissioner V. Elliott states that with a pig farm, if the wind is right, the smell will get to you and she questions whether there is anything Mr. Hock can do to alleviate the smell that the Kovall's are complaining about. Atty. Conti again states that the manure pile will be moved. Mr. Hock states that there is 30-40 yards of manure piled at the property line and has been there for years. Torrington Area Health was out to the property and told him to level it and spread it. Commissioner V. Elliott questions how the Commission will know when that has been done with Mr. Hock replying it will be done in two to three weeks. Mr. Kovall refers to the photos he took of the manure pile stating that it is approximately 15 feet high and it is his hope that the manure be moved further away from his house. Mr. Hock states that the manure pile will be spread out where the garden used to be.

Mr. Kovall states that he would like to see in writing that the LLC (Delicias da Fazenda) is terminating the business, as Mr. Hock reports, and not be regenerated under another name and not under Cedar's Hill Farm, LLC, which is the business name now listed at 797 Hill Road. Mr. Kovall points out that the building where animals are kept is too close for keeping of animals as a business with Atty. Conti stating that the 1988 Zoning Regulations allowed for agricultural uses but the building on the Hock property goes back further than that. Mr. Kovall notes that prior to January 2023, the Hock property wasn't a business farm. On that date in January, it was registered as a business in a Country Residential zone and the 150-foot separating distance is applicable, therefore the barn does not meet the setback requirements. Atty. Conti states that the business is irrelevant, that the farm was always there, and the three-year rule applies for the building setback as a legal non-conforming structure. Mr. Kovall replies that the farm was not always a wholesale business as it is now.

Mr. Hock suggests that the Commission should visit his property to see for themselves what is taking place.

T. Root **motioned** to set a Special Meeting for a site walk of the property located at 797 Hill Road on **Saturday, September 16, 2023 at 9:00 a.m.**, seconded by W. Ponte. Motion passed unanimously.

Commissioner D. Kovall is reseated.

7. ANY OTHER BUSINESS.

COMPLAINTS: Two complaints have come in for an Airbnb operation at **48 Rock Brook Road**. It is believed that the property owner, Li Meng, is renting out rooms by the night, week, or month and is listed on an Airbnb website. ZEO D. Truskauskas is to look into this and reach out to the town attorney to discuss.

COMPLAINT follow-up received back in June regarding car repairs taking place at **25 White Oak Drive**. ZEO D. Truskauskas states that he looked at the property recently and it looked as if what is on the property has been there for a long time and doesn't look to be an active business. He believes the Harwinton Blight Officer is also looking into this property as well.

8. INFORMAL DISCUSSION – PROPOSED ZONING REGULATION AMENDMENTS.
No discussion.

9. CORRESPONDENCE.
None.

10. INVOICES.
None.

11. ADJOURN.
V. Elliott **motioned** to adjourn the meeting at 8:37 p.m., seconded by W. Ponte. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator



Based on the distances recorded on the A2 survey map of the 797 Hill Rd property, and the change in use on January 3, 2023 from a Non-business to a Business operation, I am requesting the following action items be initiated by the zoning board.

- 1.) Enlist the town attorney to review the A2 survey map in regards to:
 - a. The required distance from the hoop house, where various livestock, including swine are kept, to the side property lines, to confirm it is in violation of zoning regulation 6.5 Keeping of animals as it relates to the business operation on the property (150 Feet).
 - b. The required distance established by The Connecticut Public Health Code (Section 19-13-B23(a)), from the hoop house (pigsty) to adjacent dwellings (300 Feet).
- 2.) Contact the State of Connecticut Department of Agriculture, Bureau of Regulatory Services, 450 Columbus Blvd. Suite #702, Hartford, CT., 06103. Contact email: Nathan.wilson@ct.gov and request that an written report based on an official inspection of the operation for conformance to the Department of Agriculture generally accepted agricultural practices.
- 3.) Officially inform Delicias Da Fazenda LLC that their operation is being investigated for non compliance with the Town of Harwinton Zoning regulations.
- 4.) Invite Delicias Da Fazenda LLC to attend the next Zoning Board meeting.

With regard to Mr. Hock referring to the operation as a farm stand, several issues need to be addressed.

- 1.) Little to none of the product sold from the operation is actually produced or raised on the property.
 - a. Livestock is brought in, penned and slaughtered on a regular basis.
 - b. The business advertizes as a wholesaler.
 - c. Produce is brought in, in bulk for resale from the property.

Handling of manure has been an issue for many years, I have written complaints dating back to 2004 to the Zoning board and Torrington area Health that refer to the violation of the 50 foot restriction from the property line. Nothing has ever been done to correct this situation and with the increase in manure production it has only gotten worse.

- 1.) The manure is not treated in accordance with any accepted practice.
- 2.) It continues to be placed within 50 feet of my property line *and within 300' from my home*
- 3.) A marked increase in the number of flies both inside and outside our home has occurred, which is in violation of Connecticut Public Health Code Chapter II, 19-13-b1(c)

August 13, 2023



William A. Korzall Jr

2020 Connecticut General Statutes
Title 22 - Agriculture. Domestic Animals
Chapter 433 - Diseases of Domestic Animals
Section 22-319b - Growers of swine. Registration. Control of disease.
Regulations. Investigation. Importation.

Universal Citation: CT Gen Stat § 22-319b (2020)

Any person, firm or corporation engaged in the growing of swine that are to be used or disposed of elsewhere than on the premises where such swine are grown shall register with the Commissioner of Agriculture on forms furnished by the commissioner. The commissioner may make orders and adopt regulations, in accordance with the provisions of chapter 54, concerning examination, quarantine, disinfection, preventive treatment, disposition, transportation, importation, feeding and sanitation for the protection of swine from contagious and infectious disease. Said commissioner shall, at once, cause an investigation of all cases of such diseases coming to the commissioner's knowledge and shall use all proper means to exterminate and prevent spread of the same. Instructions shall be issued, in writing, by the commissioner or the commissioner's agent that shall contain directions for quarantine and disinfection of the premises where such disease exists. No swine shall be brought into Connecticut by any individual, corporation or common carrier, unless the same originate from a herd that is validated as brucellosis-free and qualified pseudorabies-negative, and are accompanied by a permit issued by the commissioner and an official health certificate showing such animals to be free from any contagious or infectious disease, except that swine brought into this state for the purpose of immediate slaughter upon premises where federal inspection is maintained need not be accompanied by an official health certificate and the owner of each establishment where federal inspection is maintained shall report weekly to the commissioner, upon forms furnished by the commissioner, the number of such swine imported. Such permit shall accompany all waybills or, if animals are driven or carted over highways, shall be in the possession of the person in charge of swine. In addition to any other requirements of this section, all swine imported for other than immediate slaughter that are over three months of age, other than barrows, shall be negative as to a blood test for brucellosis and pseudorabies within thirty days of importation. With approval of the State Veterinarian, a thirty-day blood test may not be required for swine originating from, and residing for at least thirty days prior to importation in, a state that is validated as brucellosis-free and stage V pseudorabies-free, or for swine originating from any herd which the State Veterinarian determines to be pathogen-free. With such approval, swine may be imported pursuant to an import permit and a current official health certificate. All swine brought into the state for immediate slaughter shall be killed in an approved slaughterhouse under veterinary inspection.

(P.A. 13-208, S. 73.)

History: P.A. 13-208 effective June 21, 2013.

William Healy

