

ZONING COMMISSION MEETING
MONDAY, NOVEMBER 23, 2015
TOWN HALL 7:00 P.M.

Present: Chairman Don Truskauskas, David Mathes, Joseph Marzullo, Steve Maston, Alternate Member Deborah Kovall, Land Use Coordinator Polly Redmond and Zoning Enforcement Officer David Perkins.

Also Present: Michael D. Rybak, Town Counsel

Absent: Michelle Rewenko, Alternate Member Daniel Thurston and Alternate Member Brooke Cheney

PLEDGE OF ALLEGIANCE

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Truskauskas called the meeting to order at 7:00 p.m. All regular members present are seated with Alternate Member Deborah Kovall seated for Michelle Rewenko.

2. APPROVE MINUTES OF PREVIOUS MEETING: 11/9/15

D. Mathes **motioned** to approve the minutes of the previous meeting with the correction to numbering of items beginning with the application of Don Truskauskas being Item 6. Motion seconded by J. Marzullo and passed unanimously.

3. PUBLIC COMMENT.

Ron Genovese, 109 Scoville Hill Road, speaks to Item 4 on the agenda, Don Truskauskas, application for barn and inground pool. He requests that the Zoning Commission not grant the waiver of an engineered plan for the reason that the neighbors need to be protected. He believes a significant amount of fill will be required for the construction and that should require a Special Permit and the submission of an engineered plan.

Lynne Steincamp, 160 Plymouth Road, speaks to Item 4 also stating that the waiver request should not be granted and stresses that Commissioners attend to the Zoning Regulations and that the application should qualify for an engineered plan. The proposed pool construction could allow for fill to be used in the area of the storage building area but it would still be redistributing material which requires a Special Permit. She states that in terms of fairness, everyone should be treated equally.

Paul Chiappa, 106 Scoville Hill Road, questions whether all approved Zoning permits are good for five years. He was informed that they are.

D. Mathes **motioned** to amend the agenda to take up Item 5 at this time, seconded by J. Marzullo. Motion passed unanimously.

DONALD BARD – APPLICATION FOR SINGLE FAMILY DWELLING, COUNTY LINE ROAD.

No one is present to represent.

Chairman Truskauskas recuses himself for the following application. D. Mathes is seated as Acting Chairman.

4. DON TRUSKAUSKAS – APPLICATION FOR 42' X 42' STORAGE BUILDING AND 36' X 42' INGROUND POOL, 99 SCOVILLE HILL ROAD. REQUEST FOR WAIVER OF ENGINEERED PLAN.

Don Truskauskas states that, as Lynne Steincamp just mentioned during public comment, he believes everyone should be treated equally and notes that the Zoning Enforcement Officer had presented calculations of fill to this

Commission during his previously withdrawn application that hasn't been normally done. He cites an application for house construction on Green Acres Road that preceded his application in front of the Zoning Commission on March 23, 2015 had just as much fill being distributed or brought in and the ZEO provided no such calculations. D. Truskauskas reads from a page in "What's Legally Required" by Mike Zizka titled "Uses and Standard Criteria" found under the Section *Making the Decision*. He reads, "If an application complies with all aspects of the relevant statutes and regulations, including the applicable decision-making standards and criteria, it should be approved. It is improper for a land-use authority to deny or modify an application for reasons that are not properly linked to standards spelled out in the statutes or regulations." D. Truskauskas submits a list of past applications that went before this Commission that included requests for waivers of engineered plans. They include applications for decks, sheds, pools and barns. D. Truskauskas notes that at the last Zoning meeting, it was heard from members of the audience that approval of his application would give him five years to operate a business out of his home, which he claims to be not true. He mentions that in 2011 he received Zoning approval for construction of a shed that was good for five years and there was no objection then. He asks that the Zoning Commissioners uphold their oaths and treat this application as every other.

