

Present: Chairman Todd Ouellette, Anne Marie Buonocore, Don Truskauskas, Cory Iacino, Alternate Member Glenn Bradley and Land Use Coordinator Polly Redmond

Absent: Nancy LaGanga and Alternate Members Robert Lavoie and Kevin Ferrarotti

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Ouellette called the meeting to order at 7:00 p.m. All regular members present are seated with Alternate Member G. Bradley seated for N. LaGanga.

2. APPROVE MINUTES OF PREVIOUS MEETING: 1/14/13 AND 2/25/13

D. Truskauskas **motioned** to approve the minutes of 1/14/13, seconded by C. Iacino. Motion passed unanimously with A. Buonocore refraining from vote due to her absence at the 1/14/13 meeting.

D. Truskauskas **motioned** to approve the minutes of 2/25/13, seconded by A. Buonocore. Motion passed unanimously with C. Iacino and G. Bradley refraining from vote due to their absence at the 2/25/13 meeting.

3. ALTHEA STOWE – APPLICATION FOR 28' X 40' GARAGE, VACANT LOT, TIMBER LANE, ASSESSORS MAP NO. F2-06-0006.

Atty. John Febroriello is present to represent Mr. & Mrs. Stowe, who are also present. Town Atty. Michael Rybak is also present. Atty. Febroriello distributes a map of the Lake Harwinton area with the Stowe's house lot and vacant lot highlighted. The vacant lot consists of Lot 165 and 166. Atty. Febroriello explains that the Stowes made application for a variance (for setbacks and use of accessory building without a primary use), appeared in front of the Zoning Board of Appeals on 2/13/13, and were denied. Atty. Febroriello states that he had a similar case concerning Mary Lund, 10 Lake Shore Drive, and provides copies of documents of restrictions that were placed on the Lund property to allow for a garage to be placed on her vacant lot. A deed restriction was filed in the land records that kept the house lot and the vacant/garage lot together restricting the separate sale of either lot. Atty. Febroriello states that the Stowe's lot(s) were created in 1949; therefore, a variance request may not have even been proper. He cites the case of Paletsky/Swingle who sued the Town of Harwinton based on a variance denial to build one house on two lots that did not comply with setbacks. On April 21, 1995, Judge Pickett decided the case and allowing permission to be granted to build on the lot, to which they did. Atty. Febroriello notes that the Stowe's two vacant lots (165 & 166) were recently joined for tax purposes via a Quit Claim deed. He is unsure whether this marries the two lots though as it was only done for tax purposes. Atty. Febroriello states that the same declarations the Lund's filed, to marry the lots, could be done for the Stowes. He reminds the commission that law is, if lots were created prior to Zoning Regulations' creation, there is the right to build on non-conforming lots. Regulations don't prohibit the lots to be built upon if the lot was in existence prior to (Harwinton's) Zoning Regulations of 1955. He notes that Lake Harwinton Association has approved the construction, there is no need for septic on the lot and there are no wetlands on the property.

Commissioner D. Truskauskas questions Atty. Febroriello that if the lot predates Zoning, that there are no restrictions on the lot? Atty. Febroriello answers, yes, subdivisions that pre-date the regulations do not have to comply with any new regulations that have been made. There may be question on whether this lot is actually from an approved subdivision but he explains that this lot and many lots in the lake area were filed in the Land Records as subdivisions. The Stowe's house lot was created by combining a number of lots though it still can't support a garage due to septic, well and the fact that a garage would block their lake view.

Commissioner D. Truskauskas questions whether the lot with the garage could ever become a commercial property if Zoning Regulations do not need to be adhered to and not just pertaining to this lot, but other lots that pre-date Zoning Regulations as well. Atty. Febroriello states that it could not because it is in a residential zone. Commissioner C. Iacino questions whether Torrington Area Health District approval is required with Atty. Febroriello stating, no, it is not needed as there is no septic system on the vacant lot.

D. Truskauskas states that an application would be required to TAHD because neighboring septic and wells may be affected by the construction. Atty. Michael Rybak agrees and states that TAHD approval is required and that there is no grandfathering of that requirement. Commissioner D. Truskauskas asks the same question of Atty. Rybak in that, if a lot predates Zoning Regulations, that there are no restrictions on the lot? Atty. Rybak agrees that the Stowe's lot is a lot of record, predates Zoning, is in the Lake Harwinton Charter zone and can only be used as a residential use. He cites Section 13 of the Harwinton Zoning Regulations, and in particular, Section 13.1.3 Building on Non-conforming Lots, stating this regulation should be applied to this application. Also Zoning Regulation Section 6.3 Existing Lots, that allows construction of a permitted building or establishment of a use on a lot containing less than the required lot area or width as set forth in the Regulations on the original effective date (April 28, 1955) or on the effective date of any pertinent amendment thereto, if: (1) the lot is a lot of record, (2) that water and sewers can be provided without endangerment to adjoining residents and (3) that the lot was part of an approved subdivision. Another requirement Atty. Rybak cites is Zoning Regulation Section 2.3, which is one that the ZBA could not vary/grant, and in particular the section that states, "No accessory building or use shall be established in the absence of a principal building or use." Commissioner D. Truskauskas questions whether Section 2.3 applies to the Stowe's vacant lot with Atty. Rybak answering, yes, that the Stowe's lot is not a true subdivision lot. That since the Appellate Court's decision on Paletsky, lots to be grandfathered in had to be part of a subdivision approved by the Planning Commission. Atty. Rybak warns the commission to be careful though in denying a use of the property to prevent the appearance of a "taking" of the lot by not allowing any use of the property. He notes that Section 15.2.2c of the Zoning Regulations states that "Zoning Board of Appeals shall not permit by variance any use of land or building not allowed by the provisions of these Zoning Regulations, and shall not permit by variance in any zoning district a use of land or building not allowed in such zoning district." This regulation prohibits the ZBA from granting use variances. Atty. Rybak refers to the Mary Lund case in which a 3-2 vote was made by ZBA to deny the variance. Mary Lund had two lots, one containing a house and one across the passway that was a vacant lot. Both lots were 50' wide by 120' deep and Mary Lund wished to construct a 25' x 20' garage. Atty. Rybak believes there was also the matter of a claim to some degree of a handicap by Mary Lund. He recalls that the Zoning Board of Appeals did not find a hardship and denied the variance and that the Zoning Commission did grant the application with the equitable agreement of filing deed restrictions. Commissioner D. Truskauskas questions whether the Zoning Commission can require restrictions with Atty. Rybak answering, no, but the applicant could offer to file the deed restriction as a concession. Atty. Febroriello states that his clients would be in agreement to file the deed restrictions. He also adds that Lake Harwinton lots are approved subdivision lots "in fact" and that the lots have been split up since 1949 and totally precede Subdivision Regulations. It is his belief that it is a proven fact that they are subdivided lots.

Commissioner A. Buonocore **motioned** to approve the application with the contingency that TAHD approval is received, that a driveway permit through the Public Works Department is obtained, that the vacant lot where the garage is to be constructed and the house lot at 4 Timber Lane be always kept together and that the garage be used only as an accessory building and that this condition of "marrying" the lots be recorded in the Land Records. Land Use Coordinator Redmond can sign off on the application once these conditions are met. Commissioner D. Truskauskas seconded the motion. LUC Redmond questions whether the garage can be built without meeting any setback requirements and does the driveway need to be shown on the site plan? Atty. Febroriello states that it is his belief that a variance is not required for not meeting setbacks and that the Stowe's do not even need to follow driveway regulations. Commissioner D. Truskauskas questions whether a driveway permit is required with Atty. Rybak answering that it is a town maintained road, therefore, a driveway permit is required. Atty. Rybak also cautions that this decision should be published in the local newspaper even though it is not a special permit. A vote was taken and the motion passed unanimously.

4. ERIC METZ/RPM SUSTAINABLE TECHNOLOGIES -- INFORMAL DISCUSSION ON OPERATIONAL DEMONSTRATION FOR MOBILE BIODIESEL PLANT, CITY OF TORRINGTON, MAIN CONTROL BUILDING, SEWER TREATMENT PLANT, 252 BOGUE ROAD.

Mr. Eric Metz, Director of Field Operations, RPM and Mr. Ray Drew, Administrator, WPCA for the City of Torrington, are present. Mr. Metz gives an overview of the operational demonstration to be installed and distributes a printed power point presentation. He also distributes a Project Summary for FOG (fats, oil and grease) to Fuel Facility. The proposal is to set up a demonstration facility at the Water Pollution Control Authority on Bogue Road to convert brown grease/FOG to biodiesel. It is noted that the WPCA facility recently installed a FOG treatment facility at this site and was given a favorable referral by the Harwinton Planning Commission on September 9, 2009. The Project Summary distributed reports that a laboratory-scale system at UCONN has provided biodiesel made from used cooking oils to the UCONN shuttle buses for several years. A 250,000 gal/yr. system is installed in a separate laboratory at UCONN and is currently producing small amounts of biodiesel as part of shakedown tests prior to operation. This system, manufactured by Proflow, Inc. of East Haven, CT, is the smallest commercial-scale version. A replica of this system, suitably modified to use FOG's, is proposed for the WPCA site. The Project Report goes on to point out that there are a number of benefits to the host site resulting from the demonstration with the most obvious being the 30-40,000 gallons of diesel/fuel oil at a cost projected to be lower than current market price. Information remains on file in the Land Use office. Mr. Metz will be meeting with Fire Marshals from the City of Torrington and Harwinton and once approval for location of the storage containers is given by them, an application will be presented to this commission. It is noted that the containers will be temporary and could range in size from 20 feet to 40 feet. Mr. Drew informs the commission that production will be on a small scale as it is only a demo and that hours of operation will be the same as WPCA's hours; Monday through Friday, 7:00 a.m. to 3:00 p.m. The operation may go to a 12-hour operation but the requirement is that WPCA staff would always be on site when RPM is there.

5. REVIEW LANDSCAPING PLAN FOR 182 BIRGE PARK ROAD, BIRGE PARK COMMONS, LLC.

The commission is in receipt of Greg Mele's landscaping plan/Buffer Design prepared by Pony Legs Studio, Kimberly Barbieri, LA, dated 3/4/13 for Birge Park Commons. The plan shows proposed plantings of [1] Amelanchier Canadensis/Serviceberry 6-7' clump, [3] Thuja plicata/'Green Giant' Arborvitae 4-5' ht, [1] Juniperus chinensis/'Sea Green' Juniper 5 gal, and [1] Acer rubrum/Autumn Flame Red Maple 15 gal. After considerable review, the commission is in agreement that the number of plantings (six) is not sufficient to fill the 15 foot wide strip within the 50 foot buffer to provide a visual screen. The commission agreed that a five gallon Juniper is not a sufficient planting to provide a buffer as it would take many years to grow to a considerable height and also to fill the width of the 50 foot buffer area. The six to seven foot clump of Serviceberry was suggested to be a 15 foot clump instead for the same reasons. Plantings should not be planted in a single row but staggered throughout to ensure filling in of the area. Suggested uses of hemlocks, spruce and white pines were made. The area where ledge is located within the 50 foot buffer area should be shown as vegetation on the plan and if there is any hardship preventing plantings, Section 12.1d allows the commission to approve permanent structures such as fencing (stockade) in place of plantings. Any existing trees on the property should also be included in the landscaping plan.

The commission agreed that plantings, grass or fencing should be extended along the 15 foot area to the back of the property and parallel with the back of the office building housing Eastside Electric. This is to shield any light from entering onto the neighboring property caused by trucks entering/exiting the garage bays on the north side of the building.

(*At the 12/3/12 IWWC meeting, Mr. Mele agreed to Commissioner R. Orciari's request that wetland plantings be planted along the brook providing a natural buffer. Mr. Mele may wish to consider adding these plantings to the landscaping plan as well.)

6. DISCUSSION – ZONING REGULATIONS.

D. Truskauskas discusses possible Zoning Regulation amendments pertaining to definitions of livestock and poultry. He refers to the Eastern CT Resource Zoning Regulations and Ordinances/Farm Ordinances booklet. C. Iacino has information regarding animal density formulas and states that there should be no acreage requirements for animals but rather regulations should focus on site suitability and setbacks. It is her belief that the current regulation (Section 6.5) that states watercourses and water bodies should not be included in the calculation of the minimum land area required for keeping of horses. D. Truskauskas states that he agrees and prefers “General Accepted Practices” as a regulation. D. Truskauskas will email LUC Redmond the information he is referring to and it will be distributed to the commissioners.

7. COMPLAINTS/ENFORCEMENT ACTIONS.

None.

8. ANY OTHER BUSINESS.

LUC Redmond informs the commission that Randy Stickney, Hilltop Equipment Rentals at 165 Litchfield Road (Home Town Pizza Plaza) was interested in obtaining a Dealer/Repairer’s License but not to sell used cars at the Hilltop Equipment site but only to be able to attend auctions and buy trucks for the business at dealer prices. The consensus of the commission was that this is not a permitted use and not in compliance with Zoning Regulation 9.8.1. It is noted that the State of CT DMV Dealers and Repairers License Application calls for a service area, parts storage area and office, which the building Hilltop is leasing does not have, therefore, the license would most likely not be issued.

9. CORRESPONDENCE.

A copy of Sean Hayden, Northwest Conservation District, 2/28/13 letter to First Selectman Michael Criss regarding “Stormwater Runoff and Erosion Problems at 860 South Road” is received from Karen Nelson. The letter includes Karen Nelson’s 3/11/13 letter to Patricia Ladd in response to P. Ladd’s written complaint and copies of Zoning minutes pertaining to Ladd’s complaint against their neighbor Michael Pinette.

10. INVOICES.

None.

11. ADJOURN.

D. Truskauskas **motioned** to adjourn the meeting at 8:55 p.m., seconded by C. Iacino. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 3/13/2013 AT 2:11 PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK