

**ZONING COMMISSION MEETING
MONDAY, SEPTEMBER 14, 2015
TOWN HALL 7:00 P.M.**

Present: Chairman Don Truskauskas, David Mathes, Anne Marie Buonocore, Alternate Member Lynne Steincamp and Land Use Coordinator Polly Redmond
Absent: Joseph Marzullo, Todd Ouellette, Alternate Member Daniel Thurston and Alternate Member Michelle Rewenko

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 L. Steincamp seated also.

2. APPROVE MINUTES OF PREVIOUS MEETING: 8/24/15

A. Buonocore **motioned** to approve the minutes of the previous meeting with amendments to Page 2 found attached to these minutes, seconded by L. Steincamp. Motion passed unanimously.

3. PUBLIC COMMENT.

Ron Genovese, 109 Scoville Hill Road, speaks of his concerns pertaining to Item 6, Don Truskauskas' application for barn and inground pool, that include questionable fill being brought onto the 99 Scoville Hill Road property that could compromise the wells in the neighborhood. He also questions whether a special permit will be required along with the application and refers to Mr. Truskauskas' previous application for a barn where he failed to abide by the Zoning Commission's request for further information from an engineer which was never obtained. He also has concerns that the residential property will become a staging area once the application is approved.

4. DAVID FREDSELL – APPLICATION FOR 24' X 24' GARAGE, 71 BURLINGTON ROAD

Mr. Fredsell is present. Plans by Dufour Surveying titled, Improvement Location Survey, dated 7-23-15, are reviewed. IWWC and TAHD approvals have been received. Erosion Control permit is on file. L. Steincamp questions the topography of the land with Mr. Fredsell stating it is relatively flat and there is no need for cuts. A. Buonocore **motioned** to approve the application, seconded by D. Mathes. Motion passed unanimously.

5. KEN WOOD – APPLICATION FOR 40' X 48' BARN, 68 GRIFFEN ROAD. REQUEST FOR WAIVER OF ENGINEERED PLAN.

No one is present to represent. LUC Redmond asks whether the application can be reviewed and approved in the absence of the applicant. IWWC and TAHD approvals have been received for the pole barn to be located 75 feet to the side (south) property line and 100 feet +/- to all other property lines. The property contains 25 acres.

D. Mathes **motioned** to grant the request for a waiver of an engineered plan, seconded by A. Buonocore.

D. Mathes **motioned** to approve the application, seconded by A. Buonocore. Both motions passed unanimously.

6. DON TRUSKAUSKAS – APPLICATION FOR 42' X 42' BARN AND 36' X 42' INGROUND POOL, 99 SCOVILLE HILL ROAD.

REQUEST FOR WAIVER OF ENGINEERED PLAN.

Applicant is not ready to present at this time.

7. COMPLAINTS/ENFORCEMENT ACTIONS.

ZEO David Perkins relayed that there are no active complaints at this time.

8. ANY OTHER BUSINESS.

None.

9. CORRESPONDENCE.

Commissioners are given copies of a draft Blight Ordinance and a revised Ordinance 103 concerning Abandoned and Inoperable Vehicles from the Board of Selectmen. Discussion and any comments Commissioners might have concerning these ordinances will take place at the next Zoning meeting to be held on September 28, 2015.

A letter has been received in the Land Use office today from Georgia Buettner, 79 Scoville Hill Road, stating her concerns of Item 6, application of Don Truskauskas, 99 Scoville Hill Road, for barn and inground pool. Chairman Truskauskas reads the letter to Commissioners. Letter remains on file in the Land Use office.

10. INVOICES.

None.