Commissioner J. Marzullo questions whether the proposed storage building will be used for commercial equipment with D. Truskauskas stating no. ZEO David Perkins explains to D. Truskauskas that he did not arbitrarily pick on him when he provided the fill calculations for D. Truskauskas' earlier application for a 40' x 40' barn. The question was asked of Mrs. Truskauskas, when she appeared before the Zoning Commission with the application on March 23, 2015, on how much fill was to be brought in and she did not know. ZEO Perkins states that he was only trying to educate the Commission. He disputes the Green Acres Road application mentioned by D. Truskauskas for similar amount of fill to be brought in claiming that it did not equal the same amount of fill. ZEO Perkins questions why the engineered plans that D. Truskauskas presented in March/April are not being used at this time with D. Truskauskas stating that there is an addition of an inground pool not shown on the engineered plans. ZEO Perkins states that the pool could have been located on the engineered grading plan with D. Truskauskas stating it would still be a request of a waiver of an engineered plan if he drew the pool in himself. ZEO Perkins questions how the storage building will be constructed in regards to the slope of the land with D. Truskauskas stating that he was going to construct a wall but the plan to bring fill to the area of the building was more feasible. ZEO Perkins questions how much fill with D. Truskauskas stating almost the same amount as proposed previously but he will also be using fill from the pool area. ZEO Perkins notes that the requirement of a Special Permit for excavating or redistributing fill in excess of 50 cubic yards (Zoning Regulation Section 14) allows for conditions and guidelines during construction. D. Truskauskas states that that is a decision to be made by the Commissioners.

Commissioner S. Maston questions what the grade at the pool area will be with D. Truskauskas pointing out on the engineered grading plan the area of contour 471. S. Maston questions if the pool area will require fill as well with D. Truskauskas stating yes. Commissioner D. Kovall expresses her concern over the duration of time spent getting this application approved and the ambiguity of it. She states that first the building was to be 40' x 40', now it is 40' x 42' and includes the construction of an inground pool. Questions on the height of the building and height of the doors were previously asked with no answers known or given. She states that applicants have come before this Commission with information on their applications or drawings in the past but she is skeptical on what is coming before this Commission with this plan. D. Truskauskas invites Commissioner Kovall to ask any questions of him at this time to which she asks if there will be electricity and water in the building. D. Truskauskas states that TAHD approval has been received for the storage building with the description/notation that the approval of the "40' x 40' barn with outside frost free hose bib" has been received. Discussion takes place on the relocation of the building being 8.6 further south of the side property line and why

that plan can't still be used. D. Truskauskas states that possibly he'll use the original engineered plan with grading for the building and use the copy of the 2006 As Built plan for the pool thereby requesting a waiver of an engineered plan for the inground pool application and submit two separate applications.

