

**TOWN OF SOMERS  
ZONING COMMISSION  
P.O. BOX 308  
SOMERS, CONNECTICUT 06071**

**ZONING MINUTES  
REGULAR MEETING  
Monday, January 22, 2007  
7:00 p.m. Town Hall**

**I. PUBLIC MEETING**

**a. Pending Claims & Litigation, Grower Direct, Inc. vs. Somers Zoning Commission**

Chairman Robert Martin called the public meeting to order at 7:05pm and the legal notice was read.

Town Attorney Carl Landolina provided a history of the involvement between Grower Direct and the Somers Zoning Commission as it pertained to the pending claim and litigation. He explained that an excavation permit was received by the owners of Grower Direct Farms to excavate some earth materials from their property. The stated purpose of the operation was to prepare the property so that additional greenhouses could later be constructed on the site. He added that a cease and desist order was issued to Grower Direct because they had begun the operation without securing a permit from the Zoning Commission.

He explained that there were discussions early on as to whether Grower Direct Farms was exempt from the permit according to Town Zoning Regulations and at the time it was decided by the owners of Grower Direct that they would come to apply for the permit, which they did. All of the permits are renewed annually in June and they reapplied to renew their existing permit in June of 2006. The permit was granted with the conditions that operations not begin each day until 8:30am and no operations on Saturdays. Grower Direct then asked for the Zoning Commission to reconsider that decision in October or November of 2006. The Commission voted not to change the hours of operation and a lawsuit was then filed by attorneys on behalf of Grower Direct Farms.

After the filing of the lawsuit, Attorney Landolina had the opportunity to speak with the attorneys for Grower Direct and a possible settlement of resolution was discussed. He then met with this Zoning Commission in Executive Session to discuss some of the details of the proposed settlement and it was decided at that time the way to proceed would be to have an open meeting, discuss the settlement of the law suit, and allow the public to speak for or against the possible resolution of the lawsuit.

Based upon his reading of the regulations, and the complaint of Grower Direct, he believes that there are some legitimate claims in the original complaint that could be made by Grower Direct supporting their position in the lawsuit. Based upon that fact he recommended to the Zoning Commission that they consider settling the lawsuit by changing the condition that was placed upon Grower Direct and allow Grower Direct to operate beginning at 7:30am, the standard hours of operation included within the Town

of Somers Zoning Regulations.

**Len Van Wingerden, 164 Hampden Road**, explained that he is the owner of Grower Direct Farms. He stated that he did not start a lawsuit, but that he did appeal the decision by the Commission to limit the hours to 8:30am to 5:30pm because they thought that this was unfair, restrictive and discriminatory. They have, however, appealed to the court and the appeal is pending, so there is not presently an actual lawsuit. He explained that a lawsuit would cost money to do such things and also Grower Direct Farms was hoping that by putting on a bit of pressure with an appeal that such a meeting as this could be held where these issues could be resolved. He doesn't want the specter of a lawsuit to hang over the meeting and that being the reason for making the change in the modification. He wants the change to be made because there was a mistake in restricting Grower Direct Farms' hours of operation. He hopes that the Commission will understand that it is important for all involved to feel that they are neutral in the hearing of the comments and that there is an even-handedness in the decision-making process.

Attorney Landolina stated that there is indeed a lawsuit involved, because an appeal is actually a lawsuit and, if it is not settled by the Zoning Commission, it will go forward unless Mr. Van Wingerden decides to withdraw his appeal. It will go through its normal course and the town will have to expend legal fees and other things defending its position.

**Irving Herskowitz, 815 Main Street**, stated that he has been reading the Grower Direct side of the issue in the newspapers, but he has never heard the Zoning Commission's side of the issue. He asked why one person was singled out. He asked what the logic behind that decision was in the Zoning Commission's viewpoint.

Attorney Landolina stated that he didn't feel that such an issue should be discussed in this venue because the issue to be discussed this evening is to decide whether or not the decision should be rescinded by the Board and the lawsuit settled.

