

HARWINTON ZONING COMMISSION
TUESDAY, MAY 29, 2018
TOWN HALL 7:00 P.M.

Present: Chairwoman Michelle Rewenko, Cynthia Kasey, Daniel Thurston, Matthew Szydlo (arriving at 7:22 p.m.), Deborah Kovall, Alternate Member Don Truskauskas, Alternate Member Theodore Root, Alternate Member Nancy Schnyer and Land Use Coordinator Polly Redmond

PLEDGE OF ALLEGIANCE

PUBLIC HEARING - continued

1. OPEN HEARING – ESTABLISH QUORUM.

Chairwoman Rewenko called the hearing to order at 7:00 p.m. All regular members present are seated with Alternate Member D. Truskauskas seated for Regular Member M. Szydlo and Alternate Member T. Root seated for Regular Member D. Kovall.

2. BUMPER BROOK ESTATES – PETITION FOR A ZONE CHANGE FROM LIGHT INDUSTRIAL TO NEWLY CREATED ZONE E – MULTI FAMILY ELDERLY HOUSING ZONE, TWENTY-FOUR BUMPER ROAD, ASSESSORS MAP NOS. A8-03-0003, A8-03-0004 AND A8-03-0006.

Atty. William J. Tracy, Furey, Donovan, Tracy & Daly, P.C. is present to represent and states that they are still waiting for WPCA action. The extension of time granted to keep the public hearing open allows for the hearing to be continued to the next Zoning meeting, therefore he requests a continuance.

3. CONTINUE OR CLOSE HEARING.

D. Truskauskas **motioned** to continue the public hearing to the next Zoning meeting to be held on Monday, June 11, 2018 at 7:00 p.m.

REGULAR MEETING

1. OPEN MEETING – ESTABLISH QUORUM.

Chairwoman Rewenko called the meeting to order at 7:02 p.m. All regular members present are seated with Alternate Member D. Truskauskas seated for Regular Member M. Szydlo.

(Alternate Member T. Root is unseated with the arrival of Regular Member D. Kovall.)

2. APPROVE MINUTES OF PREVIOUS MEETING: 5/14/18

D. Truskauskas **motioned** to approve the minutes of the previous meeting with the following corrections:

Page 1, Item 2, Line 10: amend Exhibit 17 to Exhibit **10**. Line 19: amend Exhibit 17 to Exhibit **10**.

Page 2, Paragraph 2, Line 9: amend Exhibit 18 to Exhibit **11**.

Page 4, Paragraph 2, Line 2: amend *positive* referral to **negative** referral.

3. PUBLIC COMMENT.

None.

No one is present to represent Items 5 and 6 at this time. Commissioners proceed to take up Item 7.

4. **PICKETT BROOK PROPERTY, LLC – APPLICATION FOR SINGLE FAMILY DWELLING, LOT 10, FOX HUNT SUBDIVISION, 4 FOX HUNT WAY.**

Tabled. See below.

5. **MICHAEL ROUSSEAU – APPLICATION FOR SINGLE FAMILY DWELLING, 45 WILDCAT HILL ROAD.**

Tabled. See below.

6. **DISCUSSION/POSSIBLE DECISION – BUMPER BROOK ESTATES, LLC - PETITION TO AMEND ZONING REGULATION TEXT AMENDMENTS: ZONING REGULATION *SECTION 2.3 DEFINITION OF ELDERLY HOUSING.**

***TO ADD A NEW ZONING REGULATION UNDER SECTION 4 PERMITTED USES AND SPECIAL PERMIT USES FOR EACH ZONE. (NEW SECTION 4.10) TITLED ZONE E – MULTI-FAMILY ELDERLY HOUSING ZONE, THAT INCLUDES SUBSECTIONS TITLED STATEMENT OF PURPOSE, PERMITTED USES, SPECIAL PERMIT USES, STANDARDS AND REGULATIONS AND ADDITIONAL SITE PLAN REQUIREMENTS.**

***TO AMEND ZONING REGULATION SECTION 5 LOT AREA TO ADD OTHER DIMENSIONS AND SPACE REQUIREMENTS TO INCLUDE REQUIREMENTS FOR ZONE E.**
(PUBLIC HEARING CLOSED 4/23/18.)

It is established that Chairwoman Rewenko has listened to the recording of the 4/14/18 Zoning meeting that she did not attend. It is also established that C. Kasey read the minutes (typed verbatim) of the 4/9/18 Zoning meeting that she did not attend, D. Thurston read the minutes (typed verbatim) of the 4/23/18 Zoning meeting that he did not attend and N. Schnyer read the minutes (typed verbatim) of the 4/23/18 Zoning meeting that she did not attend.

Land Use Coordinator P. Redmond reports that Town Counsel Michael D. Rybak, as staff admission, sent her an email dated 5/24/18 with an email from William J. Tracy to him attached. Atty. Tracy's email informs Atty. Rybak that he drafted a different elderly housing regulation based primarily on the town-sponsored regulation but incorporating some of the provisions of the multi-family with respect to driveway, drainage and layout standards. A redlined version using Section 9.9 as the base was submitted along with a proposed clean version. Atty. Tracy's email goes on to say that he is trying to address concerns raised by some of the zoning commissioners and that if he had a better idea of their specific concerns, he could look at addressing those as well. The proposal envisions a special permit and will also require any project to be served by both water and sewer and excludes septic and community septic.

Atty. Rybak states that what triggered this email was that after the last hearing he spoke with Atty. Tracy who asked if something could be done to address the Commission's concerns about the text amendment and try to figure out all their concerns. In looking at it, a couple of things came to mind. One was there seemed to be an interest on the part of the Commission to do something about elderly housing but not the old regulation that was done for Wintergreen Housing that was clearly out of date and not very detailed and protective of the town's concerns. And number two, that the location of this particular property seemed that it would be better off in some kind of residential multi-family use perhaps than the current light industrial zoning that it has due to its location. So, as Atty. Tracy summarized in his email, perhaps it's a good project in a good location but just looking for the right regulation. He informed Atty. Tracy that if his client wants to submit revisions to Section 9.9 he could and see if it's something the Zoning Commission would consider although it's late in the game because whatever is submitted would not go to the Planning Commission for their review or have any public comment, not that there was much public comment.

He suggested to Atty. Tracy to present the revisions to the Commission and that perhaps this application could be treated as a Commission-sponsored amendment or perhaps a modification if there was still time to send to the Planning Commission. He would not suggest bypassing the Planning Commission especially in reviewing their Referral. He asks that Atty. Tracy speak to this, as he's not presenting the proposal, but that perhaps if this were done more like a multi-family zone is, as a special permit and site plan approval. Atty. Rybak states though that even when the multi-family zone was written, and it's been a few years now, it was tested in the case of Torrington v Harwinton of the property now known as Sunset Ridge off of Mountain View Drive where the zone change was granted under the multi-family rules. The neighbors were opposed on the Harwinton side but then the application came back as a special permit after the multi-family rules were written and at that point, because Harwinton felt there should be access from Harwinton and Torrington, the Torrington neighbors persuaded the City of Torrington to take an appeal and that's how it came to be City of Torrington v Town of Harwinton. What the town found about the multi-family regulation at that time was that it didn't really cover the details the town wanted for buildings and driveways, and so while a special permit allows you to put conditions on, you can't condition a zone change. So what happened was, in order to meet the rules, they needed a variance and as a result the Zoning Commission, when granting the approval through the condition process, actually almost granted a variance. So you have to be very careful what vehicle you use for these multi-family projects whether they're elderly or not. He thinks a special permit, site plan approval works better than the zone change approval because you can tailor it to the site without conditioning the zone and he also thinks that the proposal works best with sewer and water and not with community systems.

Commissioner D. Truskauskas states that procedurally, he would be more comfortable in starting again with a new application as opposed to making it Commission-sponsored because this wasn't what was noticed to the public. He likes the special permit process much better but his concern is the chance of haphazardly going from one proposal to another. Also, the public hearing was closed and the modification came from the applicant, not us, and there's also concern that residents of Torrington haven't been noticed so if they have concerns we want to be careful that we don't end up in another legal battle with the city. He states he'd be happier if the applicant brought it back with new language so the town isn't footing the bill as a town-initiated amendment modification. He questions Atty. Rybak on whether the applicant would have to wait a year to reapply (State Statute 8-3(c)) with Atty. Rybak stating that the Zoning Commission could waive that rule and also this would be something conceptually different being presented.

Chairwoman M. Rewenko seconds what Commissioner Truskauskas said and to take that approach would be better. Commissioner D. Truskauskas states that if the Commission initiated these proposals there would be time constraints and the town would foot the bill for noticing. If this is something the Commission is interested in, and we can convince the applicant to pay for another application, I think it's fair to ask.