Town Counsel Michael D. Rybak breaks down the process of accepting an application and checking it against the Zoning Regulations for compliance. He states it is the Commission who decides what is required of the applicant in order to make a decision. In this case, Section 14 is being looked at by the Commission for the amount of excavation and fill being in excess of 50 cubic yards. Section 14 requires a public hearing unless the application is in conformance with an approved subdivision plan and/or site development plan but if the Zoning Commission determines that site development plans include significant grade changes that require extensive excavation and grading, an Excavation and Grading Permit may be required. Atty. Rybak states that the question to ask is, since most of the applications that come before the Zoning Commission require more than 50 cubic yards of excavation, grading, filling or redistribution, what criteria does the Zoning Commission apply? Also, how does the Commission decide on waivers for engineered plans? LUC Redmond refers to Section 8.5 that allows the Commission to waive requirements of engineered plans when in their judgment they feel it is not required. Atty. Rybak questions whether an engineered plan was provided for the original application of the 40' x 40' building and if so, is there enough information on that plan to make a determination and to decide on the application? LUC Redmond states that the issue is the amount of grading, filling and redistribution of material exceeding 50 cubic yards that then triggers the requirement for a public hearing per Section 14. Atty. Rybak believes that Section 14 is more for excavation projects. He asks whether the Zoning Commission has information on how many truckloads of fill will be brought on to the property with D. Truskauskas stating that this type of information has never been asked of any other applicant before. Commissioner D. Kovall states that, before becoming an Alternate Zoning Commissioner this past November, she attended many Zoning meetings in the past and has always heard Commissioners ask the questions, "Is the land level?" or "Are there trees on the property?" These are normal questions the Commission asks applicants. She now asks, what is the amount of fill for this application? D. Truskauskas states 60 to 70 truckloads. Commissioner D. Kovall asks whether the pool will be constructed first with D. Truskauskas stating that he would like to construct the pool first and use the fill from that area for the building location. Commissioner D. Kovall states that the project probably won't be done in the winter months with D. Truskauskas stating, probably not but most likely in the spring and summer. D. Kovall questions over what time period the 60 to 70 truckloads of fill will be brought onto the property with D. Truskauskas stating he will have to look for sources of fill and will probably receive 10 to 15 truckloads at a time because he won't be able to find one source with 60 to 70 loads. LUC Redmond questions how many cubic feet would that amount to with D. Truskauskas answering, 1,050 cubic yards prompting Commissioner D. Kovall to state that the amount would still require a Special Permit under Section 14. Commissioner S. Maston states that if both projects, the pool and the storage building, will be worked on at the same time he would like to see both the pool and the building on one engineered plan. He would also like to see contours at the back of the pool. D. Truskauskas states that the pool area has a 2:1 slope and he will be taking the slope and sliding it out so there won't be a substantial grade change. D. Truskauskas states that the only issue he has with the Commission requiring a Special Permit of him is that most Zoning applications/projects require removal of 50 cubic yards of fill so he asks, "Does every application then require a Special Permit?" Commissioner D. Kovall acknowledges that that is a good point and from her past attendance at Zoning meetings, she believes there's a tendency to waive Special Permit requirements for excavation and filling in excess of 50 cubic yards and perhaps it is because people in the building trade who are seated on this Commission get 'numbed' to certain things and see it as no big deal so the Commission has become less vigilant in this matter.

Atty. Rybak notes that large projects, such as the All Star Transportation bus depot, require a Special Permit and Home Occupations also require Special Permits. With other past applications, maybe the Commission should have held public hearings but he believes that what is triggering the Special Permit requirement with this application is possibly the distance to wetlands or concern of neighbors. D. Truskauskas states that he would gladly submit a Special Permit application if every other future applicant does the same. He notes that most applications coming before this Commission would then require a Special Permit including driveway construction applications. LUC Redmond questions whether conditions can be placed on Site Plan applications with Atty. Rybak stating, yes, and if the applicant is willing to adhere to conditions such as hours of operation, dust control, etc. the Commission can spell out those conditions if a motion is made to approve the site plan. D. Truskauskas states he would be willing to meet conditions placed on any approval. LUC Redmond questions what course of action can be taken if those conditions are not adhered to by the applicant with Atty. Rybak stating that the permit could be revoked if there is a violation of conditions. D. Truskauskas reminds the Commission that the overnight storage of his truck is an existing non-conforming activity approved by the Zoning Board of Appeals. Atty. Rybak notes that even though Zoning permits are good for five years, the Commission may want to limit the timeframe for bringing in fill.

At this time, Commissioner D. Kovall **motions to deny the request for a waiver of an engineered plan**, seconded by S. Maston. Those in favor of the motion are D. Kovall and S. Maston. J. Marzullo is not in favor of the motion and D. Mathes abstains from voting. Motion passes 2 to 1.

Atty. Rybak suggests that the Commission guide the applicant as to what they would like to see on a site plan. Those items would be as follows: (1) that both the building and the inground pool be sited on one engineered plan, (2) that grading and contours be noted on the plan including before and after contours, (3) that erosion control measures be included on the plan, (4) that it be noted on the plan that only clean fill free of construction debris shall be brought onto the property, (5) that dust control measures be noted on the plan, (6) that hours of operation be noted on the plan as being between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday with no work to be done on holidays, and (7) that the duration of bringing in fill for this project be two years from date of Zoning approval and shall be noted on the plans.

D. Truskauskas notes that there will be no stockpiling of material so that won't be required to be on the site plan and that the proposed work will be a one truck operation with no trucks left idling on the property.

It is noted by LUC Redmond that since the applicant is stating this is a new application, no new application has been received for the relocation of the building or the inground pool. TAHD has not approved the pool and no Soil and Erosion Control permit is on file. D. Truskauskas will submit an application, and all accompanying forms, at the next Zoning meeting to be held on December 14, 2015 providing his engineered site plans are complete.

D. Truskauskas is reseated as Chairman at this time.

5. **DONALD BARD – APPLICATION FOR SINGLE FAMILY DWELLING, COUNTY LINE ROAD.**
See above. No one present to represent.

6. DISCUSSION ON DRAFT BLIGHT ORDINANCE AND REVISED ORDINANCE 103 ABANDONED AND INOPERABLE VEHICLES PREPARED BY BOARD OF SELECTMEN.

Atty. Rybak informs the Commission that the draft Blight Ordinance is a blend of the Town of Prospect and the Town of Watertown. He states that the Board of Selectmen wanted to be the Blight Commission but as he understands it, the Zoning Commissioners, through past discussions, felt that members of the Land Use Commissions should make up the Blight Commission. He understands that the Zoning Commission had concerns with regulating grass height and that those areas in the Lake Harwinton area where tall grass could be a concern may not be of concern in areas of Plymouth Road, for example. Chairman Truskauskas questions whether the mowing of grass could apply to vacant properties only? Atty. Rybak states that it would be fair to rationally distinguish between vacant properties and those properties that are not vacant. Commissioner J. Marzullo questions who the Blight Enforcement Officer would be with Atty. Rybak stating it would be the IWWC/Zoning Enforcement Officer. Atty. Rybak poses the question of whether the Commission would like to see a Blight Appeals Board since there is a hearing process with a Hearing Officer included in the ordinance. Does the town want any Appeals Board similar to the Zoning Board of Appeals or does the town want appeals to go to court? Discussion takes place on how complaints will be received with anonymous complaints being accepted and having the Blight Enforcement Officer filling out the complaint form. The Blight Enforcement Officer can also fill out complaint forms if he has firsthand knowledge of blight. It is noted that the first sentence of Section 7 of the draft Blight Ordinance should read as follows: "(a) Any resident, property owner or public official of the Town shall file a written complaint of violation of this ordinance with the Blight Commission on a form prescribed by the Blight Commission for review." This was mentioned at a previous meeting with Atty. Rybak.

7. COMPLAINTS/ENFORCEMENT ACTIONS.

ZEO Perkins informs the Commission that a complaint was received from Cynthia Yanok, 122 Scoville Hill Road, regarding new construction of a barn at 114 Scoville Hill Road. He inspected the property and found no barn and he Google earthed the location and saw no changes to the property. LUC Redmond informs the Commission that the owner of 114 Scoville Hill Road came in today to fill out an application for a 144 square foot shed which she approved.

ZEO Perkins updates the Commission on a past complaint of Edward Zielinski regarding 505 Plymouth Road property owned by Simonin and states that the property has been cleaned up. A complaint by E. Zielinski regarding the rock pile at Equestrian Estates, Plymouth Road, has been addressed by the ZEO with the developer of the subdivision.

8. ANY OTHER BUSINESS. None.

9. CORRESPONDENCE. None.

10. INVOICES.

D. Mathes **motioned** to approve the invoice of ZEO David Perkins in the amount of \$225.00 for the period July 2015 through October 2015. J. Marzullo seconded the motion and it passed unanimously.

11. ADJOURN.

D. Mathes **motioned** to adjourn the meeting at 9:10 p.m., seconded by S. Maston. Motion passed unanimously.

Respectfully submitted,

Polly Redmond, Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 11/30/15 AT 11:32 AM
ATTEST NANCY E. ELDRIDGE TOWN CLERK