Chairman Martin stated that the Zoning Commission's point of view can be easily found by the public's reading of the minutes of past Zoning Commission meetings, and then it is up to the Zoning Commission to make a final decision after this meeting at the regular Zoning Meeting.

**David Reed, 32 Mountain View Road**, the Vice Chairman of the Town of Somers Economic Development Commission, stated that he was here to support the town's local businesses and he asked that the Town reconsider the time constraint put on this business and make it an equitable situation as with the other organizations in town that do this type of work. He did look at the particular minutes on June 19 and in the actual voting section it did not state why the Commission established this special criteria. It didn't really answer the question as to why the board made this decision. He does not really understand why one business would be set apart from the other businesses within the field.

**Everett Morrill, 101 Mountain View Road**, stated that he works for the Town of Somers Public Works Department. He noted that Public Works has to get sand for the Town in the same area and restricting the hours of operation effects the hours that the Public Works Department can work as well. If the department has to wait an extra hour to get trucks through to get sand, it appears unfair to the department. He added

that he believes that it is important that whenever a gravel bank, or any other business opens up, everyone should be treated equally and consistently.

**Diane Nelson, 106 Stafford Road**, commented that even though she hasn't lived in the area very long, Grower Direct Farms has always been a great neighbor. All of the trucks that have come out of the operation have been clean and do not go fast, there is no dirt tracked onto Hampden Road, and she rarely hears trucks.

She feels that an hour may not seem like much time to some people, but in the construction business, it is. Also, when someone wants their sand and gravel, if they can't get it, they will always go somewhere else to get it. The town is not supporting its businesses if it can't make it equal across the board in terms of competition.

**Ed Fedorowich, 232 Stafford Road**, stated that Mr. Van Wingerden and his family have always been very good neighbors. Also, about 17 years ago when the town had a problem with Bruce Wood's gravel bank and the Gavlak water issue, Mr. Van Wingerden allowed them to drive through his property so that they could exit via Hampden Road, which is a much wider road than Stafford Road or Woods Road, which were the other options. He would rather be approaching a gravel truck on Hampden Road than he would on Woods Road. What if Mr. Van Wingerden decided that he just wanted to get out of the entire business and closed up his operation and the road? What would happen to Mr. Woods' operation? He explained that there are many problems that could ensue based upon the way the Board has ruled upon this.

**Bob Topier, 208 Hampden Road**, stated that he has lived in the area about 3 to 3-1/2 years and commented that he would like to see that all of the business operations within Town are treated equally. He added that he has been working in the construction field for 25 years and generally construction companies operate from 7:00am to 3:30pm. Restricting someone to start hauling at 8:30am really constricts their operation.

**Leon Dolby, 107 Colorado Drive**, stated that he does not see how anyone could justify stopping trucks coming from the sand and gravel operation but at the same time not stopping the very large trailer trucks which could operate at any time of the day on the same roads.

**Joan Rivard, 74 Maple Ridge Drive**, stated that she supports making the change back to the town's normal required hours. No one business in the same field should be isolated from another, and all of the Town's people will have to pay for a lawsuit. There are many things someone could complain about in this town. For example, the school busses wake her up in the morning. The helicopters from the prison sometimes disturb her. However, she is not going to sue them because that is part of what living in this town is all about. She added that it takes common sense to live anywhere and it seems common sense that if you have a gravel bank operation, it should have the same hours as any other operating gravel bank.

Ms Rivard is part of an organization in town that Mr. Van Wingerden donates flowers to and she is in and out of his operation through the spring and fall because of this. She stated that her organization sees an operation where he waters down the roads to keep the dust down, the place is immaculate and many other places in town should take a lesson from this because it is an operation that the Town can be proud of.

She added the Commission has placed a restriction on Grower Direct Farms which many people cannot understand and she requested that the Commission rescind its original decision.

**Henry Broer, 74 Hampden Road**, stated that he wanted to address the decision-making that went on at this Commission dating back to January 2006, and added that any reading of the minutes, including all of the comments of those living on Hampden Road, can explain why the decision was made. He stated that he hasn't heard anyone who lives on Hampden Road south of Growers Direct speak in favor of it. He stated that he is opposed to the continuing high volume of truck traffic on Hampden Road as he has stated and written to the Commission, the Town Planner and the Board of Selectmen.

