

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

**ZONING MINUTES
REGULAR MEETING
JUNE 1, 2009
TOWN HALL - 7:00 p.m.**

I. PUBLIC HEARINGS:

a. MODIFICATION OF SPECIAL USE PERMIT APPLICATION FOR GOLF CENTER: ADD STORAGE BUILDING & SECOND BUILDING WITH TAKE-OUT FOOD SERVICE, 349 MAIN STREET, DRIVING RANGE 349 MAIN STREET, LLC

Chairman Martin opened the Public Hearing at 7:04pm and the legal notice was read.

Tim Coon of J.R. Russo and Associates represented the applicant. He presented a lot map of the 18.7 acre property which is zoned A-1. He reiterated that the application for construction of the mini-golf course was approved last fall. This evening's application is for construction of a food service building. The applicant proposed to move the current building to another location on the property to be used for storage. A new 1,700 square foot building will be built to house the food service.

Mr. Coon showed an architectural rendering and floor plan of the proposed building and described how the space will be used. There will be a food service window with indoor and outdoor seating, but no waitress service. A septic system and a propane tank will be installed for the new building. The lighting and other features of the original plan will not change. The parking lot will have eighty-two parking spaces. A deferral of construction of the thirty spaces had been approved last fall, but construction of these spaces will not be deferred. The applicant is not requesting a change of the previously approved hours of sunrise to 10pm Sunday to Thursday and sunrise to midnight Friday to Saturday. The food service will be an accessory use to the mini-golf and driving range only. The original landscape plan will not change.

The Health Department sent a letter regarding the well stating they approve the water quality and quantity. A second inspection of the water supply will be needed before opening the food service. The Town Engineer provided his letter of approval and Mr. Coon provided the Fire Marshall's letter to the Commission.

Ms. Carson stated a letter was received from the Fire Marshall dated May 28, 2009 and a letter came from the Town Engineer dated May 27, 2009 stating the bond was acceptable. Ms. Carson reported that David Askew has no comment regarding the storm water drainage or change in elevation of the parking lot, as they are the functional equivalent of the previously approved plan. The Sanitarian and the Planning Commission have given there site plan approvals. The sign permit will go through the Zoning Enforcement Officer (ZEO).

The floor was opened to those who wished to speak for or against the application:

Selectman David Pinney wanted to make sure that the accessory use food service does not become a restaurant in a residential zone.

There were no others to speak for or against the application.

A motion was made by Ms. Conklin; seconded by Mr. Fraro and unanimously voted to close this portion of the Public Hearing at 7:18pm.

b. PROPOSAL TO SETTLE A LAWSUIT: ROBERT SMYTH, ET AL VS. SOMERS ZONING COMMISSION DOCKET #CV08-4009357S PENDING IN TOLLAND SUPERIOR COURT REGARDING ZONE CHANGE APPLICATION (PREVIOUSLY DENIED BY THE ZONING COMMISSION) FOR PROPERTIES AT 225 FIELD ROAD (MAP 02 BLOCK 50) & 251 FIELD ROAD (MAP 02 BLOCK 44 LOT 03)

Atty. Karl Landolina of Fahey, Landolina Attorneys, LLC represented the Somers Zoning Commission giving a summary of this case to date. The plaintiffs Smyth and Avery had requested a zone change to make the zone lines consistent with their property lines. There were several public hearings on this application ending in a denial of the request by the Zoning Commission. Mr. Smyth appealed to Superior Court and the case went to mediation. An agreement was proposed, however Mr. Avery was not a part of that agreement. Mr. Avery has since made himself a party to this lawsuit and has been included in the stipulated agreement.

Atty. Landolina stated that since the last public hearing abutters to the Smyth/Avery properties, Decker, Cox, Legg, Navakonis and Cowles have filed petitions to intervene under an Environmental Protection Act. Also, John Cowles has filed a motion pro se in Superior Court to intervene as a party in the lawsuit, but this motion has not yet been heard.

Atty. Landolina recommended the Public Hearing to be continued and to take evidence at this meeting. After closing the Public Hearing he said the Commission could vote on the stipulated agreement but the vote would then need to go for approval by Superior Court. At that time Mr. Cowles may have intervener status in the case. Atty. Landolina pointed out that in zoning cases all parties must agree to all terms of the stipulation or there will be no resolution.

Jane Legg notified Atty. Landolina that she too had filed a motion in Superior Court to be a party to the case. She presented her motion for the file.

Atty. Landolina asked Mr. Cowles and Ms. Legg if their purpose for filing for intervener status was to block an agreement, or change the agreement. Mr. Cowles answered it was too early to tell what it might be.

A Motion was made by Mr. Fraro; seconded by Ms. Conklin and unanimously voted to go off record and into recess at 7:39pm.

At this time Atty. Landolina and Atty. Parks left to confer. They returned at 7:41pm and explained that they needed to discuss Ms. Legg's motion to intervene because her motion has a different posture than that of Mr. Cowles. However, both attorneys agreed that the motion did not change their positions.

The five petitions filed by Cox, Decker, Navakonis, Legg and Cowles were accepted and made a part of the record. These petitions were filed under a provision of the Environment Protection Act allowing a party to intervene if an activity allows an unreasonable risk of pollution. The petitions ask the Zoning Commission to take an environmental assessment regarding the proposed zone change. Atty. Landolina explained however, that an *activity* is not being proposed and only a line is being moved, therefore the law has not been triggered.

Atty. Landolina recommended that the chairman invite the petitioners to address the Commission regarding why they believe Atty. Landolina's opinion should be disregarded.

John Cowles – 26 Lindell Drive- said he would withdraw his petition.

Joe Decker- 393 Billings Road – stated that he wanted to make sure that he would have an opportunity to discuss the stipulated agreement, but did not refute the attorney's opinion.

Jane Legg provided photographs of the view of the subject property from her property to be made a part of the record.

Robert Cox – 19 Lindell Drive – explained that he is concerned that the industrial use of the property may contaminate the water supply. He did not refute the attorney's opinion.

Mr. Navakonis passed on his opportunity to address the Commission.

Atty. Parks, representing the plaintiffs, stated that he also does not believe that the petitions meet the threshold of this law.

At this time the Commission began to address the stipulated agreement.

Atty. Landolina explained that the agreement amended on June 1st was essentially the same as the May 19th agreement but that the new document now applies to Mr. Avery and his property as well. Atty. Landolina reiterated the elements of the proposed stipulated agreement. Under the new agreement a landscaped berm will be required where the Smyth and Avery properties abut the residential properties. The entire berm must be constructed and planted before any C.O. on either property will be issued. There will be a 90-foot setback requirement for construction of any buildings on the properties. The current zoning required set back is 25 feet.

There is a provision in the agreement that allows that any item challenged by the court may be severed from the agreement with the remaining agreement left intact. A clause in this section, paragraph five stating "accept by the parties" has been deleted from the June 1st agreement. The newer agreement allows for buildings on the property currently zoned industrial to be unaffected by the stipulated terms.

Atty. Parks addressed the Commission stating that his clients are hoping to strike a balance so they can use their properties. He reiterated that the buffer has been increased beyond what current regulations require. He pointed out that Mr. Avery lives on this property and does not want to pollute his own water supply. Atty. Parks said that he and his clients are interested to know any additional stipulations the abutters would want to add to the agreement.

The floor was opened to those opposed to the agreement.

Jane Legg said that she is concerned regarding the well water testing. She added that an 8-foot berm would not shield her second floor view from the lights or buildings on the subject property. In the past she has heard trucks dumping at 2:30am. She feels that the Town has not acted on polluting problems on the site in the past and does not believe the Town can be counted on in case of future problems. She believes that Mr. Smyth created the access problem he has with his residential lot. She said that if there were guarantees that there would be monitoring of the issues at the site she might consider an agreement.

John Cowles presented the Commission with a 29 page presentation to be made a part of the record, which he discussed page by page. His stated aim was for a vote against a stipulation for judgment by the Zoning Commission.

He addressed the elements of the plaintiff's appeal and the stipulated agreement the he objects to. Some issues discussed were: The stipulation needs to include an inspection procedure. The statement in the appeal claiming that the property is 2/3 industrial 1/3 residential is untrue. He questions where in the Somers POCD is the statement encouraging zone lines and property lines to conform.

He discussed case by case why this property was different from other split zone properties in Town where the Zoning Commission allowed a zone change. He concluded that this case is not one of many split zone cases as stated by Atty. Parks but is a one of a kind case in the Town of Somers.

Mr. Cowles cited case law stating "The test of a Board's power to change zone is whether the change is for the benefit of the community as a whole, rather than for the benefit of particular individuals or groups of individuals", 140 CT Reports 402.

He stated that in 2003 the Smyth property was supposed to have been planted with trees to screen the residential properties from the industrial land. Mr. Cowles presented a photograph showing that the trees were not planted; he therefore doubts that the abutters can believe the stipulations will be upheld by the plaintiffs. He also expressed concern that there are no provisions for replanting of trees if any should die.

Joan Rivard was upset by the dismissal of the petitions because moving a zone line is not a cause of action under the statute. She pointed out that the plaintiffs want to change the zone line to use the property for an industrial use.

Atty. Parks stated that the parties are attempting to avoid trying the plaintiff's appeal and want to find a compromise. He thinks the stipulated agreement as it stands is a fair proposal.

Atty. Landolina suggested that paragraph five of the stipulated agreement be removed because this language could make the agreement too permissive. He commended Mr. Cowles for bringing attention to this in his discussion on contract zoning. Atty. Landolina also suggested that a requirement of a landscape bond could be added to the agreement ensuring that the trees are maintained for a period of time. A provision for a conservation easement could also be considered to protect the 90-foot setback area.

A motion was made by Ms. Conklin; seconded by Mr. Smith and unanimously voted to continue the Public Hearing for the proposal to settle the lawsuit: Robert Smyth, et al vs. Somers Zoning Commission docket #CV08-4009357S pending in Tolland Superior Court regarding zone change application (previously denied by the Zoning Commission) for properties at 225 Field Road (map 02 block 50) & 251 Field Road (map 02 block 44 lot 03) until June 15, 2009 at 7:00pm at Town Hall.

II. CALL TO ORDER

Chairman Rob Martin called the regular meeting of the Zoning Commission to order at 7:04pm. Members Jill Conklin, Rob Martin, Dan Fraro, Wes Smith, and alternate member Paige Rasid (seated for Ray Hafford) were present and constituted a quorum. Also present were Town Attorney, Carl Landolina and Town Planner Patrice Carson.

A motion was made by Mr. Fraro; seconded by Ms. Rasid and unanimously voted to take the agenda out of order.

IV. OLD BUSINESS

a. DISCUSSION/POSSIBLE DECISION: MODIFICATION OF SPECIAL USE PERMIT APPLICATION FOR GOLF CENTER: ADD STORAGE BUILDING & SECOND BUILDING WITH TAKE-OUT FOOD SERVICE, 349 MAIN STREET, DRIVING RANGE 349 MAIN STREET, LLC

Ms. Carson advised the Commission that anything that the Fire Marshall or Sanitarian has remaining will be addressed at the building permit level. The proposed bond is \$62,721.00.

A motion was made by Mr. Fraro; seconded by Mr. Smith and unanimously voted to approve Driving Range 349 Main Street, LLC's modification of special use permit application for golf center to add storage building & second building with take-out food service at 349 Main Street with the bond to be set at \$62,721.0, which includes a 10% contingency to protect the interest of the Town of Somers and to require that the restaurant operate only during operating hours of the golf center.

IV. NEW BUSINESS

a. **SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, STAFFORD/ROOT/WOOD ROADS, WOOD GRAVEL OPERATION LLC**

Tim Coon of J.R. Russo and Associates represented the applicant. Hr presented a lot map and showed the areas of the operations. Little has changed since last year's renewal of the permit. The Town Engineer has inspected the site and provided a bond estimate with an increase to a 20% contingency. He found that there is an area where the grade is steeper than the acceptable 3 to 1 grade and that there are mounds along the upper side of the working face that have no protection at the top.

Mr. Smith questioned whether there had been more complaints from the Root Road residents. Mr. Carson knew of none.

