

Present: Chairman Daniel Thurston, Secretary Cynthia Kasey, Deborah Kovall, Alternate Member Dave Foster, Alternate Member Victoria Elliot, Land Use Coordinator Polly Redmond and Zoning Enforcement Officer Don Truskauskas

Absent: Theodore Root, William Ponte and Alternate Member Michelle Whitford

**PLEDGE OF ALLEGIANCE**

**1. OPEN HEARING ESTABLISH QUORUM.**

Chairman D. Thurston called the meeting to order at 7:00 p.m. A quorum was established with Alternate Member D. Foster seated for T. Root and Alternate Member V. Elliot seated for W. Ponte.

**2. APPROVE MINUTES OF PREVIOUS MEETING: 9/25/2023**

V. Elliot **motioned** to approve the minutes of the previous meeting, seconded by D. Foster. Motion passed unanimously.

**3. PUBLIC COMMENT. None.**

**4. B&R CORPORATION – APPLICATION FOR 25’ X 50’ ADDITION TO COMMERCIAL BUILDING, 216 BOGUE ROAD.**

Jared Braddock, representative for B&R Corporation, is present. Site Plan prepared by Jones Engineering, dated 10/2/2023, are presented by Mr. Braddock that shows the two story 25’ x 50’ addition measuring 61.3 feet to the west side property line. TAHD and IWWC approvals have been received. D. Kovall **motioned** to approve the application, seconded by V. Elliot. Motion passed unanimously.

**5. LEONARD LOPARDO – CONTINUED DISCUSSION - APPLICATION FOR MODIFICATION OF PREVIOUS APPROVAL, SUNSET RIDGE OFF MOUNTAIN VIEW DRIVE, HANNAH WAY, LAUREN LANE.**

Mr. Lopardo is present stating that it is his understanding that town engineers, WMC Consulting Engineers, gave their blessing on the modification of the plan to eliminate the walking trail and install a berm/swale. Mr. Lopardo states that the berm/swale will be connected to the drainage right away. Mr. Lopardo distributes photos of the east side of Highfield Drive, Torrington, that shows flooding in the street that he says contributed to the flooding within Sunset Ridge on September 29, 2023 whose property borders the City of Torrington. He states that Torrington is “accepting” of this water. Mr. Lopardo states that the breach experienced by the Lucians at 31 Hannah Drive a week ago during heavy rains was caused by the water coming from Highfield Drive but also adds that when landscaping shrubs were introduced and planted by his contractor, Oak Hill, in the back bank of 31 Hannah Drive, it formed pockets in the earth that gave way with the force of the rain. Referencing the site plans titled Site Grading and Drainage Plan, Sheed C2, revised 9/22/2023, he proposes to move the swale in back of 27 Hannah Way further away from that home and closer to the Torrington line. The remainder of the swale, to the west and behind Units 30, 1 and 6, will be completed in the spring.

Cindy Lucian, 31 Hannah Way (Unit 21), states that she and her husband, Greg, have had years of ongoing issues with water accumulating under their deck and now the landslide that happened on September 29<sup>th</sup> in her backyard with the bank coming down. Another breach in the bank occurred in her neighbor’s yard at 33 Hannah Way (Unit 20). She distributes to Commissioners a packet of collected photos she took showing the mud slide of the bank behind her house and also her neighbors, photos of water under her deck, and photos of the bank from the time period July, August and September 2020, June 2021, and July, August and September 2023, showing how the bank has been slowly deteriorating over time. She notes that it appears to her that the bank has been altered substantially since they picked out their lot to build on. She refers to a picture in the packet showing how holes had to be drilled into the drain pipes of their house to allow water from under the deck to empty out and also to prevent the water from entering through the basement windows. She states that neighbors, who are in their 70s, had to come out and dig trenches to divert the water from going towards houses by digging trenches.

Chairman D. Thurston questions Mr. Lopardo if the bank has been cut during construction with Mr. Lopardo answering that it was built according to plan. V. Elliot states that may be true but it is not working and the problem with the water should be addressed by perhaps putting in a retaining wall at 31 Hannah Way (Unit 21) similar to the one he put in at 33 Hannah Way (Unit 20). Mr. Lopardo states that the bank came down because of the plantings and that this is not a Zoning problem, it is an Association problem and it is the Association who is responsible for the repair. Chairman Thurston questions if the bank had to be cut back in order to build the house at 31 Hannah Drive with Mr. Lopardo answering, no.

Greg Lucian, 31 Hannah Way (Unit 21) states that on the 29<sup>th</sup>, when the bank came down, Mr. Lopardo was on site and when told of the landslide, he went to see, and according to Mr. Lucian, Mr. Lopardo said, "this is not my problem, it is the problem of the Association." When Mr. Lucian told Mr. Lopardo that he is the Association, Mr. Lopardo just turned and walked away. Mr. Lopardo denies this. V. Elliot questions who it is that is responsible to fix the bank that came down? Mr. Lopardo replies that it is the Association who owns the land and the roads and the homeowner owns the house. Mr. Lopardo states that there is a delta effect happening within this development and that water is supposed to flow over lawns and into a catch basin. With the tremendous amount of rain that came down on September 29<sup>th</sup>, and the lawn being cut into by the residents during the rain event, prevented what the lawn was supposed to do. He states that his excavator told him to stay off the lawn and with gas lines on site, he can't get in there but he will probably have to have his excavator take a look to see what can be done. He was at the site today and noted that runoff is coming from off site.

D. Kovall refers to the pictures provided by Cindy Lucian, and particularly one marked "Mud Slide #2" where it shows a block wall behind a house that abruptly stops at the Lucian property. She questions why that wall can't be extended to the Lucian yard since the slope seems to be the same. Mr. Lopardo states that the Building Inspector required the wall for that lot (33 Hannah Way) due to the proximity of the house to the sloped area. V. Elliot asks why the wall can't be extended with Mr. Lopardo answering that it is the Association who should do it. Residents in the audience collectively state that Mr. Lopardo is the Association.

Greg Lucian, 31 Hannah Way (Unit 21), states that the swales and trenches were done to prevent water from going into his basement, to divert the water. The water then was going out to the catch basin. Mr. Lopardo states that he told Greg not to dig trenches, that it would only push the water faster.

Shirley Amundsen, 25 Hannah Way (Unit 24), states that Mr. Lopardo is putting everything on the Association but believes that he is responsible for putting the wall in. She states that she also has had water problems with Mr. Lopardo always telling her that he would take care of it but never has. Mr. Lopardo states that he has made every effort to avert water.

William Foster, 6 Hannah Way (Unit 9), states that there is supposed to be a retaining wall behind 25 Hannah Way as shown on the site plan. Mr. Lopardo replies that it was proposed but, in the end, it wasn't needed. Mr. Foster questions why then if Mr. Lopardo is saving on cost for not building that wall, why he can't use the money to build a retaining wall for 31 Hannah Way for the Lucians? C. Kasey states that it is not up to the Zoning Commission in saying who pays for what.

Paul Horvay, 27 Hannah Way (Unit 23), states that he helped Greg Lucian with the water pouring down the bank at his house as well as at Anthony Mercuriano's, 29 Hannah Way (Unit 22) and that the water was not going to a catch basin. He questions if Harwinton requires erosion control plans, which they do. He questions if the erosion control plan provided by Mr. Lopardo was approved, which it was. He questions if the erosion control plan was adhered to with ZEO Don Truskauskas answering, yes, and adds that behind 31 Hannah Way it shows a 2:1 slope, maybe less.

Ruthann Horvay, 27 Hannah Way (Unit 23), states that the residents are not in the position to hire a lawyer, as they have been told to do by the Commission and Enforcement Officer. The residents are not a formal Association yet. She believes the bank may not meet the original plan and wants to know if in fact it does even though ZEO Truskauskas is saying it does. ZEO Truskauskas states that the residents should have hired a lawyer years ago with Lillian Busse, 15 Hannah Way, stating they were told they are not the Association and could not do so.

William Foster, 6 Hannah Way (Unit 9), questions if Mr. Lopardo is qualified to state that it was the plantings that caused the erosion of the bank, as he does not believe so.

George Perlotto, 33 Hannah Way (Unit 20), states that he is 76 years old and was happy to have helped Greg Lucian divert the water. He questions Commissioners if anyone other than ZEO Truskauskas have visited the site with some Commissioners stating they have driven through but not during any rain events. ZEO D. Truskauskas reminds the residents of Sunset Ridge that each time he goes out to the site, it costs the town, and that there are visits to the site that he hasn't even charged the town for.

Christine August, 22 Hannah Way (Unit 18), refers to ZEO Truskauskas' comment regarding cost to the town and states that within this 55 and older community the roads are not taken care of by the town, even though they get through traffic on this private road, they have no children attending the school system and that they do pay taxes to the town. To have ZEO Truskauskas say that it costs the town money each time he visits, it is the only service provided to the Sunset Ridge residents. She believes the slope of the bank is almost 50% and quotes state BOCA Building Code requirements. She states that the pitch of the bank is almost vertical and to eyeball it and say it is 2:1, that nobody's eye is that good. ZEO Truskauskas states that if the pitch is not 2:1, the residents have a valid concern, but the slope seems to be consistent between the two houses (31 Hannah Way and 33 Hannah Way).

Mr. Lopardo states that GM2 Associates did the surveying of the property and he will see if they have information on the slope.

\*\*\*\*\*

Returning to the matter of what is posted on the agenda under Item 5, Application for Modification of Previous Approval, Sunset Ridge off Mountain View Drive, Hannah Way, Lauren Lane – LUC Redmond had written a letter addressed to Len Lopardo stating that the modification was approved by the Zoning Commission and was for the following:

*The modification is to delete the proposed footpath primarily on the east and north sides of the site. This includes the path beginning at Lauren Lane and continuing in a counterclockwise direction to Ross Drive. The portion of the footpath from Lauren Lane to the area of the detention pond will remain. Catch Basin #18 and the grass swale on the north side of the site will be installed. That portion of the plan has been restored to what was shown on the original approval. A swale detail has been included on the plans, including the addition of a turf reinforcement mat on a 200-foot length of the swale upstream of Catch Basin #18."*

In light of the damage caused by the September 29, 2023 rain event, LUC Redmond wanted to bring discussion back to the table before sending out the letter. ZEO Truskauskas suggests that the letter be revised to reference the Modification Plan and date with LUC Redmond stating that once the revised plans showing the new location of the swale is received in the Land Use office, the letter will reference the revised date and be sent out.

Mr. Lopardo informs the Commission that the swale in the area further west will not be done until the spring as the grass won't grow at this time of year. William Foster, 6 Hannah Way, states that grass will grow in November and only take 4-5 days to germinate.

Shirley Amundsen, 25 Hannah Way (Unit 24), asks that the swale proposed in the back of her house and 24 Hannah Way be moved further north to the edge of the grass and woods with ZEO Truskauskas stating that Mr. Lopardo should move the swale further from the houses.

Teresa Foley, 13 Hannah Way (Unit 30), questions where the remaining two C.O.'s for the houses being built stands and will they be issued as Mr. Lopardo said that one of the two houses will be ready for a C.O. next month. Mr. Lopardo has not asked for a Certificate of Compliance yet for the two remaining houses but it was the Commission's stance that the last two remaining homes would not receive Compliance/C.O.'s until all issues/problems have been addressed.

Paul Horvay, 27 Hannah Way (Unit 23), questions that if it is determined that the erosion of the bank was caused because the slope was not 2:1, would the Commission insist the Mr. Lopardo fix it. Chairman Thurston states that he believes the developer would be responsible but he isn't sure.

Anthony Mercuriano, 29 Hannah Way (Unit 22), in reference to Mr. Lopardo's statement that grass wouldn't grow in the swale until spring, he reminds Mr. Lopardo that grass was planted on his lot in December by Mr. Lopardo himself. He states he has concern for the Lucian's and Perlotto's and that there is a need to extend the wall to go behind Lucian's home but he also questions if the wall is going to work to hold back the slope with ZEO Truskauskas stating he is not sure as he is not an engineer. Mr. Mercuriano states his belief that Mr. Lopardo owns the land so he should be responsible for the wall.

Lillian Busse, 15 Hannah Way (Unit 29), sent an email to the Land Use office on 10/9/2023 stating the following:

I wanted to let you know nothing has been done on the list from September 10, 2023. For detail description see Sept 29, 2023 plan.

- Detention Pond
- No street lights two were promised weeks ago
- No Curbing in various locations
- Documentation that the road is to Town standards
- Catch Basin and Swale
- Remaining Landscaping per revised plan
- Weeds grading topsoil and seed disturbed areas (Phase 3 and Phase 5)
- Mudslides and other erosions sites

I am concerned that the work won't get done before winter. Then Len's excuse would be he can't do anything in the winter.

When houses are compromised by floods, silt and mudslides, Len does nothing. He claims it's the associations problem, when we tell him he is the association, he just walks away. He is the developer and also our association manager and does nothing. That leaves 70+ year old residents going out and digging ditches to protect their homes. Then he tells us we have no right to do that and won't fix the problem, because we caused the problem! He has responded to the Zoning Board by putting up some silt fences and hay bales. Unfortunately, after the damage is done.

Sunset Ridge is a community for residents 55+ consisting of soon to be 30 single homes owned by the residents. The land is common ground that the Association is responsible for. The association fees consist of Taxes on the common ground, Management fee, Insurance, Fire hydrants water, Electricity for street lighting, Trash and recycle, Road Maintenance, Landscaping and Snow Removal, Miscellaneous expenses and "reserves".

All we are asking for is the community to be developed like the plans that the town approved, and what we were shown when we bought out homes.

We are looking forward to transitioning from Mr. Lopardo to the residents with everything done.

## 6. COMPLAINTS/ENFORCEMENT ACTIONS.

Mr. & Mrs. Gil Roberts are present to discuss their complaint they submitted for discussion at the last Zoning meeting where it was determined by ZEO Don Truskauskas that the activity taking place at 800 Hill Road, consisting of receiving large logs that are deposited on to the side of the property and then processed into firewood, is an agricultural use. Mr. Roberts states that he believes if one is processing wood, that wood has to come from the property they own and this is not the case. Harwinton Agricultural Committee Chairperson Michael Orefice wrote an email to the Land Use office stating the following:

*The Zoning minutes dated September 25, 2023 describe a complaint from Gil Roberts, 775 Hill Road, regarding his neighbor at 800 Hill Road for processing firewood for sale. The minutes reflect that the operation involves large sections of trees from various tree removal services that are delivered in bulk to the front of 800 Hill Road where the trees are processed on the property and then removed from the site and possibly sold. The Zoning Enforcement Officer stated that this type of operation is considered an agricultural use as was determined in the past by the ZBA for the same operation that takes place on Shingle Mill Road.*

*The resident at 800 Hill Road may be processing the logs at his residence, but if he is not personally harvesting the logs, then this activity is NOT an agricultural operation. The farm operation on Shingle Mill Road that was approved by ZBA was approved because the farmer processed AND HARVESTED the logs himself. Having truck loads of logs delivered to ones property, does not fit the state definition of agriculture under 1-1q Definition of Agriculture. Engaging in agricultural practices MUST include the harvesting and not just the processing.*

*Note: The harvesting of an agricultural commodity does not have to be harvested on ones own land. There are many farmers that lease land from other property owners that allows them to harvest agricultural products such as hay, maple sap, and corn as examples.*

*If Zoning deems the activity at 800 Hill Road as an agricultural use, then there's no stopping anyone from bringing in an agricultural product to their property, sell it, and then claim that they are engaged in agriculture practices and expect to be protected under the state definition of agriculture and/or Harwinton's Right to Farm Ordinance.*

*Farming plays an important role in Harwinton and it's vital that we protect the local farmers that engage in sound agricultural practices and follow the guidelines laid out in 1-1q.*

*Michael Orefice  
Harwinton Agricultural Committee Chairperson*

D. Kovall states that the Zoning Regulations clearly state that agriculture must have to do with the property, such as the person doing the cutting of trees. Mr. Bagley is getting deliveries of logs from a 16-wheeler, and with the use of a claw, they are removed and placed on the side yard of his property where they are then processed into firewood. ZEO Truskauskas states that what he is doing is what Bryan Heavens is doing on Shingle Mill Road and won his appeal in front of the 2010 Zoning Board of Appeals after a Cease and Desist Order was issued to him. D. Kovall states that was many years ago and believes that a Notice of Possible Violation should be sent to Mr. Bagley to have him come before the Zoning Commission and if it ends up in front of the Zoning Board of Appeals, that Commission should only look at appeals on a case by case basis. C. Kasey **motioned** to have ZEO Truskauskas send a Notice of Possible Violation to Mr. Bagley asking him to attend the November 13, 2023 Zoning meeting.

**7. ANY OTHER BUSINESS.**

None.

**8. INFORMAL DISCUSSION – PROPOSED ZONING REGULATION AMENDMENTS.**

No discussion.

**9. CORRESPONDENCE.**

None.

**10. INVOICES.**

None.

**11. ADJOURN.**

C. Kasey **motioned** to adjourn the meeting at 8:40 p.m., seconded by D. Kovall. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