Mr. Broer added that it is only the increased traffic that became obvious about a year ago and added that contrary to Mr. Van Wingerden's attempts to confuse the issue by including all gravel operations occurring at this site, it is the Van Wingerden Gravel Operation operating on his 152 acres, easily identified by his use of Holden Trucks, that they have complained about. Mr. Broer added that Mr. Van Wingerden now has chosen to challenge the Zoning Commission rules by going to court and suing the Commission and the Town. He added that he wishes to address some of the 20 issues Mr. Van Wingerden has brought before the court listed in the deposition.

Mr. Broer began by quoting Item 4 on the Deposition as follows: "The Commission is bound by the regulations which it has adopted.". He added that Regulation 214-102, paragraph (f) states that the Commission may "place, on any special use permit, whatever conditions the Commission may wish to reasonably deem necessary.". He stated that he has no doubt that the Commission has applied this carefully and conscientiously at many meetings and discussions.

He then addressed Item 5, Bias or Unfair Treatment. He stated that any reading of the minutes of the past 2½ years clearly demonstrates that this Commission has diligently avoided any bias or unfair treatment.

He stated that Item 6 mentions the hours of operation prior to June 19, 2006 and Item 7 discusses public hearings held for the special use permits for earth removal. He stated that Item 8 discusses that representatives for the Plaintiff did not attend the hearing and added that Mr. Van Wingerden has not attended several public hearings.

Item 9 states that, "unbeknownst to the Plaintiff, the Commission reduced its hours of operation" and that Mr. Van Wingerden states that he thought the new hours were just a typo and he chose to ignore it. Mr. Broer added that Mr. Van Wingerden has continued to violate the hours of operation continually since that time.

In reading the minutes, Mr. Broer stated that he never sees reference to the many emails he has sent to the Town documenting many abuses of the operating hours or the letter he wrote to the Chair of the Commission on August 29, 2006.

The Plaintiff brought an application to reinstate the starting time to the original use permit even as he knowingly violated the terms of the existing permit. The Commission had previously granted a permit with an earlier starting time. The Commission, after several public hearings on the matter, all through

2006, decided a change in operating hours was in order.

Item 14 of the Deposition states that there was a “depreciated and/or destroyed the value of its property”. Mr. Broer asked how this was so and added that tons of sand and gravel have been removed over the past 2½ years.

With respect to Item 16, he stated that contrary to a requirement of its regulations, any reading of the regulation gives the Commission authority to attach special conditions to a special use permit.

With respect to Item 17c he quoted from the Deposition, “The Commission attached a condition it did not have the power to do.”. He added that Regulation 214.102(f) states that it does have the power.

With respect to Item 17e he quoted: “The Commission ignored the evidence presented by the Plaintiff at the hearing.”. Mr. Broer asked how could the Plaintiff say this when he spoke, as well as 7 members of the public.

17 n-o addressed the gist of what the lawsuit holds, in his opinion. It stated, “Does the Town have a concern as it relates to neighborhood and the citizens who live there?”.

He stated that Items 18 and 19 declare that the ordinance is vague and uncertain. He feels that to him, they are not vague and uncertain, but a court will have to decide that.

He asked that the town not be swayed because Grower Direct is the second biggest taxpayer in town. And to remember that it’s October 2006 minutes regarding the Worthington Pond Farms Decision states that the Court agreed that the Commission does have leeway in granting Special Use Permits.

He quoted the first sentence of Mr. Van Wingerden’s letter dated 9/3/2006 which stated: “for some 2½ years we have been moving excess earth from our land.” and added that during this time, Mr. Van Wingerden had no permit to do so.

He added that it is critical that the Commission realize that the total number of trucks, other than Holden Trucks, using the gravel pits wouldn’t equal the number of Holden Trucks excavating on Van Wingerden’s property.

He commented that he has sent at least a dozen emails to the Town Planner and the First Selectmen with the numbers of trucks and the before 7:30am starting times of them. He submitted examples of this and a copy of his letter.

A letter dated January 12, 2007, and received January 16, 2007, was received from **John and Laura Jacewicz, 99 Hampden Road** and read into the record in support of granting Grower Direct Farms’ request for the change. They stated that the vehicles from Grower Direct Farms make no more noise than those vehicles that routinely use Hampden Road and the road into the business is well maintained and generally in a state of good repair. They added that the traffic traveling along Hampden Road is not extensive compared to the regular traffic traveling along the roadway.

Mrs. Carson stated that no other correspondence was received for the public meeting. A motion was made by Jill Conklin, seconded by Anita Calder, and unanimously voted to close the public meeting at 7:44 p.m.

At 7:45pm, a motion was made by Wes Smith, seconded by Jill Conklin, and unanimously voted to add to the agenda **EXECUTIVE SESSION: Pending Claims & Litigation, Grower Direct, Inc. VS. Somers Zoning Commission** and to invite the Zoning Commissioner, Town Planner, and Town Attorney.

The Commission came out of Executive Session at 7:59pm.

## **II. CALL TO ORDER**

Chairman Robert Martin called the regular meeting to order at 8:00pm. Members Anita Calder, Jill Conklin, Rob Martin, Wes Smith and Alternate Member, Dan Fraro (seated for Peter Klein), were present and constituted a quorum. Town Planner Patrice Carson was also present.

**III. INTERVIEW DESIGN REVIEW BOARD CANDIDATES** – There were no new candidates present.

## **IV. MINUTES APPROVAL**

The minutes from November 20, 2006 and December 27, 2006 were deferred.

A motion was made by Anita Calder, seconded by Jill Conklin, and unanimously voted to approve the minutes of the January 8, 2007 minutes as written.

## **V. OLD BUSINESS**

### **a. Discussion/Possible Decision: Pending Claims & Litigation, Grower Direct, Inc. vs. Somers Zoning Commission**

A motion was made by Wes Smith, seconded by Anita Calder and unanimously voted to authorize the Town Attorney to settle the litigation of Grower Direct Farms Inc. vs. Somers Zoning Commission by rescinding the condition of the present Special Use Permit limiting Grower Direct Farms' hours of operation from 8:30am to 5:30pm and reinstating the hours of operation in Section 214-71.D. of the Somers Zoning Regulations.

### **b. Other** – There was no Old Business.

## **V. NEW BUSINESS**

### **a. 2007/2008 Budget**

Mrs. Carson reviewed the budget for the upcoming year, noting changes from last year. There has been a

decrease in the hours for the Zoning Enforcement Officer. An increase has been included for instruction due to the fact that new members have been placed on the Commission, but over all the Commission's budget has actually decreased.

A motion was made by Jill Conklin, seconded by Dan Fraro, and unanimously voted to approve the 2007/2008 Budget as recommended and submit it to the Boards of Selectmen and Finance.

**b. Other** – There was no other new business.

## **VII. DISCUSSION: PLAN OF CONSERVATION AND DEVELOPMENT**

No new information was presented on this item.

## **VIII. STAFF/COMMISSIONER REPORTS**

No reports were given. The Zoning Enforcement Report will be emailed to Commission Members.

## **IX. CORRESPONDENCE AND BILLS**

The Town has received notice that the Department of Environmental Protection has issued a general permit for utility and drainage installation for sanitary sewer at the Somers Correctional Complex in the Shaker Road area.

There will be an open community forum on January 29, 2007 at 7:00pm at the High School regarding looking for a new school superintendent.

Mrs. Carson reported that a bill has been received from the Journal Inquirer for \$283.32 for the notice for the November 20, 2006 public hearing and meeting. A motion was made by Anita Calder, seconded by Jill Conklin, and unanimously voted to pay the bill as presented.

## **X. ADJOURNMENT**

A motion was made by Jill Conklin, seconded by Blinky Calder and unanimously voted to adjourn the January 22, 2007 Zoning Commission meeting at 8:30pm.

Respectfully submitted,

Wes Smith, Secretary

Robin Timmons, Recording Secretary

***MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING.***