A motion was made by Mr. Smith; seconded by Ms. Conklin and unanimously voted to accept Wood Gravel Operation Llc's special use permit application for gravel bank at Stafford/Root/Wood Roads to refer the application to Planning and to set the Public Hearing date to June 15, 2009 at 7:00pm at Town Hall.

A motion was made by Mr. Fraro; seconded by Ms. Conklin and unanimously voted to go into executive session at 9:44pm and to invite Ms. Carson and Atty. Landolina to discuss pending litigation re Smyth et al vs. Somers Zoning Commission.

A motion was made by Mr. Smith; seconded by Ms. Rasid and unanimously voted to come out of executive session at 10:05pm. There were no notes and no votes taken.

IV. OLD BUSINESS:

b. **DISCUSSION/POSSIBLE DECISION: PROPOSAL TO SETTLE A LAWSUIT: ROBERT SMYTH, ET AL VS. SOMERS ZONING COMMISSION DOCKET #CV08-4009357S PENDING IN TOLLAND SUPERIOR COURT REGARDING ZONE CHANGE APPLICATION (PREVIOUSLY DENIED BY THE ZONING COMMISSION) FOR PROPERTIES AT 225 FIELD ROAD (MAP 02 BLOCK 50) & 251 FIELD ROAD (MAP 02 BLOCK 44 LOT 03)**

Mr. Martin said that the Commission would continue the Public Hearing. The Commission recommends that stipulations be added to the agreement for a two-year landscaping bond and to require the construction of the burn one year from the date of signing the stipulated agreement or before application of a building permit whichever comes first. Atty. Landolina encouraged the applicants to show good faith by agreeing to these additional stipulations. He explained that the Commission is willing to entertain this agreement because they believe that after implementation of the stipulations the subject property would be far more preferable to the abutters than the current situation. He cautioned that if this case goes to court and is lost the outcome could be much worse.

III. MINUTES APPROVAL: March 26, 2009 & May 18, 2009

Approval of the minutes of March 26, 2009 was deferred.

Correction of the May 18, 2009 minutes: Remove from item II. Paragraph 2 "Ms. Rasid Abstained."

A motion was made by Ms. Rasid; seconded by Mr. Smith and unanimously voted to approve the minutes of May 18, 2009 as amended.

IV. NEW BUSINESS (cont.):

b. **CLOSURE OF SPECIAL USE PERMIT APPLICATION FOR GRAVEL BANK, SOUTH ROAD, BORDEAUX FARM**

Ms. Carson read a letter from Mr. Bordeaux stating that the gravel removal operation is finished and the permit will not be renewed. Restoration of this gravel bank area is nearly completed. The bond for the property is good until September. A letter from the Town Engineer confirmed Mr. Bordeaux's statements. The closure will be handled in-house by staff.

c. **REQUEST FOR EXTENSION OF ZONING PERMIT FOR NEW HOUSE, 7 ASPEN RIDGE, LEASKA**

Ms. Carson explained that the applicant is requesting a one-year extension of the Building and Zoning permit. The buyers have been unable to sell their home, which caused the failure of the sale of the 7 Aspen Ridge Property.

A motion was made by Mr. Smith; seconded by Mr. Fraro and unanimously voted to approve Leaska's request for an extension of the zoning permit for new house at 7 Aspen Ridge for one year.

d. **OTHER** – There was no other New Business.

V. DISCUSSION: PLAN OF CONSERVATION & DEVELOPMENT

a. **RIDGELINE REGULATIONS**

The ZEO is reviewing the proposed regulation and will also call the Town of Kent for their feedback. The Commission will wait to hear from the ZEO before proceeding further on these regulations.

VI. STAFF/COMMISSIONER REPORTS – There were none.

VII. CORRESPONDENCE AND BILLS

Ms. Carson distributed the newsletter from the CT Federation of Planning & Zoning Agencies. There were no bills.

VIII. ADJOURNMENT

A motion was made by Mr. Smith; seconded by Mr. Fraro and unanimously voted to adjourn the June 1, 2009 meeting of the Zoning Commission at 10:19pm.

Respectfully submitted,

Wesley Smith, Secretary

Jeanne Reed, Recording Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING.