

## ZONING COMMISSION MEETING

MONDAY, MAY 11, 2015

TOWN HALL 7:00 P.M.

Present: Chairman Don Truskauskas, David Mathes, Anne Marie Buonocore, Joseph Marzullo, Alternate Member Dan Thurston, Alternate Member Lynne Steincamp, Alternate Member Michele Rewenko, Land Use Coordinator Polly Redmond.

Also Present: First Selectman Michael Criss and Town Atty. Michael D. Rybak

Absent: Todd Ouellette

### PLEDGE OF ALLEGIANCE

### PUBLIC HEARING

#### 1. OPEN HEARING – ESTABLISH QUORUM.

Chairman Truskauskas called the hearing to order at 7:00 p.m. All regular members present are seated with Alternate Member Dan Thurston seated for Todd Ouellette.

#### 2. PRESENT COMMISSION-INITIATED PROPOSED ZONING REGULATION AMENDMENTS AS FOLLOWS:

##### **\*ADD TO SECTION 2.3 DEFINITIONS:**

*Medical Marijuana Dispensary Facility means a place of business where medical marijuana may be dispensed or sold at retail to qualifying patients and primary caregivers and for which the Connecticut Department of Consumer Protection has issued a dispensary facility permit under Public Act 12-155, Connecticut General Statutes, Chapter 420f, and Sections 21a-408-1 to 21a-408-70, inclusive, of the Regulations of Connecticut State Agencies.*

*Medical Marijuana Production Facility means a secure, indoor facility where the production of medical marijuana occurs and is operated by a person to whom the Connecticut Department of Consumer Protection has issued a production facility permit under Public Act 12-155, Connecticut General Statutes, Chapter 420f, and Sections 21a-408-1 to 21a-408-70, inclusive, of the Regulations of Connecticut State Agencies.*

##### **\*ADD TO SECTION 4 PERMITTED USES AND SPECIAL PERMIT USES FOR EACH ZONE (PRIOR TO SECTION 4.1): LAST PARAGRAPH TO READ:**

*Prohibited Uses: Medical Marijuana Dispensary and Production Facilities are not allowed in any zone.*

The file contains **Exhibit A)** Harwinton's Zoning Regulations dated 9/17/2012, **Exhibit B)** Harwinton's Plan of Conservation and Development, **Exhibit C)** the proposed Zoning Regulation, including Statement of Purpose, **Exhibit D)** Notices to Regional Planning Agencies and neighboring municipalities, **Exhibit E)** Notice to the Harwinton Planning Commission in accordance with CGS 8-3a(b), **Exhibit F)** Copy of Public Act No. 12-55 An Act Concerning the Palliative Use of Marijuana, **Exhibit G)** Copy of Chapter 420f Palliative Use of Marijuana, **Exhibit H)** State of CT Regulation of the Department of Consumer Protection concerning Palliative Use of Marijuana, **Exhibit I)** Legal Opinion from the West Hartford Corporation Counsel dated 3/20/2014 Re: West Hartford's proposed Medical Marijuana Ordinance.

Chairman Truskauskas reads the call to hearing (**Exhibit J**) as published in the Republican American on 4/30/15 and 5/8/15. He acknowledges Staff Referral Report received from the Naugatuck Valley Council of Governments (**Exhibit K**) and reports that their findings of the proposed text amendments to Harwinton's Zoning Regulations to be in conformity with the Regional and State Plans of Conservation and Development and that the amendments are a reasonable use of the Commission's authority to regulate land use. **Exhibit L** is the report from the Harwinton Planning Commission from their 4/8/2015 meeting. **Exhibit M** is an email from Town Atty. Michael D. Rybak that provides a link to an editorial on CT Viewpoints, the editorial page of the CT Mirror, by Dr. Sheryl Ryan, Professor of Pediatrics at Yale University School of Medicine and Chair, AAP National Committee on Substance Abuse that makes clear Connecticut should be cautious about any further legalization of medical marijuana or recreational use until THC has been reclassified and scientifically studies as a Schedule 2 regulated substance for its medical effects on children under the age of 18.

Chairman Truskauskas explains to the public the hearing process and procedure and reads the proposed Zoning Regulation amendment. He opens the floor to public comment at this time.

Eugene Slason, 90 Spring Hill Road, states that he doesn't believe Harwinton should be in the forefront of having a medical marijuana dispensary in town having only one resident trooper to deal with any fallout from it. He states he would not like to see a dispensary in town.

Roland Perreault, 165 Delay Road, states for the record he is a Planning Commissioner and that the Planning Commission's report should be shared with the public tonight. He states that the Planning Commission had concerns with the proposal and believed it to be irrational. Speaking as a resident now, he states that he believes prohibiting a medical marijuana dispensary or a medical marijuana production facility exposes the town to liability. He finds it contradictory that the Zoning Commission's purpose of this proposed amendment is to protect the public health when the reason for the State of Connecticut's regulation is for health issues. He believes the proposed Zoning amendment is really a *not in my back yard* thing. He questions whether any of the Zoning Commissioners have read the State's Regulation of the Dept. of Consumer Protection concerning Palliative Use of Marijuana and notes that the Regulation provides for much responsibility and security of these types of facilities. He urges that the Commissioners read the State's Regulation before making any decision. He states that he is not speaking for the good or the bad of these types of facilities but only has concern for the position the town may be put in by prohibiting them.

Chairman Truskauskas notes that he has read the State's Regulation of the Dept. of Consumer Protection concerning Palliative Use of Marijuana and that the Zoning Commission has held discussions on this topic for over a year prior to this public hearing being scheduled.

First Selectman Michael Criss, 274 Scoville Hill Road, states that back in 2011 he came before the Zoning Commission with information from Northwest Council of Governments where they had discussed regulations on strip clubs, bars and medical marijuana. He had shared this information with the Zoning Commission and is happy to see that discussion has taken place. He explains that no other board has the responsibility for making this decision and that the Commission should make decisions not only for today but for years to come. He notes that this town is not land locked from anything but that the town does need businesses here but do we want medical marijuana facilities? He believes not. The Commission should view medical marijuana facilities the same as if CVS or Price Chopper came before this board for a use permit. He notes that the University of Virginia did a study in 1996 regarding the increase in crime around

medical marijuana facilities and as was noted by Mr. Perreault, there is the trooper issue of having only one on staff at a time. First Selectman Criss states that he would like to keep the rural character and charm of this town and would like to see Harwinton's landscape remain the way it is. He reminds the commission that once the door is open for medical marijuana use in town, it opens the door for recreational use. He states he knows of the many benefits of medical marijuana but doesn't believe a facility here to be the best use of land in Harwinton.

Michael Orefice, 231 Lead Mine Brook Road, Chairman of the Planning Commission, explains that the Planning Commission met on 4/8/15 and had the proposed Zoning Regulation amendment presented to them for a report. LUC Redmond could not attend that meeting and with no Zoning Commission member representing, the Planning Commission went blindly into a recommendation. He reads the Planning Commission's report which is as follows:

A motion was made against the adoption of the proposed regulation changes at this time until:

1. The proposed language is reviewed by Town Atty. Michael Rybak for any future potential legal issues.
2. The Zoning Commission has read and understood the 76 pages of regulations.
3. The Zoning Commission can demonstrate that the changes are in keeping with Harwinton's current Plan of Conservation and Development.
4. That the Zoning Commission can defend that the prohibition protects the health and safety of the citizens of Harwinton.
5. The Zoning Commission investigates any current issues with towns that presently have processing facilities and dispensaries.

Mr. Orefice states that he attended a CT Federation of Planning & Zoning Agencies Conference back in 2014 presented by the author of the State's Regulation of the Dept. of Consumer Protection concerning Palliative Use of Marijuana (William M. Rubenstein, CT Commissioner of Consumer Protection) where the extensiveness of the regulations were discussed. Mr. Orefice states that he is not necessarily for or against the proposed amendment but that the Zoning Commission should investigate these five points.

Franci Tartaglino, 500 Burlington Road, questions the cost of this process for holding a public hearing and having the Town Attorney review the proposed regulation and attend this hearing as well as the cost of the Land Use Coordinator's time involved. Commissioner J. Marzullo states that this is not a topic of discussion. First Selectman Criss states that the legal budget has not exceeded its limit and that the Land Use Coordinator is paid hourly and nothing extra has been taken out of her salary for work involved in this proposal. Ms. Tartaglino comments that there is then a cost involved in search of a regulation for something that hasn't been proposed to this town by anyone. She also questions whether this proposed Zoning Regulation amendment conflicts with the Right to Farm Ordinance. Chairman Truskauskas states that there was discussion on whether Medical Marijuana would fall under agriculture and the answer is no. Ms. Tartaglino states that people felt the same way when her massage business opened, there was fear of what it would bring, and that the residents of Harwinton seem to feel the same way about business owners who distribute or cultivate medical marijuana.

Janet Burritt, 31 Whetstone Road, states that as a past Board of Selectman member she was charged with the care and interest of the citizens of Harwinton. She was shocked when she learned of this proposal and is not sure if local government can keep control of this. She states it won't be a positive move for the town and questions who proposed the amendment. Chairman Truskauskas states that First Selectman Michael Criss brought this to the attention of the Commission. Mrs. Burritt states that she hopes there'd be other

resources other than medical marijuana to help those who need pain relief. She states that she stands firmly with the Zoning Commission to prohibit medical marijuana facilities in town.

Eugene Slason, 90 Spring Hill Road, states that he would be opposed to any drug manufacturing plant in Harwinton and that people moved to Harwinton for its small town feel and he would like to keep it that way. He believes there is not enough evidence as to the benefits of medical marijuana to warrant it to be in Harwinton.

Franci Tartaglino, 500 Burlington Road, states that there are multiple issues going on here tonight and that this proposed regulation is not about recreational marijuana, it's not about porn shops moving in, it's about people not finding relief with medication. She states that she has customers coming to her business who suffer with chronic pain who take oxycontin, vicodin, etc. and that people find much pain relief with medical marijuana. People need this tremendously and we should be doing everything in our power to help them. She finds this proposed amendment to be a preemptive strike since there is no proposal for such a facility to come to town.

First Selectman Michael Criss, 274 Scoville Hill Road, states that Franci Tartaglino brings up a good point, the difference between recreational and medical marijuana use. Medical marijuana is now a legal use in the State of CT but federally, it is still illegal. He states that if the town opens a door to it, it won't be able to close it if facilities are grandfathered in and if marijuana becomes legal recreationally. He states that he does not look to the government to look out for the best interest of Harwinton; he relies on land use commissions, town staff and the town attorney. The welfare of Harwinton is not always about revenue, it's about safety too. He cites a September 2014 article conducted by Catherine Alford, Department of Economics at The University of Virginia, where the author found that "allowing for marijuana retail stores (called dispensaries) increases overall state property crime rates by 8.12 percent and increases robbery rates by 10.98 percent. On the other hand, allowing for home cultivation of marijuana has no statistically significant effect on property crime rates and decreases the robbery rate by 10.03 percent. These results demonstrate the importance of market design in influencing the nature of marijuana transactions and the resulting incentives for crime following the legalization of marijuana."

John Grasso, 32 High View Drive, states that discussion tonight is reaching "outside the umbrella". He has heard discussion on problems in other states where dispensaries have opened up but there have also been some successes. If the proposed amendment was approved and Connecticut goes forth with full legalization, he questions whether that legalization would be controversial to the proposed regulation to prohibit. Chairman Truskauskas states that Town Atty. Michael Rybak could speak to that but tonight the discussion should only be about medical marijuana facilities.

With no further comment from the public, Commission members are asked for their comments.

Commissioner Joe Marzullo refers to a documentary he watched on CNN called "High Profits" which documented a place in Colorado where a couple opened up a medical marijuana dispensary in hopes they could change over to a recreational marijuana dispensary, which they did. He states that the couple went from being quite poor to making \$800,000 a day. His point is that the goal behind these facilities is not just medical but monetary and that it is easy to go from medical marijuana dispensary to a use that Harwinton would not want in this town.

Commissioner Anne Marie Buonocore states that she is not in favor of this proposed regulation for the same reasons the Planning Commission stated in their report. The proposed regulation is saying that it is in the best interest of the public not to provide medical marijuana which, in her opinion, is not true. There are lots of assumptions here tonight and she would like to take this time to read a statement she has prepared (**Exhibit N**). In part the statement reads that she “asks that the Commission and the public stick to the question at hand and that this proposed Zoning Regulation is about whether or not the town feels that a medical marijuana dispensary and/or growing facility should be allowed as a business in Harwinton. It has been legalized by sound and reasonable elected officials, who based their vote on scientific knowledge gleaned from the peer reviewed rigorous research studies and clinical trials conducted by NIH grants in reputable academic institutions, and the resulting published literature – the decision to legalize was based on science with evidence to treat, not on anecdotal information or single expert opinion. And those who made the decision are those that we, you and I, elected to legislate in Hartford for the State of CT.” She states that she would like to do nothing since the Zoning Commission is not in favor of permitting such a use. She also submits for the record, **Exhibit O**, a letter from the Chief of Police, South Windsor Police Department, after she had a discussion with him regarding a successful medical marijuana dispensary in that town. The letter from Matthew D. Reed, Chief of Police, dated 5/11/15, states that Prime Wellness of Connecticut has operated a cannabis dispensing facility in South Windsor since August 2014 and that there has been no negative effects of the business being there. Before closing, she reads a short excerpt from an article in the Hartford Courant, dated 4/20/15, (**Exhibit P**) titled *A Slow Start* by Kenneth R. Gosselin. The article mentions that “Harwinton is among some towns that are opposing medical marijuana outlets within their borders.”

Chairman Truskauskas states his belief that it is the Zoning Commission’s job to look ahead at pending applications without a knee-jerk reaction when an application comes before this commission. This public hearing was scheduled out to allow time for the public to form questions and bring them to the hearing. It is said that a medical marijuana facility would not be allowed in town without it being permitted in the Zoning Regulations but it can come in under retail. If the situation changes regarding medical and recreational, the Commission can go back and change the regulation they are proposing. It’s also been said that no one wants to come to Harwinton to open a facility but it is possible if the business can save on property taxes and benefit from a low mil rate.

Commissioner Lynne Steincamp points out that this public hearing is about location of business, not the merits of medical marijuana. It seems to her that a medical marijuana dispensary would not be a problem and would be a low impact business to bring revenue to the town. A medical marijuana dispensary would be the type of business that would be heavily regulated, like a liquor store, and medical marijuana is a legal drug and dispensing is a legal business. She does not see a problem with permitting it.

Commissioner Michele Rewenko states her belief that this will not be solved tonight. The commission must look at other states as to what could happen here and that she doesn’t feel comfortable in approving such a business here in town.

With no further comments from the Commissioners Town Atty. Michael Rybak addresses the commission. He states that procedural notices were mentioned in the opening of the hearing and questions whether there was a response from Northwest Council of Governments. LUC Redmond states there has been no response but proof of receipt of the notice has been received in the Land Use office. Other noticing requirements were verified including fulfilling the land use notice registry. Atty. Rybak states that Atty. Steve Byrne was contacted by LUC Redmond asking his opinion on the proposed regulation and that the public hearing

should remain open in order to obtain his legal opinion. He cautions the commission that any decision they make should be clear and that very specific reasons for their decision should be made. The commission must also make clear if their decision is in compliance with the Plan of Conservation and Development. In regards to the POCD, he notes that there is very little land, 623 acres, listed as Industrial or Utility land and 182 acres listed as Commercial land. The Zoning Map, presented tonight for viewing, shows the location of these zones and Atty. Rybak notes that all of these zones were in use prior to 1955 conception of Zoning Regulations. Atty. Rybak submits copies of pages from the Plan of Conservation and Development (**Exhibit Q**) that outline this acreage information and also submits a copy of the Zoning map found in the POCD.

Atty. Rybak states that when he was first asked for his opinion on this proposed Zoning Regulation, he questioned whether the town even needed to do this at all. Zoning Regulation 1.3.1 states that “Any use which is not specifically permitted in a zone is prohibited and any use that is not specifically permitted in any zone is prohibited in the entire Town.” Zoning Regulation 2.2 states “Uses of land, buildings, or structures not clearly permitted in the various zones are prohibited.” and Zoning Regulation Section 4 states “Uses of land or structures not clearly permitted in the various zones are prohibited.” Within the Zoning Regulations for Commercial/Industrial zones, there is nothing that specifically permits a medical marijuana facility but there is a permitted use for store for retail trade and at one time there was a pharmacy in town. Faced with this regulation, Atty. Rybak states he was asked whether the town needs to regulate for medical marijuana dispensaries and the question of whether a dispensary could come in as it is no different than a pharmacy. The second question posed to Atty. Rybak was whether a medical marijuana production facility could be considered the same as a farm, which is not easy to answer.

Atty. Rybak states that if one were to look at the authority to zone, the municipality can only do what they are authorized to do and what is found in State Statute Section 8-2. He notes that the Zoning Commission had previously asked him to look at a Moratorium on Medical Marijuana Dispensaries and Producers, as other towns have done, to allow the Zoning Commission time to study regulations. Somewhere along the line, the direction of the commission changed and he states that with this proposal to prohibit, the commission is going into deeper water. At issue is the adoption of Chapter 420f and State Regulations that preempts Zoning. Atty. Rybak submits for the record a copy of Exhibit I (noted above as Legal Opinion from the West Hartford Corporation Counsel dated 3/20/2014 Re: West Hartford’s proposed Medical Marijuana Ordinance where counsel’s conclusion was that options for a proposed Medical Marijuana Ordinance included increasing or decreasing separating distance requirements (similar to the sale and serving of liquor within towns), increase or decrease the permitted zones for production and/or dispensary facilities but cautioned against an outright prohibition. As a side note, Atty. Rybak states that if this commission were to go forward with this proposal to prohibit, then the proposed wording must clearly be stated as Medical Marijuana Dispensaries and Medical Marijuana Production Facilities separately.

Atty. Rybak reviews statute definitions of sections of State Statute 21a 408 which authorizes the Commissioner of Consumer Protection to adopt regulations providing for the licensure and standards for the State of CT and the number of facilities allowed in the state. The regulations also allow the Commissioner to authorize any person to dispense medical marijuana who is qualified and a pharmacist, and can authorize the limit of dispensaries so as to not exceed the number appropriate to meet the needs of qualified patients in the state. Atty. Rybak states that in Subsection f of the regulations, the Commissioner, in order to license dispensaries, must describe areas in the state where licensed dispensaries may not be located after considering criteria for location of retail liquor permit premises as found in Subsection A of Section 30-46. He finds it curious why legislature would cross-reference what is a

pharmaceutical dispensary statute to the location of a liquor store and adds that Section 30-46 Liquor Act may, at its discretion, suspend, revoke or deny renewal of a liquor license for reasonable cause if believed that proximity has detrimental effects against church, schools, hospital, or veterans home or camp barracks or flying field of the armed forces. He believes this to be a very old statute and also finds this a strange attachment to the Medical Marijuana Dispensary regulation

Atty. Rybak states that regulations do not take production of medical marijuana as farming or agricultural and he reads the criteria that must be met for Production facilities. Discussion continues on whether the State Regulations preempt local regulations. Atty. Rybak submits **Exhibit R**, a copy of American Land Planning Law, State Statute 103:6.50 *Particular uses – Medical marijuana* where land use appellate litigation in connection with medical marijuana uses has thus far only taken place in California where one particular issue California courts faced has been whether the State's Compassionate Use Act (CUA) or Medical Marijuana Program Act (MMP), both of which decriminalize the sale and possession of marijuana used for medical purposes, preempt local land use ordinances banning medical marijuana dispensaries. The article goes on to state that the issue of express preemption, the Court explained that the narrow purposes of the CUA and MMP – to enable access to medical marijuana – did not explicitly require localities to guarantee the availability of locations where medical marijuana may be sold and in fact, the Court suggested it would be unreasonable to deny a locality's authority over the siting of marijuana dispensaries since facilities that dispense medical marijuana may pose a danger of increased crime, congestion, blight and drug abuse, and the extent of this danger may vary widely from community to community."

**Exhibit S** is entered by Atty. Rybak which is a copy of American Land Planning Law, State Statute 4:9.50 *Medical marijuana shops* that notes "where state legislation exists, local governments face questions as to whether they can regulate marijuana sales for medical purposes, and, if so, how they can go about doing it. Beyond state controlled licensing requirements, local zoning issues arise such as zoning to prohibit such use, designating zones where such use is allowed, defining the use, establishing a minimum distance from sensitive areas, and whether to allow home occupations." The article goes on to state that, "an apparent and glaring road block to the effectiveness of these state laws permitting medical marijuana sale and use is that they provide no defense to a federal prosecution. Federal law prohibiting the use or possession of marijuana has no exception for marijuana used for medical purposes." The article continues on with information that the California Supreme Court held that the state law authorizing medical marijuana shops did not preempt local authorities from banning them and that Colorado's medical marijuana law expressly allows local government to regulate dispensaries, even to the point of prohibiting them.

Atty. Rybak questions the commission on whether they wish to venture forward with this proposed regulation and whether there is a real need to do so. Chairman Truskauskas questions whether someone can come before this commission with an application for retail use dispensing medical marijuana and asks would the commission have to allow such use. Atty. Rybak states, yes. The commission would be hard-pressed to deny the application. Commissioner Marzullo expresses fear of a medical marijuana dispensary morphing into a dispensary for recreational marijuana if the product became legal. LUC Redmond questions whether the State of CT Regulation of the Department of Consumer Protection concerning Palliative Use of Marijuana requires a square footage minimum for a medical marijuana dispensary with Atty. Rybak stating that one of the requirements does ask for a blueprint for both dispensaries and production facilities that includes square footage. Chairman Truskauskas questions whether the place for prohibition is within the Zoning Regulations or should it be an Ordinance to which Atty. Rybak states that it is the Zoning Regulations that permits uses allowed in town.

Chairman Truskauskas questions whether the Zoning Commission could preempt the State's Regulation by putting it in the Zoning Regulations with Atty. Rybak stating that the Zoning Regulations could state that certain things may be allowed and certain things may not be allowed such as, medical marijuana may be allowed but recreational marijuana may not be allowed.

**3. CONTINUE OR CLOSE HEARING.**

D. Thurston **motioned** to continue the hearing to Tuesday, May 26, 2015 at 7:00 p.m. in the town hall, seconded by A. Buonocore. Motion passed unanimously.

**REGULAR MEETING**

**1. OPEN MEETING – ESTABLISH QUORUM.**

Chairman Truskauskas calls the regular meeting to order at 8:52 p.m. The same quorum exists.

**2. APPROVE MINUTES OF PREVIOUS MEETING: 4/27/15**

A. Buonocore **motioned** to approve the minutes of the previous meeting, seconded by J. Marzullo. Motion passed unanimously with D. Mathes and D. Thurston refraining from vote due to their absence at the previous meeting.

**3. PUBLIC COMMENT.**

None.

**4. KRISTINA NURNBERG – APPLICATION FOR 14' X 30' SHED, 124 MEADOWVIEW DRIVE. REQUEST FOR WAIVER OF ENGINEERED PLAN.**

Mr. & Mrs. Nurnberg are present. A letter from the Nurnbergs requesting a waiver of an engineered plan is on file. Placement of the shed will be 40 feet to the side property line and approximately 85 feet from the front property line. IWWC and TAHD approval has been received. D. Thurston **motioned** to grant the waiver request, seconded by D. Mathes. A. Buonocore **motioned** to approve the application, seconded by D. Mathes. Both motions passed unanimously.

**5. KEN PREVUZNAK – APPLICATION FOR 12' X 30' BARN, 34 WHETSTONE ROAD. REQUEST FOR WAIVER OF ENGINEERED PLAN.**

Mr. & Mrs. Prevuznak are present. A letter from the Prevuznaks requesting a waiver of an engineered plan is on file. Placement of the barn will be 78 feet from the front property line and 38 feet to the side property line. IWWC and TAHD approval has been received. D. Mathes **motioned** to grant the waiver request, seconded by J. Marzullo. A. Buonocore **motioned** to approve the application, seconded by D. Thurston. Both motions passed unanimously.

**6. BRIAN PAGANINI – APPLICATION FOR SINGLE FAMILY DWELLING, LOT 13, ROCKY ROAD WEST.**

Jared Braddock, Pickett Brook Properties, is present to represent. Plans prepared by Jones Engineering, LLC, Southington, CT titled Proposed Plot Plan & Septic System Design for Pickett Brook Properties, LLC dated 12/17/14, revised 4/9/15 are reviewed. IWWC and TAHD approvals have been received. Soil and Erosion Permit is on file. No driveway permit is required as the end of Rocky Road West where it intersects with Fox Hunt Way will be paved and that roadbed will be extended to the town property line and the entrance of Lot 13. A. Buonocore **motioned** to approve the application, seconded by D. Mathes. Motion passed unanimously.



**7. DISCUSSION/POSSIBLE DECISION - COMMISSION-INITIATED PROPOSED ZONING REGULATION AMENDMENTS ADDING DEFINITIONS OF MEDICAL MARIJUANA DISPENSARY FACILITY AND MEDICAL MARIJUANA PRODUCTION FACILITY AND TO PROHIBIT THE USE OF MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA PRODUCTION FACILITIES IN ANY ZONE.**

No discussion.

**8. COMPLAINTS/ENFORCEMENT ACTIONS.**

Five complaints (two dated 4/30/15 and three dated 5/11/15) have been received from Jessica Genovese, 109 Scoville Hill Road, against Don Truskauskas, 99 Scoville Hill Road regarding Autumn Excavating truck entering and exiting the 99 Scoville Hill Road property throughout the day. The complaints state that sometimes the truck has a cover over the truck bed with some type of material underneath and with equipment trailer in tow as it enters the 99 Scoville Hill Road property. No work is being done on the property and she therefore believes that Mr. Truskauskas is operating his business out of his home. She states that she has sent a video she has taken to ZEO David Perkins that shows Mr. Truskauskas coming and going in his dump truck on various days and the amount of dust produced from doing so. One complaint speaks of an Autumn dump truck leaving the property at 6:22 a.m. hauling the equipment trailer with a white Chevy truck following and pulling a trailer. This truck returned to the 99 Scoville Hill Road property at 6:35 p.m. Also, she notes in her complaint, that a blue truck was on the property all day and exited the property at 6:39 p.m. Mr. Truskauskas' Autumn Excavating dump truck returned to his property at 8:19 p.m.

She notes that the Zoning Board of Appeals granted Mr. Truskauskas the right to keep one truck on his property and that it was to only be used for work being done on his property, not for it to come and go as it has been. She claims that the activity affects not only her but that of her neighbors and that Mr. Ragalye's house to the south of Mr. Truskauskas' driveway becomes enveloped in dust when the dump truck is driven onto the 99 Scoville Hill Road property. She claims that the activities by Mr. Truskauskas not only affect the outside living ability of her and her neighbors but the inside as well and notes that Mrs. Galgano, who lives across the street from 99 Scoville Hill Road, had to move her bedroom to the back of the house due to Mr. Truskauskas' truck entering and exiting the property.

Mrs. Genovese expresses that she was expecting to see ZEO David Perkins at tonight's meeting and she questions what is being done with her complaints. She questions whether there is a checklist that he completes saying that he read the complaint and notes what action has been taken. She states she has not heard from the ZEO on any of these complaints she submitted.

Chairman Truskauskas gives Mrs. Genovese a copy of the ZEO's Procedures on Enforcement outline and a copy of the Zoning Enforcement Officer Complaint Worksheet he is to fill out. Mrs. Genovese questions whether the ZEO is using these forms with Chairman Truskauskas stating, no.

At this time, Mr. Truskauskas recuses himself in order to make rebuttal of the complaints presented tonight. He states that the dump truck in question can be stored on the residential property as allowed by a ZBA ruling. The other truck that Mrs. Genovese mentioned is that of a friend of his who comes in with the blue truck and then borrows Mr. Truskauskas' truck. This truck in use can come and go on his property and can also be stored on his property. Mr. Truskauskas notes that his friend returns earlier than he does so obviously he is not working with him. In regards to the noise nuisance claim, Mr. Truskauskas states that it

is Torrington Area Health District that handles noise complaints. LUC Redmond questions as to whether there is any dust control for the gravel driveway with Mr. Truskauskas replying that it is only a requirement in the Zoning Regulations for the construction phase of a structure with LUC Redmond stating that perhaps it is for the construction phase because that is when trucks are usually entering the property on a daily basis, not ten years after construction has been completed.

Discussion by commission members ensues regarding the use of the Zoning Enforcement Officer Complaint Worksheet. The commission asks that ZEO Perkins be asked to attend the next Zoning meeting on Tuesday, May 26, 2015 in order to hold further discussion on the use of the worksheet and job performance.

It is noted that the ZEO has not furnished the commission with a report in regards to the complaint received at the last Zoning meeting from Mr. Zielinski.

9. **ANY OTHER BUSINESS.**

None.

10. **CORRESPONDENCE.**

None.

11. **INVOICES.**

None.

12. **ADJOURN.**

A. Buonocore motioned to adjourn the meeting at 9:35 p.m., seconded by D. Mathes. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT  
ON 5-18-2015 AT 2:40 PM  
ATTEST NANCY E. ELDRIDGE TOWN CLERK