Atty. Tracy states that in terms of procedure, realizing the public hearing is closed and he can't speak of the substance of it, but procedurally if he and his client had an idea of specific concerns and what the Commission would like to see, they could make those change and bring it as another submission, withdrawing the current application. He's not comfortable leaving it open-ended. He states he'd like to have the project moving along and the Commission-initiated doesn't really suit the applicant's timeframe. But if they had some idea of getting close or knew what the Commission was looking for and bringing it to them, he'd have a much more productive process and it could be fine-tuned for what's being presented.

Chairwoman Rewenko states that her concerns with the present proposal were the proposed setbacks, that they should be more in keeping with the current multi-family setbacks, and also the language from the Multi-Family Regulations requiring fiscal impact studies that were not included in the present proposal.

Commissioner M. Szydlo arrives at this time.

Commissioner D. Truskauskas notes that in Section 9.9.8 from the red-lined version of the proposed regulation it states the plans should be approved by TAHD for well locations. He states that if the proposal is to keep it just to city utilities, the regulation should be consistent all the way through and that TAHD approval would not be required since there would be no wells. Regarding the town's current Zoning Regulation on buffers, which he feels is terrible, he states he does believe there should be a buffer requirement for this project to be located against the town line and he cites the issue this Commission had regarding buffers at the airport for the bus depot application. He'd like to see a 15 foot buffer proposed in red-lined regulation 9.9.10d. Atty. Tracy notes that this property off Twenty-four Bumper Road abuts up to residential land therefore requiring no buffer. Commissioner D. Truskauskas states that it is Multi-Family against Residential and he would like to see a buffer although it could be something conditioned in an approval of a Special Permit. He turns to Atty. Rybak for his opinion on this with Atty. Rybak stating that he likes the idea that buffers are in the regulations and believes they could be modified in an approval. He notes that buffers depend on topography and placement of buildings among other things. He reminds the Commission that conditions placed on a special permit or site plan must arise from the regulations.

Atty. Rybak states that the good thing about this approach is that it doesn't happen where there aren't any public utilities, which means it is limited to the northwest corner of town. Then the sewer service and water connection is sorted out with Torrington doing so in such a way that we don't use up the towns capacity in the process. Commissioner D. Truskauskas draws attention to the WPCA Plan of 2011, and particularly #3 *Sewer Avoidance*, in accordance with recommendations in the 1978 report of the DEEP it states that "the WPCA agrees that sewer avoidance is a desirable policy in rural areas where sewers do not currently exist. The WPCA therefore adopts a policy of sewer avoidance and designates all areas outside the boundaries of the Sewer Service Area as sewer avoidance areas. The WPCA will not extend, nor permit the extension of its sanitary sewer infrastructure to serve areas or individual properties outside the boundaries of the Sewer Service Area." He also reads Section 3.2 where it states "New development and construction outside the boundaries of the Sewer Service Area shall not exceed the capacity of the land on which it is located to adequately support a sub-surface disposal system. The WPCA expects that appropriate municipal agencies such as but not limited to Planning and Zoning, Building Department, and Health Department will incorporate policies that will ensure the long-term reliability of subsurface disposal systems." He states that it might be more of an issue for WPCA but that it does mention Planning and Zoning.

Atty. Rybak states that the reason for that dealt with the negotiated capacity issue where there was concern with parcels off of Silano Drive and Clearview Avenue that hadn't been used for anything but could, with cluster development, become large users of sewer capacity and WPCA didn't want to see the town compelled to have to extend the sewer line to possibly support a development disguised as affordable housing and insisting that the town had to extend the sewer line. Commissioner D. Truskauskas states that it is from 1978 but believes WPCA would have to amend their plan if the Zoning Commission requires city and sewer for the elderly housing regulation with Atty. Rybak agreeing they would in order for this project to come in. Commissioner D. Truskauskas then asks whether the Zoning Commission should let WPCA worry about that and not so much for our regulations with Atty. Rybak stating, if the Commission is saying it has to be served by sewer and water before you even consider the application, he think it makes it a lot different than saying it could be somewhere in the, say R60 zone, and then compel a sewer line extension. He would let WPCA handle that because they know the capacity issues.

Commissioner M. Szydlo states that he doesn't want to be in a situation where they are using up all of Harwinton's capacity for one proposal. Atty. Rybak states that the Commission could make a decision, not a condition of approval, but a checklist of one of the things that has to be brought in, that WPCA approval of the project's capacity is accommodated in their WPCA Plan, or that they amended their Plan to accommodate the project. The Zoning Commission can require WPCA approval similar to having TAHD approval before approval is given. Atty. William Tracy states that it is in the proposed new regulation he redlined that WPCA approval is required. Commissioner D. Truskauskas states that perhaps having the water company state they have sufficient supply would also be helpful to have in the regulations with Atty. Tracy noting that that is a good point and it can be done.

Commission D. Truskauskas points out to Atty. Rybak that Section 9.9.10d in the redlined proposal that it does call for protection of existing residences and districts through the use of landscaping, fencing or buffering so that would give the Commission some leeway in the special permit process. He refers to Section 9.9.12 through 14 stating that they all refer to other regulations, perhaps when referring to the regulations it should state “as amended”. Atty. Rybak agrees with this.

Atty. Rybak states that he is pondering what Chairwoman Rewenko said about the fiscal impact study requirement. He could see in a multi-family development with a large number of units that it might be something you’d want to consider if there was school impact, etc. But he thinks with elderly housing it’s less of a concern so the question is, does the Commission still want it and if so, is it needed in the way it’s worded in the Multi-Family Regulation? Chairwoman Rewenko states that if they were to create a new regulation for multi-family elderly, why not mirror that of the existing Multi-Family Regulation? Atty. Rybak questions if any Commissioner has noticed other towns requiring a fiscal impact study with Commissioner D. Truskauskas stating that it’s always been in our regulations but he agrees it may not be necessary to have a fiscal impact study done for elderly housing where there won’t be a large number of children attending school, which the school budget is the majority of the budget. He also doesn’t think town services will have a large impact either compared to the tax base this project will bring in. Atty. Rybak states if the Commission were to go with that approach, then should there be a Restrictive Covenant filed in the land records stating the development would be for elderly housing only and will be limited to the definition that Atty. Tracy provided of federal law. This would give the town a way to enforce that these units remain elderly only. LUC Redmond notes that Restrictive Covenants are filed in the land records for Oak Meadow Estates and Sunset Ridge, both 55 and older developments. Chairwoman Rewenko has concerns that 55 and older has changed these days and that there are people of that age who have school-aged children and grandparents are sometimes raising their grandchildren. Commissioner T. Root states, in talking about 55 and older, he asks if there is an option to refuse people that are SSI people if they are not 55 and older. With the answer being no, Commissioner Root states you then have to consider that with SSI there may be more ambulance calls made.

Commissioner D. Kovall states that perhaps that’s a consideration when you get to the point where it involves the City of Torrington that they be advised of what’s going on. When you talk about the location of this project, she thinks most of the traffic will be toward Torrington and on Torrington roads. She also notes that someone who lives in this development won’t necessarily call Harwinton for an ambulance they’ll call an ambulance company to provide that service.

Commissioner D. Truskauskas states that with SSI, we do need to do something with elderly housing and SSI comes along with that and we have to accept that. Commissioner T. Root speaks of the Torrington Towers in Torrington as an example that was to be just for elderly housing and now houses SSI where more ambulance calls are made and more police calls are made. Any calls made will be to Harwinton for emergencies because they’re Harwinton residents living in this development. Atty. Rybak states that Harwinton has now entered into a contract with Charlotte Hungerford, as well as five surrounding towns that have also, that requires the nearest emergency vehicle to respond to calls and will include Campion Ambulance located on the south end of Torrington.

Commissioner D. Thurston states that if we’re considering that this fits into an area for sewer and water it covers a bigger area than what we’re discussing on this particular project. So if someone comes in and wants to do a similar development it will apply for other projects. Atty. Rybak states that WPCA will have to deal with Harwinton capacity issues as well.

Commissioner D. Truskauskas questions what if the town wants to put in elderly housing and can’t meet the regulation because sewer and water is required. Commissioner D. Thurston states that it would have to be a sufficient piece of property for sewer and when tapping into the ground for water, you could be tapping into someone else’s well a quarter mile away. It doesn’t matter if it’s the town doing it or a private developer, those are issues that have to be dealt with.

Commission D. Kovall states that the Commission is looking at something that needs to be codified but in looking at statutory covenants and talking about special conditions, these things give the Commission “wiggle room”. By the very fact that we’re talking about public sewer and public water, that in and of itself makes what’s available small enough so someone is not going to put something in say, at the end of Hill Road, because with no public sewer and no public water it eliminates that area. But with public water and public sewer it’s leaving the door open for another piece of property in that area to be developed in the same way if it meets the capacity and it doesn’t overwhelm the amount of water being pulled out of the ground. She states that she likes this much better than changing the whole zone and the special permit piece allows the Commission the flexibility to tailor some things including the buffer on the town line.

Atty. Rybak states that the question Commissioner Thurston raised bears some consideration. That if the purpose is to overwrite the town-sponsored elderly housing regulation by adding more detail, we may want to keep an exception for the town-sponsored elderly housing to not have to be on public sewer and water because there is still land available, or could become available, close to town hall that may be advantageous to expand Wintergreen Housing or on another piece of property in close proximity to town hall, just because of the substantial investment in the town hall, the library and the Thierry property. So when you look at all that, he suggests not writing out of the regulations that little aspect of town-sponsored elderly housing to not have to have sewer and water if the town could demonstrate adequate onsite septic capacity water capacity and perhaps even have a well drilled if hooking up to water was not feasible.

Atty. Rybak states, if you just kept the town-sponsored elderly housing and add a new regulation for private, or what could be done is have a regulation as an over-write and state “except for town-sponsored elderly housing, which you would only need to demonstrate adequate onsite septic and water capacity.”

Commissioner D. Truskauskas questions if the applicant is going to withdraw his application with Atty. Tracy stating he will have to discuss that with his client but if this is something adopted, the new wording, it would be a change to a town residential zone so the zone change application would be to a town residential zone instead of MF-E zone. He notes that the Zoning Regulations already allow elderly housing in the town residential zone. Atty. Rybak states that could be done because that hearing is still open but what you really still need is the WPCA approval.

Commissioner D. Truskauskas **motioned** to continue discussion to the June 11, 2018 Zoning meeting, seconded by Commissioner T. Root. Motion passed unanimously.

Items 4 and 5 are taken up for review at this time.

**PICKETT BROOK PROPERTY, LLC – APPLICATION FOR SINGLE FAMILY DWELLING,
LOT 10, FOX HUNT SUBDIVISION, 4 FOX HUNT WAY.**

Jared Braddock, Supreme Industries, is present to represent. Plans by Jones Engineering titled Proposed Plot Plan, Lot #10 Fox Hunt Way, dated 5/25/18 are reviewed. The plans show the lot in its original configuration in the Fox Hunt Subdivision that has since taken the end of Rocky Road West and made it a driveway for 39 Rocky Road West. The plans presented make it to appear that Lot 10 is a corner lot when in fact it is not and only has street frontage on Fox Hunt Way. The property contains 5.05 acres with the house proposed to be 66.2 feet to the front property line. A Conservation Easement is noted on the plans bordering the property where no building is allowed. IWWC Agent approval has been received. E&S permit and driveway permit is on file. TAHD approval is outstanding. D. Truskauskas **motioned** to approve the application, seconded by D. Kovall. Motion passed unanimously.

MICHAEL ROUSSEAU – APPLICATION FOR SINGLE FAMILY DWELLING, 45 WILDCAT HILL ROAD.

Taylor Hartwell is present to represent. Plans by Berkshire Engineering, titled Septic System Design, for Michael Rousseau, Parcel “A”, Wildcat Hill Road, revised to 11/14/17 are reviewed. The lot is a rear lot containing 5.08 acres with the house proposed to be approximately 350 feet to the front property line. IWWC approval was received on 3/6/17 and modified with an approval on 12/4/17. E&S permit and driveway permit is on file. TAHD approval has been received. C. Kasey **motioned** to approve the application, seconded by D. Truskauskas. Motion passed unanimously.

7. DISCUSSION/POSSIBLE DECISION – BUMPER BROOK ESTATES, LLC - PETITION FOR A ZONE CHANGE FROM LIGHT INDUSTRIAL TO NEWLY CREATED ZONE E – MULTI FAMILY ELDERLY HOUSING ZONE, TWENTY-FOUR BUMPER ROAD, ASSESSORS MAP NOS. A8-03-0003, A8-03-0004 AND A8-03-0006.

8. COMPLAINTS/ENFORCEMENT ACTIONS.

None.

9. ANY OTHER BUSINESS.

None.

10. CORRESPONDENCE.

None.

11. INVOICES.

None.

12. ADJOURN.

Respectfully submitted,

Polly Redmond, Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 06/05/18 AT 10:39AM
ATTEST NANCY E. ELDRIDGE TOWN CLERK