11. ADJOURN.

D. Mathes motioned to adjourn the meeting at 7:22 p.m., seconded by A. Buonocore. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 9-17-2015 AT 12:10 PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK

Atty. Rybak refers to a legal question that was asked by Chairman Truskauskas at the last meeting concerning what is the required vote in this case due to the Planning Commission's report. He states that the Zoning Commission needs to decide and clearly state on record the number of members voting. State Statute 8-3a *Findings of consistency of proposed regulations or boundaries with the plan of development. Referral of proposed regulations or boundaries to planning commission* is referred to and read by Atty. Rybak. The Statute reads in part, "A proposal disapproved by the planning commission may be adopted by the zoning commission by a vote of not less than two-thirds of all the members of the zoning commission." Atty. Rybak reads the Planning Commission's referral of the proposed regulation found in the minutes of their April 8, 2015 meeting (Exhibit L). The Planning Commission's referral was against the adoption of the proposed regulation changes at that 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.

Atty. Rybak states that the question now is was the Planning Commission's referral a disapproval or a disapproval with conditions that once satisfied, satisfied the Planning Commission's requirements. It may not have turned it into an approval but it is not a disapproval under State Statute 8-3d if the five conditions have been satisfied. He leaves it up to the Zoning Commission on how to read the Statute but that is how he reads it. with those conditions having been satisfied? In answer, Atty. Rybak addresses the five points made by the Planning Commission and notes that (1) the language has been reviewed by the Town Attorney. (2) The Zoning Commission has read and understands the State licensing regulations. (3) The Zoning Commission is addressing consistency with the Plan of Conservation and Development in the drafted motion. Atty. Rybak states that Point (4) of the Planning Commission's referral on whether the Zoning Commission can defend that the prohibition protects the health and safety of the citizens of Harwinton can be concluded by the Zoning Commission members themselves. Regarding Point (5) on whether the Zoning Commission has investigated any current issues with towns that presently have processing facilities and dispensaries, the record shows that there has been correspondence from South Windsor and Watertown. It is Atty. Rybak's opinion that at this point, under the State Statute, the Zoning Commission is not facing disapproval from the Planning Commission. Chairman Truskauskas notes that the Statute clearly states that the Planning Commission is supposed to say whether the proposed regulation is in conformance with the Plan of Conservation and Development and #3 in their report states that it is the Planning Commission who wants Zoning to tell them whether it conforms with the POCD. He therefore questions whether it's really a disapproval that meets the statutory requirements. In his opinion, with the Planning Commission requesting that Zoning makes this finding, the Planning Commission is purveying their purpose onto Zoning and they haven't given a disapproval or an approval. The Planning Commission has not met their obligation to Zoning to give a disapproval right from the start. Atty. Rybak states that the purpose of referring to the Planning Commission is to render a finding of consistency with the POCD, which they apparently did not. Chairman Truskauskas agrees and states that even without the Zoning Commission meeting the five points, his question at the last meeting was based on his thought that the Zoning Commission didn't need to meet that threshold, that if we find the Planning Commission's report is not a disapproval, we just need a simple majority to pass the proposal. L. Steincamp refers to Point (5) of the Planning Commission's referral where it states they would like the Zoning Commission to investigate all towns with medical marijuana facilities and notes that this Commission has only contacted two towns.

J. Marzullo questions whether four affirmative votes from a five-member commission (2/3) would be required with Chairman Truskauskas stating his belief that a simple majority of voting commissioners will pass a motion because the Planning Commission's five points have been satisfied. A. Buonocore states that that's the way

Zoning has always done things and is separate from Planning. We haven't asked them on other issues and she points out that Michael Orefice, though not really consistent with talking about the plan of Harwinton, but asked that we base our decision on whether this is good for the town, not whether or not we approve of Medical Marijuana, because it is legal and that shouldn't be the issue. He did turn it over to the Zoning Commission to make the decision and to act separate from Planning.

Chairman Truskauskas questions Atty. Rybak on whether the motion would be to accept and adopt the proposal or to just accept with Atty. Rybak stating that the motion should include a reading on what is being adopted and the reasons. There is a statement of findings and he notes that they are not based on his opinion but was written by him based on what was said at the public hearings.

J. Marzullo **motioned** to approve and adopt the proposed amendments to the Harwinton Zoning Regulations dated 9/17/12 to add the definitions of Medical Marijuana Dispensary Facility and Medical Marijuana Production Facility to Section 2.3 as follows:

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.